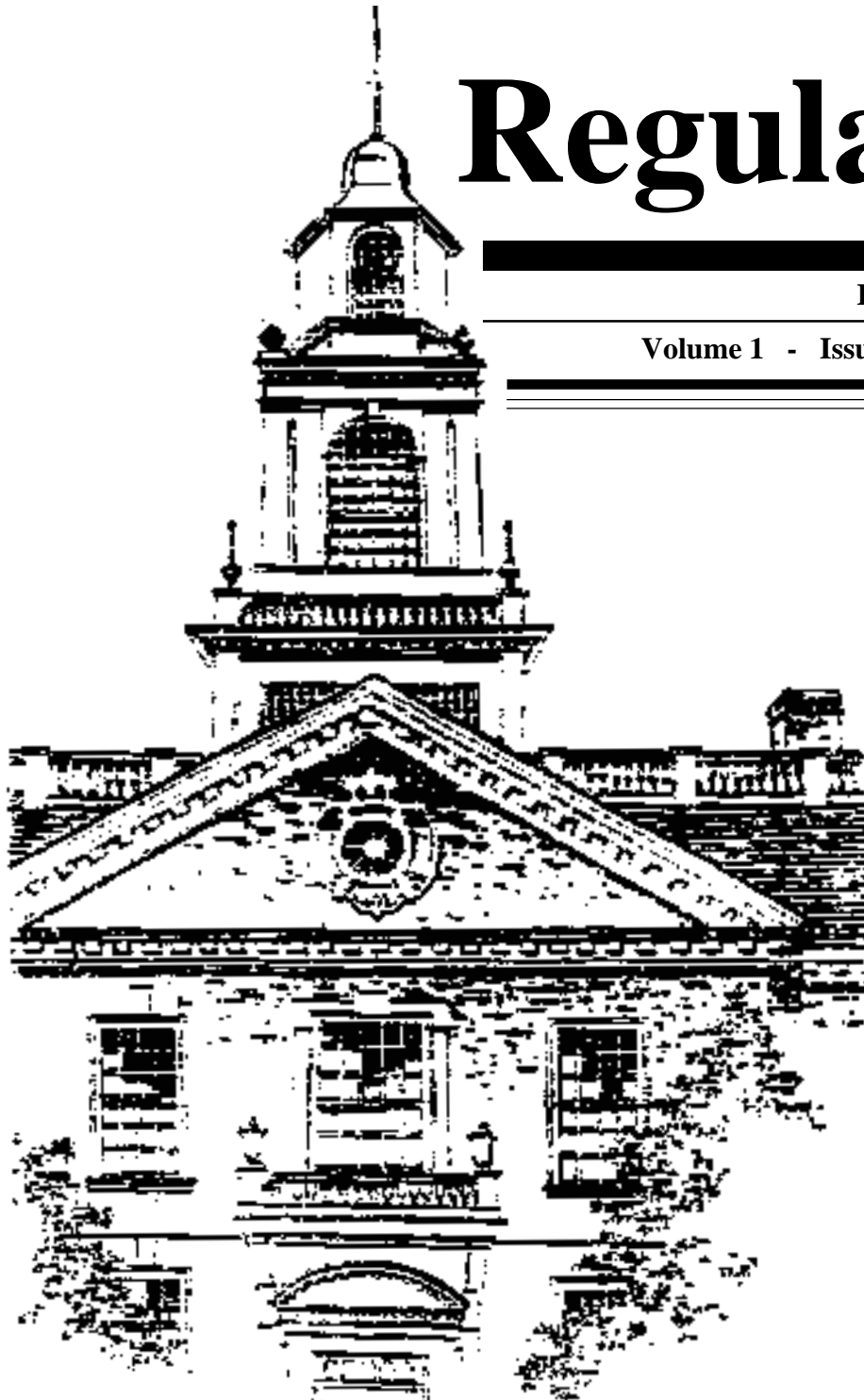

Delaware Register of Regulations



Issue Date: February 1, 1997

Volume 1 - Issue 8

Pages 993 - 1255

IN THIS ISSUE

Regulations:

Errata

Proposed

Final

Governor

Appointments

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 January 15, 1998.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

SUBSCRIPTION INFORMATION

A yearly subscription for the Delaware Register of Regulations costs \$100.00 per year from January - December, for 12 issues. Single copies are available at a cost of \$9.00 per issue, including postage. For more information contact the **Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.**

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations.

INFORMATION ABOUT THE DELAWARE 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.

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
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

William S. Montgomery, Director, Division of Research; **McDonald T. Coker**, Deputy Director; **Kathleen K. Amalfitano**, Secretary; **Walter G. Feindt**, Legislative Attorney; **Jeffrey W. Hague**, Registrar of Regulations; **Marlynn H. Hedgecock**, Administrative Officer; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Brit Shop Supervisor; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Administrative Assistant; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

Cumulative Table of Regulations 998

ERRATA

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF FISH & WILDLIFE

Tidal Finfish Reg. No. 25, Atlantic Sharks 1005

PROPOSED REGULATIONS

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Delaware Board of Examiners of Psychologists 1009
Delaware Real Estate Commission 1015
Respiratory Care Practice Advisory Council 1022
Delaware Council on Real Estate Appraisers 1172

DEPARTMENT OF EDUCATION

Smoking Regulations 1029
Repeal of three regulations 1030

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Lottery Office, background investigation
requirements for Lottery Employees 1032
Technical Memorandum 98-1, Check Boxes 1033

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Amendments to Medicaid Provider Manuals,
General Policy Manual, Long-Term Care
Provider Manual, and others 1035
DMAP, Amendments to Medicaid Eligibility
Policy Manual 1058

DEPARTMENT OF JUSTICE

Delaware Securities Act 1078

DEPARTMENT OF LABOR DIVISION OF EMPLOYMENT & TRAINING

Governor's Advisory Council on Apprenticeship &
Training 1116

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT

Transportation Conformity Regulation No. 32 1125

INDUSTRIAL ACCIDENT BOARD

Proposed Amendments, Rules Nos. 8, 9, 30 & 31 1153

INSURANCE DEPARTMENT

Regulation No. 47 1155
Regulation No. 63 1160

VIOLENT CRIMES COMPENSATION BOARD

Proposed Rule Amendments & Addition 1161

FINAL REGULATIONS

DEPARTMENT OF AGRICULTURE

Thoroughbred Racing Commission,
Bleeder Program 1183

DEPARTMENT OF EDUCATION

Delaware Administrator Standards 1184
Delaware Teaching Standards 1188
Vocational Technical Education Programs 1196
Repeal of certain Vocational Technical Education
Sections 1199

TABLE OF CONTENTS

997

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE
OFFICE OF THE STATE LOTTERY**

Video Lottery Employee Organization & Lottery
Employee Regulations 1202

**DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

DMAP Sec. 410.15, Vehicles 1211
DMAP Sec. 420, Personal Needs Allowance 1212
Durable Medical Equipment Manual 1213
Ambulance Provider Specific Policy Manual 1214

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS**

Equal Employment Review Board 1215
Special Employment Practices relating to Health
Care & Child Care Facilities &
Adult Abuse Registry Check 1216
Prevailing Wage Regulations 1218

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

NOx Budget Program 1220

GOVERNOR

Governor's Appointments 1248

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Administrative Services, Division of
Professional Regulation
Delaware Real Estate Commission, notice of
public hearing 1251

Delaware Board of Examiners of Psychologists,
notice of public hearing 1251
Delaware Real Estate Commission, notice of
public hearing 1251
Delaware Council on Real Estate Appraisers, notice
of public hearing 1251
Delaware Board of Medical Practice,
Respiratory Care Practice Advisory Council,
notice of public hearing 1251

Department of Education, monthly meeting notice 1252

Dept. of Finance,
Office of the State Lottery, notice of comment
period 1252
Division of Revenue, Technical Memo. 98-1,
notice of public comment period 1252

Dept. of Health & Social Services, Div. of Social Services
Notice of public comment period for changes
in several Medicaid provider manuals 1252
Notice of proposed policy amendments to
Medicaid eligibility policy manual 1253

Dept. of Justice, Delaware Securities Act,
notice of public comment period 1253

Dept. of Labor, Division of Industrial Affairs
Gov.'s Advisory Council on Apprenticeship &
Training, public notice of proposed rule
changes 1253

DNREC, Div. of Air & Waste Management, notice
of public hearing on Reg. 32 1254

Industrial Accident Board, notice of public hearing
on proposed rule changes 1254

Insurance Department, notice of public hearing
on Regulation No. 47 1255
Notice of public hearing on Regulation No. 63 ... 1255

Violent Crimes Compensation Board, notice of public
hearing on proposed rule changes 1255

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues 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.).

Attorney General's Office

Opinion No. 97I-B01, FOIA Complaint against the Town of Laurel	1:1 Del.R. 74
Opinion No. 97I-B02, FOIA Inquiry	1:1 Del.R. 75
Opinion No. 97I-B03, FOIA Complaint against Woodbridge School District	1:1 Del.R. 76
Opinion No. 97I-B04, Access to DELJIS	1:1 Del.R. 77
Opinion No. 97I-B05, FOIA Complaint against the Town of Laurel	1:1 Del.R. 79

Delaware State Fire Prevention Commission

1997 State Fire Prevention Regulations	1:2 Del.R. 197 (Final)
Ambulance Service Regulations	1:1 Del.R. 35 (Prop.)

Department of Administrative Services

Division of Professional Regulation

Board of Chiropractic	1:1 Del.R. 45 (Final)
Board of Dental Examiners	1:5 Del.R. 543 (Prop.) 1:7 Del.R. 852 (Final)
Board of Electrical Examiners	1:7 Del.R. 795 (Prop.)
Board of Examiners in Optometry	1:7 Del.R. 820 (Prop.)
Board of Nursing, Advanced Practice Nurse	1:1 Del.R. 15 (Prop.)
Board of Nursing	1:2 Del.R. 146 (Final)
Board of Pharmacy	1:4 Del.R. 428 (Prop.)
Board of Physical Therapy	1:2 Del.R. 101 (Prop.) 1:6 Del.R. 714 (Final)
Board of Veterinary Medicine	1:7 Del.R. 805 (Prop.)
Nursing Home Administrators	1:2 Del.R. 141 (Final)

Department of Agriculture

Aquaculture Regulations	1:4 Del.R. 309 (Prop.)
Delaware Harness Racing Commission	1:2 Del.R. 92 (Prop.) 1:5 Del.R. 498 (Final) 1:5 Del.R. 541 (Prop.)
Whips & Blood Gases	1:7 Del.R. 921 (Final)

Delaware Thoroughbred Racing Commission	1:2 Del.R. 100 (Prop.)
	1:3 Del.R. 248 (Prop.)
	1:5 Del.R. 508 (Final)
	1:6 Del.R. 649 (Prop.)
	1:6 Del.R. 713 (Final)
Department of Education	
Agriscience Education Framework	1:2 Del.R. 154 (Final)
Delaware Administrator Standards	1:6 Del.R. 650 (Prop.)
Delaware Teaching Standards	1:6 Del.R. 654 (Prop.)
Driver Education	1:5 Del.R. 559 (Prop.)
	1:7 Del.R. 964 (Final)
DSSAA Requirements	1:2 Del.R. 172 (Final)
Education of Homeless Children & Youth	1:5 Del.R. 556 (Prop.)
	1:7 Del.R. 962 (Final)
Foreign Language Content Standards	1:2 Del.R. 156 (Final)
Glossary of Terms, Manual for Certification of Professional School Personnel	1:2 Del.R. 158 (Final)
Guidelines for Approval of School Improvement Grants	1:7 Del.R. 815 (Prop.)
High School Diploma & the Record of Performance	1:5 Del.R. 554 (Prop.)
	1:7 Del.R. 960 (Final)
Interscholastic Athletics	1:4 Del.R. 361 (Prop.)
	1:6 Del.R. 724 (Final)
Manual for Certification of Professional School Personnel	1:2 Del.R. 163 (Final)
Membership in Fraternities & Sororities	1:4 Del.R. 363 (Prop.)
	1:6 Del.R. 723 (Final)
Regulations on School/Police Relations	1:3 Del.R. 256 (Prop.)
	1:5 Del.R. 510 (Final)
Repeal of certain parts of section V, Vocational Technical Education Programs	1:6 Del.R. 664 (Prop.)
Repeal of certain regulations concerning Student Activities	1:4 Del.R. 365 (Prop.)
	1:6 Del.R. 726 (Final)
Repeal of Minimum-Maximum Program Assignment, Experimentation and Modification	1:7 Del.R. 817 (Prop.)
Repeal of six Regulations that are in the Delaware Code	1:7 Del.R. 817 (Prop.)
Repeal of Section B.1.a, Discipline Powers & Responsibilities of Superintendents	1:3 Del.R. 263 (Prop.)
	1:5 Del.R. 517 (Final)
Requirements for Vocational Technical Education Programs	1:6 Del.R. 662 (Prop.)
Satellite School Agreements	1:2 Del.R. 170 (Final)
School Bus Regulations	1:2 Del.R. 87 (Prop.)
	1:5 Del.R. 473 (Final)
State Content Standards	1:2 Del.R. 151 (Final)
Visual & Performing Arts Content Standards	1:2 Del.R. 90 (Prop.)

	1:6 Del.R. 729 (Final)
Visual & Performing Arts Graduation Requirements	1:2 Del.R. 88 (Prop.)
 Department of Finance	
Div. of Revenue, Delaware State Lottery Office,	
Video Lottery Employee Organization and Lottery Employee	
Regulations	1:3 Del.R. 243 (Prop.)
Regulations dealing with Americans with Disabilities Act	1:7 Del.R. 826 (Prop.)
Technical Information Memo. 97-6.....	1:6 Del.R. 712 (Prop.)
 Department of Health & Social Services	
Adult Abuse Registry	1:7 Del.R. 803 (Prop.)
Ambulance Provider Policy Manual, Criteria for Non-Emergency	
Ambulance Transportation for Medicaid Clients in a	
Nursing Facility	1:4 Del.R. 394 (Prop.)
Assisted Living Agencies, Regulations for.....	1:4 Del.R. 300 (Prop.)
	1:7 Del.R. 951 (Final)
 DHS revision of Public Law 104-193, the Personal Responsibility	
and Work Opportunity Reconciliation Act, Se. 403, 8 USC 1613,	
the 1993 Mickey Leland Childhood Hunger Relief Act, the Food,	
Agriculture, Conservation and Trade Act Amendments of 1991	
Public Law 104-203, Title 38, USC, and DSSM Sec. 4006 & 4012....	1:4 Del.R. 313 (Prop.)
 Division of Public Health,	
Licensing & Registration of Operators of Public Water	
Supply Systems	1:1 Del.R. 28 (Prop.)
	1:7 Del.R. 932 (Final)
Plumbing Code Regulations	1:7 Del.R. 830 (Final)
Public Pools	1:2 Del.R. 174 (Final)
Trauma System Rules	1:2 Del.R. 110 (Prop.)
	1:7 Del.R. 891 (Final)
Prehospital Trauma Triage Scheme, ALS & BLS (Errata)	1:3 Del.R. 213 (Prop.)
DMAP Sec. 410.15, Vehicles	1:4 Del.R. 368 (Prop.)
DMAP Sec. 420 Personal Needs Allowance	1:4 Del.R. 369 (Prop.)
	1:7 Del.R. 921 (Final)
DSSM Section 8000, A Better Chance Program	1:4 Del.R. 297 (Prop.)
Durable Medical Equipment Manual	1:5 Del.R. 563 (Prop.)
Inpatient Hospital Provider Manual	1:4 Del.R. 370 (Prop.)
Long-Term Care Provider Manual, Billing of Third Party Payer	1:4 Del.R. 394 (Prop.)
 Long-Term Care Provider Manual, Criteria for Non-Emergency	
Ambulance Transportation for Medicaid Clients in a	
Nursing Facility	1:4 Del.R. 394 (Prop.)
Outpatient Hospital Provider Manual	1:4 Del.R. 383 (Prop.)
 Revision of Regulation of the Medicaid/Medical Assistance Program	
Contained in DMAP Sec. 420	1:3 Del.R. 214 (Emer.)
	1:7 Del.R. 858 (Final)

CUMULATIVE TABLES

1001

Revision of Regulation Contained in DSSM 8201	1:5 Del.R. 456 (Emer.)
	1:6 Del.R. 711 (Prop.)
Revision of Regulation Contained in DSSM 8301.3	1:3 Del.R. 215 (Emer.)
Revision of Regulation DSSM 8205.2, 8304 & 8305	1:6 Del.R. 709 (Prop.)
Department of Labor	
Div. of Employment & Training, Apprenticeship Programs	1:1 Del.R. 21 (Prop.)
Div. of Industrial Affairs	
Prevailing Wage Regulations	1:5 Del.R. 519 (Prop.)
Procedures of Equal Employment Review Board	1:5 Del.R. 537 (Prop.)
Special Employment Practices relating to Health Care & Child Care	
Facilities & Adult Abuse Registry Check	1:5 Del.R. 533 (Prop.)
Department of Natural Resources & Environmental Control	
Div. of Air & Waste Management, Air Quality Management Section,	
NO _x Budget Program	1:5 Del.R. 564 (Prop.)
Regulation No. 2	1:1 Del.R. 48 (Final)
Reg. No. 20, Sec. No. 28, Standards for Performance for	
Municipal Solid Waste Landfills	1:4 Del.R. 330 (Prop.)
Div. of Air & Waste Management, Regulations Governing	
Hazardous Waste	1:3 Del.R. 278 (Final)
Div. of Fish & Wildlife,	
Atlantic Sturgeon Regulations	1:7 Del.R. 787 (Prop.)
Horseshoe Crab	1:7 Del.R. 807 (Prop.)
Shellfish Reg. No. S-41, Growing Areas Closed to Harvesting	
Clams, Mussels & Oysters	1:4 Del.R. 354 (Prop.)
	1:7 Del.R. 835 (Final)
Shellfish Regulation No. S-48. Conch Minimum Size Limits	1:3 Del.R. 250 (Prop.)
	1:7 Del.R. 835 (Final)
Shellfish Reg. No. 55, Crab Trotlines & S-56, Crab Traps	1:4 Del.R. 354 (Prop.)
	1:7 Del.R. 837 (Final)
Tidal Finfish Regulation No. 8	1:3 Del.R. 270 (Final)
Tidal Finfish Regulation No. 25 for Atlantic Shark	1:4 Del.R. 345 (Prop.)
	1:7 Del.R. 844 (Final)
Div. of Water Resources, Regulations for Licensing Operators	
of Wastewater Facilities	1:4 Del.R. 323 (Prop.)
	1:7 Del.R. 924 (Final)
Regulations Governing the Control of Water Pollution	1:4 Del.R. 395 (Prop.)
Department of Services for Children, Youth and Their Families	
Division of Family Services	
Licensing Requirements for Residential Child Care Facilities	
and Day Treatment Programs	1:6 Del.R. 668 (Prop.)
Office of Child Care Licensing, Child Abuse Registry	1:7 Del.R. 801 (Prop.)

CUMULATIVE TABLES

Department of State, Office of the State Bank Commissioner

Regulation No. 5.1101(f).0001, Election to be treated for tax purposes as a “Subsidiary corporation” of a Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware	1:3 Del.R. 219 (Prop.) 1:5 Del.R. 474 (Final)
Regulation No. 5.1101etal.0002, Instructions for preparation of Franchise Tax Report	1:3 Del.R. 221 (Prop.) 1:5 Del.R. 476 (Final)
Regulation No. 5.1101etal.0003, Estimated Franchise Tax Report	1:3 Del.R. 224 (Prop.) 1:5 Del.R. 479 (Final)
Regulation No. 5.1101etal.0004, Final Franchise Tax Report	1:3 Del.R. 226 (Prop.)
maintaining branches in this state	1:3 Del.R. 228 (Prop.) 1:5 Del.R. 481 (Final)
Regulation No. 5.1101etal.0005, Instructions for preparation of Franchise Tax for Federal Savings Banks not headquartered in this state but maintaining branches in this state	1:3 Del.R. 228 (Prop.) 1:5 Del.R. 483 (Final)
Regulation No. 5.1101etal.0006, Estimated Franchise Tax Report Federal Savings Banks not headquartered in Delaware	1:3 Del.R. 231 (Prop.) 1:5 Del.R. 486 (Final)
Regulation No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks not headquartered in Delaware	1:3 Del.R. 232 (Prop.) 1:5 Del.R. 487 (Final)
Regulation No. 5.1101.etal.0008, Instructions for calculation of Employment Tax Credits	1:3 Del.R. 233 (Prop.) 1:5 Del.R. 488 (Final)
Regulation No. 5.1101etal.0009, Instructions for preparation of Franchise Tax for Resulting Branches in this state of out-of-state banks	1:3 Del.R. 235 (Prop.) 1:5 Del.R. 490 (Final)
Regulation No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this state of out-of-state banks	1:3 Del.R. 239 (Prop.) 1:5 Del.R. 494 (Final)
Regulation No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this state for out-of-state banks	1:3 Del.R. 241 (Prop.) 1:5 Del.R. 496 (Final)
Regulation No. 5.131.0002, Procedures Governing the Creation & Existence of an Interim Bank	1:5 Del.R. 592 (Prop.)
Regulation No. 5.2111(b).0005, Report of Delaware Loan Volume	1:7 Del.R. 812 (Prop.)
Regulation No. 5.2111/2210/2906.0006, Report of Delaware Assests	1:7 Del.R. 815 (Prop.)
Regulation No. 5.2210(e).0005, Report of Delaware Loan Volume	1:7 Del.R. 813 (Prop.)
Regulation No. 5.2318.0001, Report of Delaware Sale of Checks, Drafts, and Money Orders Volume	1:7 Del.R. 813 (Prop.)

Regulation No. 5.2906(e).0003, Report of Delaware Loan Volume	
Motor Vehicle Installment Contracts	1:7 Del.R. 814 (Prop.)
Regulation No. 5.701/774.0001, Procedures for applications to form a bank, bank & trust company or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code	
	1:5 Del.R. 595 (Prop.)
	1:7 Del.R. 862 (Final)
Regulation No. 5.761.0017, Incidental Powers	
	1:5 Del.R. 597 (Prop.)
	1:7 Del.R. 865 (Final)
Regulation No. 5.770.0009, establishment of a branch office by a bank or trust company	
	1:5 Del.R. 598 (Prop.)
	1:7 Del.R. 866 (Final)
Regulation No. 5.771.0005, Procedures governing applications to open branch offices outside the State of Delaware	
	1:5 Del.R. 599 (Prop.)
	1:7 Del.R. 867 (Final)
Regulation No. 5.795etal.0016, Merger with out-of-state banks	
	1:5 Del.R. 601 (Prop.)
	1:7 Del.R. 869 (Final)
Regulation No. 5.833.0004, Application by an out-of-state savings institution, out-of-state savings & loan holding company or out-of- state bank holding company to acquire a Delaware savings bank or Delaware savings & loan holding company	
	1:5 Del.R. 602 (Prop.)
	1:7 Del.R. 870 (Final)
Regulation No. 5.844.0009, Application by an out-of-state bank holding company to acquire a Delaware bank or bank holding company	
	1:5 Del.R. 605 (Prop.)
	1:7 Del.R. 873 (Final)
Regulation No. 5.777.0002, Application for a certificate of public convenience & advantage for a limited purpose trust company pursuant to subchapter V of Chapter 7 of Title 5 of the Delaware Code	
	1:5 Del.R. 609 (Prop.)
	1:7 Del.R. 877 (Final)
Governor's Office	
Amendment to Executive Order No. 46	1:3 Del.R. 279
Appointments & Nominations	1:1 Del.R. 68
	1:2 Del.R. 200
	1:3 Del.R. 281
	1:4 Del.R. 438
	1:5 Del.R. 623
	1:6 Del.R. 740
	1:7 Del.R. 970
Executive Order No. 45, Employee & Labor - Management Relations in State Government	
	1:1 Del.R. 63
Executive Order No. 46, Governor's Task Force on Violent Crime	
Amendment to Executive Order No. 46	1:3 Del.R. 279
Executive Order No. 47, Executive Committee of the Workforce Development Council	
	1:1 Del.R. 65
Industrial Accident Board	
	1:5 Del.R. 548 (Prop.)
	1:7 Del.R. 938 (Final)

CUMULATIVE TABLES

Insurance Department, Regulation No. 75, Written Notice by Insurers of Payment of Third Party Claims	1:5 Del.R. 591 (Prop.)
Public Service Commission	
Regulation Docket No. 12, Notice of Investigation & Formulation of Rules Concerning Pay Phone Services	1:1 Del.R. 5 (Prop.)
Regulation Docket No. 12, Investigation & Adoption of Rules to Govern Payphone Services within the State of Delaware	1:3 Del.R. 263 (Prop.) 1:6 Del.R. 730 (Final)
Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries	1:1 Del.R. 9 (Prop.)
Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries	1:2 Del.R. 139 (Final)
Regulation Docket No. 47, Promulgation of Rules Regarding the Discounts for Intrastate Telecommunications & Information Services Provided to Schools & Libraries	1:5 Del.R. 462 (Final)
State Personnel Commission	
Merit Employee Relations Board Regulations	1:3 Del.R. 274 (Final)

THE FOLLOWING ORDER ADOPTING A REGULATION AND THE FINAL REGULATION ARE BEING PUBLISHED AGAIN DUE TO CHANGES THAT WERE MADE IN THE REGULATION AS A RESULT OF THE PUBLIC HEARING PROCESS. THE CORRECT FINAL REGULATION WAS NOT PUBLISHED IN ISSUE 7. THE ORIGINAL REGULATION AS PROPOSED AND THE FINAL REGULATION AS ADOPTED FOLLOW

**DEPARTEMENT OF NATURAL
RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 902(e)(3) (7 Del.C. 902(e)(3))

In Re: Adoption of a new Tidal Finfish
Regulation No. 25 in accordance
with the approved Fishery Management
Plan for Atlantic sharks.

Order No. 97-F-0038

ORDER

SUMMARY OF THE EVIDENCE AND INFORMATION

Pursuant to due notice, the Department of Natural Resources and Environmental Control proposes to add a new Tidal Finfish Regulation No. 25, ATLANTIC SHARKS, to be consistent with the Fishery Management Plan for Sharks of the Atlantic Ocean, as amended, and final rules approved by the Secretary of Commerce (50 CFR Part 678).

This regulation will make it illegal to possess certain sharks in the management unit after a federal semi-annual commercial quota is landed for large pelagic sharks, small coastal sharks or pelagic sharks; implement a recreational creel limit; prohibit directed commercial fishing for, landing of, or sale of five species of sharks; prohibit filleting of sharks at sea and prohibit the removal of any fins from a shark in the management unit and discarding the remainder at sea. These regulations are intended to reduce effective fishing mortalities, stabilize the large coastal shark population, facilitate enforcement and improve management of Atlantic shark resources. Sharks in the management unit are currently at very low populations due to recent increases in their harvest.

A public hearing was held on, October 27, 1997, in Dover, Delaware, in front of Charles A. Lesser, Fisheries

Administrator for the Department and the Department's designee to receive evidence. All public comments supported the Departments proposed regulations on sharks. Some of the commentors also recommended a 58 inch minimum size limit for large coastal sharks in order to further protect juveniles.

FINDINGS OF FACT

Legislation (H.B. 169), recently enacted by the 139th General Assembly, authorizes the Department of Natural Resources and Environmental Control to promulgate regulations for species of finfish that are consistent with management plans approved by the U.S. Secretary of Commerce. The Secretary of Commerce has approved Amendment One to the Fishery Management Plan for Atlantic sharks and federal regulations for Atlantic sharks (50 CFR Part 678).

Sharks comprise a valuable marine resource to U.S. Atlantic States. Unfortunately, Atlantic sharks have been seriously overfished in the past two decades leading to declines of as much as 80% in some stocks. The Delaware regulations would bring state fishery management in line with the current federal fishery management plan for sharks of the Atlantic Ocean. This would assist greatly the effort to stop overfishing and help rebuild critical stocks of sharks.

Because sharks reproduce very slowly, giving live birth in most cases to a very few young per year in a way much more like land mammals than the other fishes, the protection of the young sharks in their nursery areas is of paramount importance. Delaware state waters contain some shark nurseries, including an important one in Delaware Bay for the sand tiger shark, a popular aquarium animal and a species that has been decimated by overfishing. Delaware Bay also is an important pupping and nursing area for the sandbar shark. Measures to protect the young sharks in their nurseries in state waters, therefore, will help conserve these biologically limited stocks and rebuild populations along the Mid-Atlantic coast.

The Advisory Council on Tidal Finfisheries discussed the proposed shark regulation at their September 16, 1997 meeting. They supported the regulations provided the no finning and no filleting sections were reworded to not contradict each other.

With the evidence and information received regarding Atlantic sharks, the Department finds the attached Tidal Finfish Regulation No. 25, ATLANTIC SHARKS, should be adopted in the public interest for the conservation of certain Atlantic sharks in Delaware.

ORDER

It is hereby ordered, this 25th day of November, 1997 that the above referenced Tidal Finfish Regulation No. 25, a copy of which is attached hereto, is adopted

pursuant to 7 Del. C. 903 (e)(3) and is supported by the Department's finding on the evidence and information received. This order shall become effective on January 31, 1997.

Christophe A.G. Tulou, Secretary
Department of Natural Resources
and Environmental Control

*** Proposed Regulation 25.**

TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS;

A) Definitions

1) Fillet means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

2) Large coastal sharks species means any of the species, or a part thereof, listed in paragraph (a) of the definition of management unit.

3) Land or Landing shall mean to put or cause to go on shore from a vessel.

4) Management Unit means any of the following species in the Western Atlantic Ocean, Delaware's Territorial Sea or tidal waters of Delaware:

- (a) Large coastal species:
- Hammerhead sharks-- Sphyrnidae
 - Great hammerhead, Sphyrna mokarran
 - Scalloped hammerhead, Sphyrna lewini
 - Smooth hammerhead, Sphyrna zygaena
 - Mackerel sharks--Lamnidae
 - White shark, Carcharodon carcharias
 - Nurse sharks--Ginglymostomatidae
 - Nurse shark, Ginglymostoma cirratum
 - Requiem sharks--Carcharhinidae
 - Bignose shark, Carcharhinus altimus
 - Blacktip shark, Carcharhinus limbatus
 - Bull shark, Carcharhinus leucas
 - Caribbean reef shark, Carcharhinus perezi
 - Dusky shark, Carcharhinus obscurus
 - Galapagos shark, Carcharhinus

galapaqensis

- Lemon shark, Neqaprion brevirostris
- Narrowtooth shark, Carcharhinus

brachyurus

- Night shark, Carcharhinus signatus
 - Sandbar shark, Carcharhinus plumbeus
 - Silky shark, Carcharhinus falciformis
 - Spinner shark, Carcharhinus brevipinna
 - Tiger shark, Galeocerdo cuvieri
- (b) Small coastal species:
- Angel sharks--Squatinae
 - Atlantic angel shark, Squatina dumerili
 - Hammerhead sharks--Sphyrnidae
 - Bonnethead, Sphyrna tiburo
 - Requiem sharks--Carcharhinidae
 - Atlantic sharpnose shark, Rhizoprionodon

terraenovae

- Blacknose shark, Carcharhinus acronotus
- Caribbean sharpnose shark,

Rhizoprionodon porosus

- Finetooth shark, Carcharhinus isodon
- Smalltail shark, Carcharhinus porosus

(c) Pelagic species:

- Cow sharks--Hexanchidae
- Bigeye sixgill shark, Hexanchus vitulus
- Sevengill shark, Hepranchias perlo
- Sixgill shark, Hexanchus griseus
- Mackerel sharks--Lamnidae
- Longfin mako, Isurus paucus
- Porbeagle shark, Lamna nasus
- Shortfin mako, Isurus oxyrinchus
- Requiem sharks--Carcharhinidae
- Blue shark, Prionace glauca
- Oceanic whitetip shark, Carcharhinus

longimanus

- Thresher sharks--Alopiidae
- Bigeye thresher, Alopias superciliosus
- Thresher shark, Alopias vulpinus

(d) Prohibited species:

- Basking sharks--Cetorhinidae
- Basking shark, Cetorhinidae maximus
- Mackerel sharks--Lamnidae
- White shark, Carcharodon carcharias
- Sand tiger sharks--Odontaspidae
- Bigeye sand tiger, Odontaspis noronhai
- Sand tiger, Odontaspis taurus
- Whale sharks--Rhincodontidae
- Whale shark, Rhincodon typus

(5) Pelagic species means any of the species, or a part thereof, listed in paragraph (c) of the definition of management unit.

(6) Prohibited species means any of the species, or a part thereof, listed in paragraph (d) of the definition of management unit.

(7) Small coastal species means any of the species, or part thereof, listed in paragraph (b) of the definition of management unit.

(B) Prohibitions

1) It shall be unlawful for any person to fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess a prohibited species.

2) It shall be unlawful for any person to remove the fins from any shark in the management unit and discard the remainder prior to landing said shark.

3) It shall be unlawful for any person to fillet a shark in the management unit except that a shark may be eviscerated and the head and fins removed prior to landing said shark.

4) It shall be unlawful to release any shark in the management unit in a manner that will not ensure maximum probability of survival.

5) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

6) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce and published in the Federal Register.

* Final Regulation 25

TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS

(a) Definitions:

(1) Fillet shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

(2) Land or Landing shall mean to put or cause to go on shore from a vessel.

(3) Management Unit shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

(4) Large coastal species shall mean any of the following species of sharks or parts thereof:

Great hammerhead, Sphyrna mokarran
 Scalloped hammerhead, Sphyrna lewini
 Smooth hammerhead, Sphyrna zygaena
 White shark, Carcharodon carcharias
 Nurse shark, Ginglymostoma cirratum
 Bignose shark, Carcharhinus altimus
 Blacktip shark, Carcharhinus limbatus
 Bull shark, Carcharhinus leucas
 Caribbean reef shark, Carcharhinus perezi
 Dusky shark, Carcharhinus obscurus
 Galapagos shark, Carcharhinus galapagensis
 Lemon shark, Negaprion brevirostris
 Narrowtooth shark, Carcharhinus brachyurus
 Night shark, Carcharhinus signatus
 Sandbar shark, Carcharhinus plumbeus
 Silky shark, Carcharhinus falciformis
 Spinner shark, Carcharhinus brevipinna
 Tiger shark, Galeocerdo cuvieri

(5) Small coastal species shall mean any of the following species of sharks or parts thereof:

Atlantic angel shark, Squatina dumerili

Bonnethead, Sphyrna tiburo
 Atlantic sharpnose shark, Rhizoprionodon terraenovae

Blacknose shark, Carcharhinus acronotus
 Caribbean sharpnose shark, Rhizoprionodon porosus

Finetooth shark, Carcharhinus isodon
 Smalltail shark, Carcharhinus porosus

(6) Pelagic species shall mean any of the following species of sharks or parts thereof:

Bigeye sixgill shark, Hexanchus vitulus

Sevengill shark, Heptanchias perlo

Sixgill shark, Hexanchus griseus

Longfin mako, Isurus paucus

Porbeagle shark, Lamna nasus

Shortfin mako, Isurus oxyrinchus

Blue shark, Prionace glauca

Oceanic whitetip shark, Carcharhinus longimanus

Bigeye thresher, Alopias superciliosus

Thresher shark, Alopias vulpinus

(7) Prohibited species shall mean any of the following species of sharks or parts thereof:

Basking shark, Cetorhinidae maximus

White shark, Carcharodon carcharias

Bigeye sand tiger, Odontaspis noronhai

Sand tiger, Odontaspis taurus

Whale shark, Rhincodon typus

(b) It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

(c) It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing sand shark unless said fins are naturally attached to the body of said shark.

(d) It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

(e) It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

(f) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

(g) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries

Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.

(h) It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

Section 2. CONSERVATION STATEMENT

This Tidal Finfish Regulation No. 25 will have a significant impact on the conservation of Atlantic Sharks.

Section 3. This Tidal Finfish Regulation No. 25 shall become effective on January 31, 1998.

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
DELAWARE BOARD OF EXAMINERS OF
PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,
Section 3506(a)(1) (24 **Del.C.** 3506(a)(1))

DELAWARE BOARD OF EXAMINERS OF
PSYCHOLOGISTS
NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to repeal the existing Rules and Regulations and adopt the new Rules and Regulations. The regulations will define the official board office, meetings of the board, officers of the board, procedures for licensure, evaluation of credentials, supervised experience, failure to pass examination, psychological assistants, continuing education, professional conduct, complaint procedures, license renewal and procedures for licensure applicable to full-time faculty members in a nationally accredited

doctoral level clinical training program in the State of Delaware.

A public hearing will be held on the proposed Rules and Regulations on March 9, 1998 at 9:30 a.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested persons on the proposed rules and regulations, and individuals are urged to submit their comments in writing. Anyone wishing to obtain a copy of the proposed regulations, or to make comments at the public hearing, should contact the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or write to the Delaware Board of Examiners of Psychologists, P. O. Box 1401, Cannon Building, Suite 203, Dover, DE 19903.

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS

PROPOSED RULES AND REGULATIONS

Statutory Authority: Title 24, Section 3506 (a)(1) of the
Delaware Code (24 *Del. C.* Section 3506(a)(1))

SECTION 01 - GENERAL RULES AND REGULATIONS

The Board of Examiners of Psychologists has been established under the Delaware law, Title 24, Chapter 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, Del.C., Title 29, Chapter 101.

SECTION 02 - OFFICIAL BOARD OFFICE

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

SECTION 03 - MEETINGS OF THE BOARD

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

SECTION 04 - OFFICERS OF THE BOARD

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

SECTION 05 - PROCEDURES FOR LICENSURE**APPLICATION - INITIAL LICENSURE**

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 Del. C. Section 3508. The applicant must submit the following:

1. An application for licensure, which shall include:
 - a) Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 Del. C. Section 3508(a)(1).
 - b) Supervised experience documented by having each supervisor complete a Supervisory Reference Form.
 - c) Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware.
 - d) Verification that the applicant has no past or pending disciplinary proceedings. [24 Del. C. Section 3508(a)(4)]

The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

2. Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

APPLICATION - BY RECIPROCITY

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 Del. C. Section 3511, shall submit evidence that he/she meets the following requirements:

1. An application for licensure, which shall include:
 - a) Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.
 - b) Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP) by achieving the passing

score, as required by their state of original licensure.

2. Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

SECTION 06 - EVALUATION OF CREDENTIALS

Candidates for licensure as psychologists in the State of Delaware shall:

1. Have received a doctoral degree based on a program of studies, which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del. C. Section 3508(a)(1), having a graduate program which states its purpose to be the training and preparation of psychologists. Candidates holding degrees from programs outside the United States or its territories are responsible for providing verification from an agency recognized by the Board that their training and degree are equivalent to US accredited programs; and

2. Have had, after receiving the doctoral degree, at least 2 years of supervised professional experience in psychological work satisfactory to the Board; and

3. Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB), or its successor, or

4. The Board will qualify for licensing without examination any person who applied for licensure and who is a diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

SECTION 07 - SUPERVISED EXPERIENCE

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant comprises of three types of supervisory experiences:

1. Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

2. Postdoctoral supervision is required for initial licensure as a psychologist. Post doctoral experience must consist of 3,000 hours of actual work experience.

This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under Section 3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

3. Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations.

A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions.

A supervising psychologist of the postdoctoral experience of psychological assistant must provide 24 hour availability to both supervisee and the supervisee's clients, or adequate coverage is provided in supervisor's absence.

This supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary.

The supervising psychologist must be employed or under contract in the setting where the clinical service takes place and that the supervision must occur within that setting.

SECTION 08 - FAILURE TO PASS EXAMINATION

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

SECTION 09 - PSYCHOLOGICAL ASSISTANTS

A psychological assistant is an individual who meets the requirements of 24 Del. C. Section 3509(2a-2e). Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the

services provided. Any Delaware licensed psychologist who has had at least two (2) years of experience following the granting of the licensure in this or in any other state may supervise a maximum of two (2) full-time psychological assistants or their part-time equivalents. Full time is defined as twenty (20) hours of direct clinical service per week. The total number of clinical hours that the Delaware licensed psychologist may supervise is forty (40) per week divided among no more than four (4) psychological assistants. The maximum number of clinical hours delivered by a psychological assistant is limited to twenty (20) per week under any one supervising psychologist. It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart. The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment. The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is

actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 Del. C. Section 3509 (b1- b3).

The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expire biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

Psychological assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full-time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising

psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant who provides services that are under the direction of different psychologists, must register as a psychological assistant with all of the psychologists who are directly supervising the clinical work.

When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the privilege of hiring a psychological assistant.

Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify if the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

SECTION 10 - CONTINUING EDUCATION

1. Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that he/she may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

2. Psychological assistants must obtain 20 hours of continuing education every two years for re-registration.

Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

3. Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed, to reapply for licensure or registration, until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

4. It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

5. The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

6. Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

a. Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

b. Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

c. Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credit. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is

presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

d. Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

e. Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

- 1) Author of a book (maximum of 40 CE hours)
- 2) Author of a book chapter or journal article (maximum of 15 CE hours)
- 3) Editor of a book (maximum of 25 CE hours)
- 4) Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

Proof of the above must include the submission of the work or documentation of authorship by copy of title pages.

f. Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific or professional organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

7. The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

8. The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

SECTION 11 - PROFESSIONAL CONDUCT

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del. C. Section 3514.

SECTION 12 - COMPLAINT PROCEDURES

Complaints against psychologists and psychological assistants will be investigated as provided by 29 Del. C. Section 8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C. Chapter 101.

Complaints must be filed, in writing, with the Division of Professional Regulation.

SECTION 13 - LICENSE RENEWAL

Renewal notices will be mailed in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. Continuing education requirements must be fulfilled as detailed in Section 10 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. Should any psychologist fail to renew and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

SECTION 14 - PROCEDURES FOR LICENSURE APPLICABLE TO FULL-TIME FACULTY MEMBERS IN A NATIONALLY ACCREDITED DOCTORAL LEVEL CLINICAL TRAINING PROGRAM IN THE STATE OF DELAWARE

University faculty employed full-time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 Del. C. Section 3519(e), who are not licensed, are subject to the following rules and regulations:

1. Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six years.

2. Professional Activities. These individuals may participate in and may supervise matriculated graduate students in activities defined as the practice of psychology within the context of a clinical training program, and may conduct any research and teaching activities related to the activities of such a program.

3. Registration. Such individuals must register with the Board of Examiners of Psychologists no later than thirty days after the commencement of employment, indicating employer, position, and dates.

The six-year time frame for the completion of licensure requirements commences with the initial date of

employment.

The six-year time frame for individuals employed as of June 12, 1995, commenced on this date. These individuals must register with the Board no later than thirty days after the enactment of these Rules and Regulations.

4. Education. Such individuals must have completed the doctoral degree at the time employment commences, to be considered eligible to perform the duties, as outlined in 24 Del. C. Section 3519(e).

5. Supervision. Such individuals must register a supervision plan with the Board of Examiners of Psychologists which includes the nature of work and the name of the supervisor. His/her plan must be acceptable to the Board, as outlined in Section 07 of the Rules and Regulations, if not, the plan must be revised accordingly. An affidavit signed by the supervisor must be submitted in fulfillment of requirements for licensure.

Availability of Rules and Regulations	15
Disclosure	16
Hearings	18
Inducements	19
Necessity of License	20
<u>Out of State Land Sales Applications</u>	

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

For Revision Effective March 2, 1996
Table of Contents to be Revised to Reflect Revised Rules
upon Adoption by Commission

**DELAWARE REAL ESTATE COMMISSION RULES
AND REGULATIONS**

I. INTRODUCTION

A. Authority

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

2. The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

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

B. Applicability

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

C. Responsibility

1. It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees.

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

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real es-

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE REAL ESTATE COMMISSION
Statutory Authority: 24 Delaware Code,
Section 2905 (24 Del.C. 2905)**

**DELAWARE REAL ESTATE COMMISSION
RULES AND REGULATIONS**

**TABLE OF CONTENTS
Section II**

SECTIONS:	PAGE
Introduction	1
Requirements for Obtaining a Salesperson's License	3
Requirements for Obtaining a Real Estate Broker's License	4
Reciprocal Licenses	6
Escrow Accounts	7
Transfer of Broker or Salesperson	8
Discipline of a Real Estate Broker or Salesperson	9
Refund of Fees	10
Business Transactions and Practices	11
Renewal of Licenses	13
Inactive Status	14

tate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

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

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

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

II. REQUIREMENTS FOR OBTAINING A SALESPERSON'S LICENSE

The Commission shall consider any applicant who has successfully completed the following:

A. Course

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

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

B. Examination

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

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

C. Ability to conduct business

1. The Commission reserves the right to reject

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

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

D. Fees

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

1. Salesperson's application ~~license~~ fee established by the Division of Professional Regulation pursuant to 29 Del. C. Section 8807(d)~~10(d)~~.

2. ~~Processing fee established by the Division of Professional Regulation pursuant to 29 Del. C. Section 8810(d)~~.

3. ~~Guaranty Fund fee established pursuant to 24 Del. C. Sec. 2921(b)~~.

III. REQUIREMENTS FOR OBTAINING A REAL ESTATE BROKER'S LICENSE

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

A. Course

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

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

~~B~~A. Experience

1. A salesperson must hold an active license be actively working in the real estate profession for five (5) continuous years immediately preceding application ~~continuously before he or she can apply~~ for a broker's license.

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

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

B. Course

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

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

C. Examination

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

D. Ability to conduct business

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

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

E. Credit Report

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

F. Fees

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

1. ~~Broker's application license fee established by the Division of Professional Regulation pursuant to 29 Del. C. Sec. 8807(d).~~

2. ~~Processing fee established by the Division of Professional Regulation pursuant to 29 Del. C. Sec. 8810(d).~~

3. ~~Guaranty Fund fee unless paid previously pursuant to 24 Del. C. Sec. 2921(b).~~

IV. RECIPROCAL LICENSES**A. Requirements**

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

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

3. The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules II.B. or III.C. provided the non-resident broker or salesperson

passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

V. ESCROW ACCOUNTS

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

B. All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker.

C. A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in a specific amount of his own funds from \$25.00 to \$100.00 in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

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

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

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

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

VI. TRANSFER OF BROKER OR SALESPERSON

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

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

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

~~VII. DISCIPLINE OF A REAL ESTATE BROKER OR SALESPERSON~~

~~A. In such circumstances, when it becomes necessary to discipline a licensee, the Commission shall follow the procedures set forth in these Rules and Regulations and the Administrative Procedures Act under Title 29, Section 6401-6434.~~

~~VIII. REFUND OF FEES~~

~~No refund of fees shall be made to any applicant who fails to qualify for a license or who requests a change in status after a renewal has been issued.~~

IX. BUSINESS TRANSACTIONS AND PRACTICES

A. Written Listing Agreements

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

B. Copy of agreements

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

C. Advertising

1. Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

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

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

4. All advertisements for personal promotion of

licensees must include the name of the cCompany under whom the licensee is licensed.

~~5. Size, dimension, proportion, and prominence of licensee's name and company's and/or broker's name referred to in paragraph 2, 3, and 4 of this subsection shall be subject to the Broker-of-Record approval.~~

D. Separate Office

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

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

E. Compensation

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

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

F. Duty to Cooperate

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

X. RENEWAL OF LICENSES

A. Renewal Required by Expiration Date on License July 1

In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon July 1, shall not list, sell, lease or negotiate for oth-

ers after such date.

B. Delinquency Fee

1. If a licensee fails to renew his or her license prior to the expiration date shown thereon July 1, he or she shall be required to pay the full license fee and an additional delinquency fee (amount equal to one half of the yearly license fee) ~~delinquency fee~~. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon before September 1, the license shall be cancelled.

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

C. Reinstatement of License

1. A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date by March 1 of the next year, the licensee shall be required to take the state portion of the examination. ~~to be reinstated~~. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

2. No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission, ~~including the submission of three (3) letters of character reference, stating that such individual is of good moral character~~. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

D. Certification of Continuing Education

~~The broker of record shall certify to the Commission, on a form supplied by the Commission, at the time of license renewal that all licensees in his/her office have complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with their renewal application and fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement.~~

XI. INACTIVE STATUS

~~Upon the payment of a fee established by the Division of Professional Regulation, the Commission may place any licensee on inactive status for a period not to exceed two~~

~~(2) years.~~

XII. AVAILABILITY OF RULES AND REGULATIONS

A. Fee Charge for Primers

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

XIII. DISCLOSURE

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

B. Buy-In-Disclosure

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

C. A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. ~~The~~ Such disclosure as to whom the licensee represents should ~~shall~~ be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made ~~whom licensee does not represent, but, in any event,~~ prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

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

With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information

about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

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

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

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

XIV. HEARINGS

A. When ~~If~~ a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not ~~cannot~~ change. ~~the status of his or her license until the pending case is settled.~~

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

XV. INDUCEMENTS

A. Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to NON-LICENSED PERSONS, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

B. No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is re-

ceived to a person who does not hold a real estate license.

XVI. NECESSITY OF LICENSE

A. For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

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

Add New Rule # OUT OF STATE LAND SALES APPLICATIONS

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

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

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

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

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

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

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

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

B. Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 2 through 4 of Section A above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may

include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

C. If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

Summary of Changes to the Rules and Regulations

I.C.3. - reworded to include "civil penalty" in the list of possible disciplinary actions which may be taken by the Commission and to clarify that brokers as well as salespersons may be held responsible for violations by a salesperson.

II. - non substantive revision to clarify the application process for the salesperson and to update reference to the statute in II.D.1.

III. - non substantive revision to clarify the application process for the broker and to update reference to the statute in III.F.1.

V.C. - revised to clarify the language regarding the amount of the broker's own funds which may be maintained in the escrow account to \$ 100 maximum in order to avoid the account being closed

V.E. - previous wording required that broker open an escrow account in a "Delaware bank" now states "a bank with an office in Delaware"

V.F. - reword for clarity

VI.A. - revised to include the requirement that a current certificate of licensure be provided by all nonresident brokers who are transferring a license.

VI.C. - Added to require that a broker moving an office report the move to the Commission in writing by filing a new office application 30 days prior to opening the new office.

VII. was struck in its entirety.

VIII. was struck in its entirety.

IX.A. - Non substantive correction to "Listing Agreements for the rental, sale, lease or exchange of real property,

whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner."

IX.B. - Non Substantive correction adding the word "the" to the last sentence which now reads: "It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution."

IX.C.3. - Non Substantive correction, was revised to replace "he/she" with "the licensee".

IX.C.4. - Non Substantive revision to replace the capital "C" in "Company" with a lower case "c" and to add the word "the" for readability as follows: "All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

IX.C.5 was struck in its entirety.

IX.D.2. - revised by adding the word "permanent" to enforce the requirement of the statute regarding office signs in private home offices: "Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location."

Add New Rule IX.E. - Clarifies the need for the licensee to disclose to all parties any compensation from more than one party to a transaction that the licensee intends to accept, and prohibits the licensee from accepting any commission, rebate or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

Add New Rule IX.F. - Identifies the need for licensees to cooperate with other licensees involved in a transaction except when such cooperation is not in the best interest of a client. Further this obligation does not imply any obligation to share commissions or otherwise compensate another licensee.

X.A. - revised to include credit certification procedure for renewal, add 15 hours as the number of required continuing education credits for the license renewal, and to accommodate change of expiration date.

X.B.1. - Revised to accommodate a change of expiration date and to clarify the late fee payment process

X.C.1. - Revised for readability and to accommodate a change of expiration date.

X.C.2. - Deleted requirement of three (3) letters of character reference, stating that the applicant is of good moral character in compliance with 24 Del.C. §2907(a)(2).

X.D. - Rewritten into Rule X.A.

XI. - Deleted in its entirety.

XII.A. - Reword to clarify that the Division of Professional Regulation sets fee for Primer.

XIII.A. - Revised for readability.

XIII.C. - was revised for clarity.

XIV.A. - was revised for clarity.

XV. - Add language to prohibit payment of commission by a licensee to another licensed person with the knowledge that all or a portion of the payment will in turn be paid out or given to an unlicensed person.

XVI. - Non substantive change

XVI.B. - Non substantive change

Add New Rule Regarding Out of State Land Sales Applications - Outlines requirements for initial applications and subsequent addition of units, lots, etc.

Renumber all Rules and Subsections as necessary.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code,
Section 1770B(c)(5) (24 **Del.C.** 1770B(c)(5))

BEFORE THE RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL OF THE DELAWARE BOARD
OF MEDICAL PRACTICE

IN THE MATTER OF THE
ADOPTION OF RULES | RESPIRATORY CARE
AND REGULATIONS TO | PRACTICE ADVISORY
REGULATE THE | COUNCIL
PRACTICE OF | REGULATION
RESPIRATORY CARE | DOCKET NUMBER 1

PLEASE TAKE NOTICE that the Respiratory Care Practice Advisory Council to the Delaware Board of Medical Practice, pursuant to the authority of Title 24, Delaware Code, § 1770B(c)(5), has developed and proposes to promulgate Rules and Regulations governing all aspects of the practice of Respiratory Care by licensed respiratory care practitioners in the State of Delaware.

A public hearing will be held on the proposed Rules and Regulations on Thursday, March 5, 1998, at 2:30 p.m., at the Cannon Building, 861 Silver Lake Boulevard, conference room B, Dover, Delaware, 19901. The Council will receive and consider input in writing from interested persons on the proposed new Rules and Regulations. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Rosey Vanderhoogt at the above address or by calling (302) 739-4522 extension 203.

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

**PROPOSED RULES AND REGULATIONS FOR THE
PRACTICE OF RESPIRATORY CARE**

Proposed by the Respiratory Care Practice Advisory
Council of the Delaware Board of Medical Practice

TABLE OF CONTENTS

SECTION 1 DEFINITIONS	1
SECTION 2 PURPOSE	1
SECTION 3 STANDARDS OF PRACTICE FOR THE RESPIRATORY PRACTITIONER	2
SECTION 4 STANDARDS RELATED TO THE RESPIRATORY CARE PRACTITIONER'S COMPETENCE AND RESPONSIBILITIES	2
SECTION 5 ADMINISTRATION OF MEDICATIONS	3
SECTION 6 DISCIPLINARY PROCEEDINGS	4
SECTION 7 WORKING STUDENT RESPIRATORY CARE PRACTITIONER	6
SECTION 8 CONTINUING EDUCATION	7
8.1 Contact hours required for renewal	7
8.2 Exemptions	7
8.3 Criteria for Qualification of Continuing Education	8
8.3.1 Definition of Contact Hours	8
8.3.2 Learner Objectives	8
8.3.3 Subject Matter	8
8.3.4 Description	9
8.3.5 Types of Activities/Programs	9

8.4 Educational Providers	10
8.5 Accumulation of Continuing Education	10
8.6 Review/Approval of Continuing Education Contact Hours	11
SECTION 9 RENEWAL OF LICENSE	11
SECTION 10 APPLICATION FOR A LICENSE	12

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

STANDARDS OF RESPIRATORY CARE PRACTICE

SECTION 1: DEFINITIONS

1.1 “Board” - means Delaware Board of Medical Practice.

1.2 “Certified Respiratory Therapy Technician (CRTT)” - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

1.3 “Council” - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

1.4 “NBRC” means the National Board for Respiratory Care, Inc.

1.5 “Programs Approved by the Board” - means programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organization which have been approved by the Board.

1.6 “Registered Respiratory Therapist (RRT)” - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

1.7 “Respiratory Care” - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under Title 24, Delaware Code, Chapter 17. Medical Practices Act, § 1770B(a)(2).

1.8 “Respiratory Care Practitioner (RCP)” - means an individual who practices respiratory care under Title 24, Delaware Code, Chapter 17. Medical Practices Act, § 1770B(a)(1) and (7).

1.9 “Student Respiratory Care Practitioner (Student-RCP)” - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by

the Board.

1.10 “Working Student Respiratory Care Practitioner” - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

1.11 “General Supervision” - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

1.12 “Direct Supervision” - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

SECTION 2: PURPOSE

2.1 The purpose of the standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

SECTION 3: STANDARDS OF PRACTICE FOR THE RESPIRATORY CARE PRACTITIONER

3.1:a. The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

1. Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.
2. Sorting, selecting, reporting, and recording the data.
3. Analyzing data.
4. Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.
5. Evaluating data.
6. Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.1:b. Respiratory care practitioners may develop strategies of care such as a treatment plan.

3.1:c. Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

SECTION 4: STANDARDS RELATED TO THE RESPIRATORY CARE PRACTITIONER’S COMPETENCE AND RESPONSIBILITIES

4.1 Respiratory care practitioners shall:

- a. Have knowledge of the statutes and regulations governing the practice of respiratory care.
- b. Accept responsibility for competent practice of respiratory care.
- c. Obtain instructions and supervision from physicians.
- d. Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.
- e. Consult with respiratory care practitioners and others and seek guidance as necessary.
- f. Obtain instruction and supervision as necessary when implementing respiratory care techniques.
- g. Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.
- h. Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.
- i. Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.
- j. Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.
- k. Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.
- l. Respect the property of patients and their families.
- m. Teach safe respiratory care practice to other health care workers as appropriate.

SECTION 5: ADMINISTRATION OF MEDICATIONS

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

- a. Patient identification
- b. Date of the order
- c. Time of the order
- d. Name of medication
- e. Dosage
- f. Frequency of administration

- g. Route of administration
- h. Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

- a. Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.
- b. Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.
- c. Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation required in the administration of drug dosages.
- d. Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.
- e. Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration; observations and actions associated with desired drug effects, side effects and toxic effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to

administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

- a. Patient identification
- b. Date of the order
- c. Time of the order
- d. Name of medication
- e. Dosage
- f. Frequency of administration
- g. Route of administration
- h. Method of administration
- i. Respiratory care practitioner's name
- j. Date and time of administration
- k. Documentation of effectiveness
- l. Documentation of adverse reactions and notifications if any

SECTION 6: DISCIPLINARY PROCEEDINGS

6.1:a. The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.1:b. Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.

6.2 Unprofessional Conduct

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

- a. Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of Title 24, Delaware Code, § 1770B or of these regulations.
- b. Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.
- c. Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.
- d. Failing to take appropriate action or follow

policies and procedures in to practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

- e. Inaccurately recording on, falsifying or altering a patient or agency record.
- f. Committing verbal, physical or sexual abuse or harassment of patients or co- employees.
- g. Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.
- h. Delegating respiratory care responsibilities to unqualified persons.
- i. Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.
- j. Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.
- k. Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.
- l. Violating the confidentiality of information concerning a patient except where disclosure is required by law.
- m. Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.
- n. Diverting drugs, supplies, or property of a patient or agency or attempting to do so.
- o. Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.
- p. Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.
- q. Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.
- r. Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a respiratory care practitioner or other health care provider.
- s. Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.
- t. Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1:h.
- u. Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

6.3 Disciplinary Investigations And Hearings

6.3.a. Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by Title 29, Delaware Code, § 8807 shall be followed with respect to any such matter.

6.3.b. Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to Title 29, Delaware Code, § 8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

SECTION 7: WORKING STUDENT RESPIRATORY CARE PRACTITIONER

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued by the Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

- a. Applicant is matriculated in an approved Respiratory Care Program.
- b. Application is submitted no more than 20 weeks prior to the program's announced graduation date.
- c. Applicant shall submit to the Council a certified list of respiratory care services

which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

SECTION 8: CONTINUING EDUCATION

8.1 Contact Hours Required for Renewal

8.1.a. The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.b. Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

8.2 Exemptions

8.2.a. A licensee who because of a physical or mental illness during the license period could not complete the

continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2:b. A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

8.3.1 Definition of Contact Hours

8.3.1:a. Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1:b. Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1:c. Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1:d. One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1:e. One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1:f. Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1:g. Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1:h. Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1:i. Performing clinical or laboratory research in health care shall be reviewed

and may be granted an appropriate number of contact hour(s) at the Council's discretion.

8.3.2 Learner Objectives

8.3.2:a. Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2:b. Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3:a. Respiratory care science and practice and other scientific topics related thereto

8.3.3:b. Respiratory care education

8.3.3:c. Research in respiratory care and health care

8.3.3:d. Management, administration and supervision in health care delivery

8.3.3:e. Social, economic, political, legal aspects of health care

8.3.3:f. Teaching health care and consumer health education

8.3.3:g. Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

8.3.5 Types of Activities/Programs

8.3.5:a. An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5:b. A correspondence course contains the following elements:

1. developed by a professional group, such as an education corporation or professional association.
2. follows a logical sequence.
3. involves the learner by requiring active response to module materials and provides feedback.
4. contains a test to indicate progress and to verify completion of module.
5. supplies a bibliography for continued study.

8.3.5:c. A workshop contains the following elements:

1. developed by a knowledgeable individual or

group in the subject matter.

2. follows a logical sequence.
3. involves the learner by requiring active response, demonstration and feedback.
4. requires hands-on experience.
5. supplies a bibliography for continued study.

8.3.5:d. Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

1. Recredentialing exam.
2. Pediatric/perinatal specialty exam.
3. Pulmonary function credentialing exams
4. Advanced practitioner exam

8.3.5:e. Course preparation

8.3.5:f. Clinical education experience must be:

1. Planned and supervised.
2. Extended beyond the basic level of preparation of the individual who is licensed.
3. Based on a planned program of study.
4. Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.
5. Conducted in a clinical setting.

8.4 Educational Providers

8.4:a. Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

1. American Association for Respiratory Care.
2. American Medical Association under Physician Category I.
3. American Thoracic Society
4. American Association of Cardiovascular and Pulmonary Rehabilitation
5. American Heart Association
6. American Nurses Association
7. American College of Chest Physicians
8. American Society of Anesthesiologists
9. American Sleep Disorders Association
10. Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5:a. When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours biennially shall include the following categories:

8.5:a.1. A minimum of 12 contact hours of required continuing education contact hours required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, a, b, or c.

8.5:a.2. The remaining 8 contact hours of the required

continuing education contact hours required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5:b. Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours a year as follows:

1. Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

2. Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

3. Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

4. Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

5. Infection control programs from facility or agency to a maximum of one contact hour.

6. Correspondence courses that are not within the curriculum that leads to an academic degree beyond that required for the original license to a maximum of four contact hours.

7. Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.

8. Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Review/Approval of Continuing Education Contact Hours

8.6:a. The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6:b. The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6:c. Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6:d. Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6:e. Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted

towards the next renewal period.

8.6:f. Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6:g. An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

SECTION 9. RENEWAL OF LICENSE

9.1:a To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.

9.2:b Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the expiration of the license.

SECTION 10. APPLICATION FOR A LICENSE

10.1 Application

10.1:a An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

10.2 Completed Application

10.2:a An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

- a. Non-refundable application fee
- b. Completed application for licensure
- c. Verification of education form
- d. Verification of national examination score
- e. Letter(s) of good standing from other states

where the applicant may hold a license, if applicable.

- f. Any other information requested in the application.

10.3 Appeals Process

10.3:a When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under Title 24, Delaware Code, § 1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under Title 29, Delaware Code, § 10131.

DEPARTMENT OF EDUCATION

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

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

SMOKING REGULATIONS

A. TYPE OF REGULATORY ACTION REQUESTED
Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION

The Smoking Regulation found in the Handbook for K-12 Education section I.M.11., page A-53 was made a regulation in 1987. It forbids the use, dispensing and sale of tobacco products by students K-12 during school hours in school buildings, on school grounds or on school buses. This regulation did away with "smoking courts" in high schools and generally put students on notice that smoking in or around schools was totally forbidden. Since this state regulation was passed a federal law entitled the Pro-Children Act of 1994, has also been enacted which says "no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary or secondary education or library services to children. "Children are defined as "individuals who have not attained the age of 18." This law applies to agencies and organizations that receive federal funds and it covers public schools and numerous other agencies serving children. This federal law effects adult behavior concerning smoking which the state regulation did not address. The federal law does not mention tobacco products such as snuff and chewing tobacco and does not cover the school grounds and the school buses which are both part of the Department of Education regulation. The regulation is recommended for readoption because in concert with the federal statute, most aspects of the problem are covered and the important emphasis on student behavior is sustained.

C. IMPACT CRITERIA

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

This regulation addresses health and safety, not curriculum issues.

2. Will the regulation help ensure that all students

receive an equitable education?

This regulation addresses health and safety issues, not equity.

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

This regulation will at least protect students from tobacco and its ill effects while they are in school or on school grounds.

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

This regulation does have the aspect of protecting non smoking students from the ill effects of smoking by fellow students.

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

Readopting this regulation will not change 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?

This regulation does not add any unnecessary reporting or administrative requirements for decision makers at the local board and school level.

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

The readopted regulation still gives local decision making authority through the development of a local policy.

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?

This regulation addresses health and safety issues and will not be an impediment to any policies in the curriculum area.

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

The regulation has been in place and readoption of the regulation is the most effective way to continue to address this concern.

10. What is the cost to the state and local school

boards of compliance with the regulation?

The regulation had been in place for ten years and readoption will not generate any new costs to the school districts.

I.M.11. SMOKING REGULATIONS

Each school district in Delaware is required to have a policy which, at a minimum, prohibits smoking and the use, dispensing or selling of tobacco products such as snuff and chewing tobacco by students in kindergarten through grade 12 during school hours in school buildings, on school grounds, or on school buses.

THE ABOVE REGULATORY CHANGE WILL BE PRESENTED
TO THE STATE BOARD OF EDUCATION AT ITS MEETING
ON FEBRUARY 19, 1998

DEPARTMENT OF EDUCATION

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

The following three (3) regulations are proposed to be repealed by the Department of Education.

The Handbook for K-12 Education contains a section entitled Fire and Emergency Preparedness, I.M.12, page A-54. This regulation should be repealed because the first part of the regulation beginning with the word "All", through the word "session", is from Del. C., Section 4104. The second part beginning with the word "During", and ending with the word "Year", is from the State Fire Prevention Regulations, Part V, Section 1-3, Fire Drills in Educational and Institutional Occupancies. Since this section is simply a restating of the Delaware Code and from another regulation, this does not need to be regulated again by the Department, and thus should be repealed as a regulation of the Department of Education.

I.M.12. FIRE AND EMERGENCY PREPAREDNESS

a. ~~All Delaware schools are subject to Delaware Code and to State Fire Prevention Regulations which require that every school be equipped with an adequate number of fire extinguishers and shall hold a fire drill at least once every month while the school is in session. (14 Del. C. §4109) Fire drills shall include complete~~

evacuation of all persons from the building. During severe weather, fire drills may be postponed. A record of all fire drills shall be kept and persons in charge of each school shall maintain a written record on site of all such fire drills held, giving the time and date of each drill held. This record of fire drills shall be made available to a representative of the State Fire Marshal, upon request. The record shall be maintained for a period of three years, not including the current year. (State Board Approved December 1993)

The Handbook for K-12 Education contains a section entitled Title I Complaint Process, Section I.F.2., pages A-15 and A-16. This regulation needs to be repealed as a Department of Education regulation because the requirement for the process and the procedures for filing the complaint are all part of existing federal regulations.

I.F.2: TITLE I COMPLAINT PROCEDURES

a. An organization or an individual may file a written, signed complaint with the Title I Office of the Delaware Department of Public Instruction (Title I Office) concerning an alleged violation by a Local Education Agency (LEA) or the State Education Agency (SEA) of a Federal statute or regulations that apply to the Title I LEA Program, in accordance with 200.73-75 of the Title I regulations and the following procedures:

(1) The complaint must include (a) a statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA Program; and (b) the facts on which the statement is based.

(2) The Title I Office shall resolve the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty calendar days of the receipt of the complaint. An extension of the time limit may be made by the Title I Office only if exceptional circumstances exist with respect to a particular complaint.

(3) The Title I Office may conduct an independent on-site investigation of a complaint, if it determines that an on-site investigation is necessary.

b. An organization or an individual may file a written, signed complaint with the LEA, in lieu of the Title I Office, concerning an alleged violation by the LEA of a Federal statute or regulations that apply to the Title I LEA Program.

(1) The complaint must include (a) a statement that the LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA

Program and (b) the facts on which the statement is based.

(2) The superintendent or the agency head of the LEA shall resolve the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within thirty calendar days of the receipt of the complaint.

(3) An appeal of the LEA decision may be made by the complainant to the Title I Office of the Department of Public Instruction. The appeal shall be in writing and signed by the individual making the appeal. The Title I Office shall resolve the appeal in the same manner as a complaint, as indicated in A.1. through 3.

e. Any party to the complaint has the right to request the Secretary, U. S. Department of Education, to review the final decision of the Title I Office. The request for an appeal of the decision to the Secretary shall be made in writing to the Title I Office within sixty days of the receipt of the decision.

d. Complaints and appeals to the Title I Office shall be mailed to the following address:

Title I Office
Department of Public Instruction
P. O. Box 1402
Dover, Delaware 19903

(State Board Approved February 1990)

The Handbook for K-12 Education contains a section entitled Title IX of the Educational Amendments of 1972 Concerning Physical Education, I.C.2., pages A-3 and A-4. This regulation needs to be repealed because it simply presents information for technical assistance purposes from the federal regulations for Title IX and is not a Department of Education regulation.

I.C.2: TITLE IX OF EDUCATIONAL AMENDMENTS OF 1972 CONCERNING PHYSICAL EDUCATION

In 1976 and 1978 "girls physical education" and "boys physical education" became "student physical education" under Title IX of the Educational Amendments of 1972:

a. Section 86.34 of Title IX states that

(1) Physical education units of instruction required for one sex must be required for everyone.

(2) Elective units must be scheduled on an open enrollment basis.

(3) Grouping by ability is permitted as long as objective standards of individual performance related to the unit studies are applied without regard to

sex:

- b. ~~Section 86.33 of Title IX states that~~
- (1) ~~Students may be separated by sex for participation in contact sports.~~
- (2) ~~Evaluation outcomes may not adversely affect members of one sex.~~
- (3) ~~Students may be separated for instruction which deals exclusively with human sexuality.~~

THE ABOVE REGULATORY CHANGES WILL BE PRESENTED
TO THE STATE BOARD OF EDUCATION AT ITS MEETING
ON FEBRUARY 19, 1998

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a), (a)(24)(f), (25) **Del.C.** §§
4805(a), (a)(24)(f), (25)

The Lottery proposes these rules pursuant to 29 Del.C. §§ 4805(a), 4805(a)(24)(f), 4805(25) and 29 Del.C. § 10115. Proposed rules 3.2(4), 3.2(9), 3.2(12), 4.2(10)(ii), 4.2(13), 4.2(15), and 4.2(17) would clarify the background investigation requirements for employee organizations and key employees. Proposed rule 6.1 would clarify the background investigation requirements for Lottery employees. Copies of the proposed rules may be obtained from the Lottery Office. Comments may be submitted in writing to Donald Johnson, at the Lottery Office on or before 4:00 p.m. on March 3, 1998. The Lottery Office is located at 1575 KcKee roa, Suite 102, Dover, DE 19901 and the phone number is (302) 739-5291.

PROPOSED REGULATIONS

1. Regulations 3.2(4), (9), (12)
 - 3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the followin, without limitation:
 - (4) The name and address of all afiliates which are either a parent body or any superior organization with any right or ability to control, supervise, discipline or set policy for this organization.
 - (9) Any other information the Director determines is needed, necessary, and reasonably related to the

competence, honesty, and integrity of the applicant or registrant as required by title 29 of the Delaware Code;

(12) A list of any known litigation involving the employee organization within the last five years.

2. Regulations 4.2(10)(ii), (13), (15), (17)

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following without limitation:

(10)(ii) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime involved is denominated a felony or misdemeanor;

(ii) Any criminal offenses, that occurred within ten years of the application or registration, for which the applicant or registrant was arrested, charged, indicted or summoned to answer, which are pending ir for which he was not convicted;

(13) Whether he has ever been subpoenaed as a witness before any grand jury, legislative body, administrative body, or crime commission on matters pertaining to the operation or performance in any labor organizaion, which shall include all details relating thereto.

(15) Any other information the Director determines is needed to determine the competence, honesty, and integrity of the applicant or registrant as required by title 29 od the Delaware Code.

(17) A Release Authorization directing all courts, probation departments, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant or registrant as requested by the Agency or the Delaware State Police that bears on and is nessay and reasonably related to the statutory standards of competence, honesty, or integrity as specified by 29 Del.C. section 4805(a)(24)(c)(ii).

3. Regulation 6.1

6.2 The Director shall conduct employment investigations for any person seeking employment with the Agency for compensation for a position which has direct access to lottery ticket saales agents, video lottery agents, or vendors. Those new employee applicants who do not meet the requirements of these Regulations and 29 Del.C. chapter 48 may not be permitted to be employed by the Lottery.

DEPARTMENT OF FINANCE**DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code,
Section 563 (30 Del.C. § 563)

PROPOSED TECHNICAL INFORMATION
MEMORANDUM 98-1

SUBJECT: "CHECK THE BOX" REGULATIONS

Public Comment shall run from February 1, 1998 through March 3, 1998 and comments must be received by March 3, 1998. Comments shall be made in writing to John Maciejewski, whose address appears at the conclusion of this Memorandum.

Purpose of Regulation -- The purpose of this regulation is to explain the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity classification.

Authority to make regulations; general information --

(i) The Director of Revenue is charged with the administration and enforcement of all state tax laws unless such duties are expressly conferred upon another agency. Title 30 Delaware Code §563

(ii) Published regulations are made and promulgated pursuant to authority vested in the Director. 30 Del. C. §563

(iii) As used in published regulations, references to a section (§) number refer to a section of the Delaware Code. References to a section (§) number preceded by a "1", as in §1.1900-1, refer to sections of regulations published by the Division of Revenue of this State.

REGULATION:

§1.1900-1 In general; Classification of organizations for federal and state tax purposes; election of entity classification.

(a) Meaning of terms -- Any term used in these regulations shall have the same meaning as when used in a comparable context in the laws and income tax regulations of the United States referring to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States or to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 [26 U.S.C. § 1 et seq.] as amended

and regulations and amendments thereto and other laws of the United States relating to federal income taxes, as the same may be or become effective, for the taxable year.

(b) Classification of entities -- The classification of entities for Delaware tax purposes shall be as prescribed for federal tax purposes. Unless inconsistent with Delaware law, the provisions of Sections 301.7701-1; 301.7701-2; and 301.7701-3 of the Regulations to the Internal Revenue Code of 1986 are hereby adopted for Delaware purposes.

(c) Election of corporation classification by certain business entities -- A business entity that is not classified as a corporation for federal tax purposes but which elects to be classified as a corporation pursuant to §301.7701-3 of the Regulations to the Internal Revenue Code of 1986 shall be classified as a corporation for Delaware tax purposes.

(d) Notice of election to be classified as a corporation -- Business entities electing to be classified as a corporation for federal tax purposes shall attach a copy of Internal Revenue Service Form 8832, "Entity Classification Election" to their Delaware Corporate Income Tax Return, Form 1100.

(e) Tax return requirements --

(1) In general -- Members or partners of a business entity which has not elected to be classified as a corporation and which does business in this State shall file income tax returns for all such tax years.

(2) Special rules for non-electing, single member limited liability companies doing business in Delaware and their corporate members -- Notwithstanding other provisions of these regulations or regulations of the Internal Revenue Code to the contrary,

(A) a limited liability company (LLC) that has only a single, individual member and (i) does not elect to be classified as a corporation pursuant to these rules, and (ii) derives any income from sources in this State (determined in accordance with Title 30 Delaware Code §1124 as in the case of a nonresident individual), or (iii) has a member residing in this State, shall file partnership income tax information and business license and gross receipts tax returns for all such tax years.

(B) A corporation which is a single member of a non-electing limited liability company (LLC) and which is not exempt under Title 30 Delaware Code §1902(b), shall file corporation income tax and business license and gross receipts tax returns for all such tax years.

(3) The attached flow charts illustrate these principles.

PROPOSED REGULATIONS

(f) Effective date of election -- An election made under this regulation shall be effective on the effective date determined under §301.7701-3(c)(1)(iii) of the Regulations to the Internal Revenue Code of 1986.

(g) Effective date of this regulation -- This regulation is effective as of January 1, 1997.

(h) Contact Person -- For more information about these regulations or the classification of entities, contact John J. Maciejewski, Jr., Assistant Director, Office of Business Taxes, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801 or phone (302) 577-8450.

SYNOPSIS

Under Internal Revenue Service regulations, a per se corporation is required to be classified and taxable as a corporation.

Any organization that is not a corporation is taxable as a partnership if it has at least two members or a sole proprietorship if it has a single owner. Both partnerships and sole proprietorships are "eligible entities".

Existing entities are classified as they were prior to the effective date of the regulations. Newly organized eligible entities are, by default, partnerships if they have at least two members or sole proprietorships if they have a single owner. A single owner entity may not be a partnership or pass-through entity.

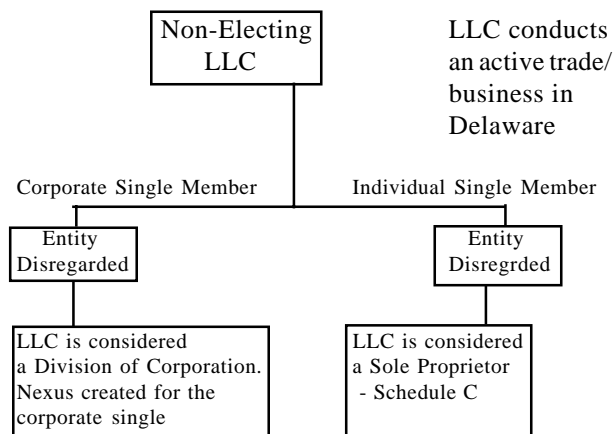
Under the federal "check the box" regulations, eligible entities may elect to be classified as associations taxable as a corporations. Corporations and certain foreign, insurance, banking and other listed associations may only be taxable as corporations.

Limited Liability Companies, except single owner LLC's, are by default taxable as partnerships. An LLC is an eligible entity which may make the election to be taxable as a corporation.

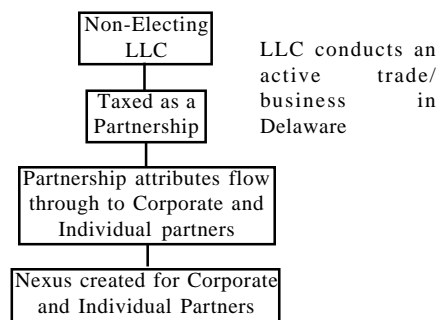
SPECIAL NOTE: The 1997 Delaware Corporate Income Tax Returns and instructions were prepared and mailed erroneously identifying the "Check the Box" regulations as Technical Information Memorandum 97-9. The correct number is Technical Information Memorandum 98-1.

William M. Remington
Director of Revenue

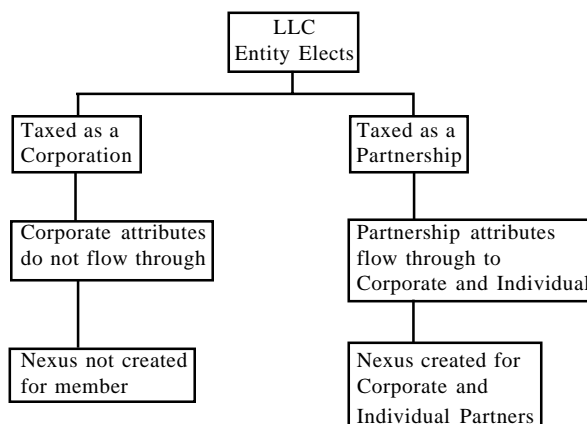
"Check the Box" Diagram Non-Electing Single Member LLC



"Check the Box" Diagram Non-Electing Multiple Member LLC



"Check the Box" Diagram Electing Single/Multiple Member LLC



**DEPARTMENT OF HEALTH &
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

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

PUBLIC NOTICE**Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) hereby publishes notice of proposed policy amendments several Medicaid provider manuals including the General Policy Manual, the Long-Term Care Provider Manual, the Non-Emergency Transportation Provide Manual, the Home and Community-Based Services Provider Manual, the Hospice Provider Manual, the Practitioner Provider Manual, and the Independent Laboratory Provider Manual. The proposed policy changes are as follows:

GENERAL POLICY**Licensure/Certification**

All providers who are enrolled with the DMAP must be professionally and properly licensed and/or certified in accordance with the federal and state laws in the state in which they are located. The provider type must match the State licensing category.

In addition, the following providers must meet the requirements for participation in Medicare (Title XVIII) as evidenced by certification from the Division of Public Health Office of Health Facilities Licensure and Certification: Long Term Care facilities, Inpatient and Outpatient hospitals, Rehabilitation agencies, Independent laboratories, Hospice organizations, Home Health agencies, Certified Physical Rehabilitation units of an Acute Care hospital, Ambulatory Surgical Centers/Free Standing Surgical Centers, and Renal Care Centers.

With the exception of behavioral health services provided through a Managed Care Organization (MCO), mental health clinic services shall be rendered only by providers which have been certified by the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH) of the Department of Health and Social Services (DHSS).

Ambulance companies located in Delaware must be certified in accordance with the State Fire Prevention Commission (Title 16, Del. Code, Chapter 67). Ambulance companies located outside of Delaware must be properly licensed and certified by the State in which they are located.

Failure to be certified and properly licensed at the time service was provided may result in penalties and denial of payment by the DMAP.

Family Planning and Related Services*Who is Eligible*

Females of childbearing years whose Medicaid (categorically or expanded population) is terminated for a non-fraudulent reason are eligible for family planning and related services for 24 months. Family planning services are defined as those services provided to females of childbearing age to temporarily or permanently prevent or delay pregnancy.

What Services Are Covered

Effective for dates of service 1/1/96 and after, the Family Planning and Related Services Benefit Package includes:

- contraceptive management; including non-systemic drugs and devices (excluding condoms), and oral contraceptives systemic drugs, and related surgical procedures (for example, ligation of fallopian tubes).
- diagnosis and treatment of sexually transmitted diseases (STDs) when provided or prescribed during the family planning visit.
- HIV screening, diagnosis, and counseling ONLY when provided during a family planning visit.

Effective for dates of service 3/1/96 and after, coverage of pharmaceuticals prescribed during the family planning visit to eradicate the causative organism of a covered STD will be added to the Family Planning and Related Services Benefit Package. Those pharmaceuticals covered for a diagnosis of STD will be limited to the following four therapeutic classes: antibiotic, anti viral, anti fungal, anti protozoan. Pharmaceuticals prescribed to treat an STD **outside** of a family planning visit are not covered.

~~Non-Qualified Non-Citizens (Aliens)~~ AliensIllegally Residing, Non-Qualified

Effective for dates of service 7/1/97 and after, illegally residing, non-qualified ~~Non-Citizens~~ (aliens are eligible **ONLY** for coverage of emergency and labor/delivery services. These services must be rendered in an acute care hospital emergency room or in an acute care inpatient

hospital. In addition, emergency services must be rendered for diagnoses designated by the DMAP as an emergency (see Appendix G for a comprehensive list of the covered diagnoses).

The DMAP defines an emergency as:

- a sudden serious medical situation that is life threatening; **OR**
- a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; **AND**
- without the treatment a person's life could be threatened or he/she could suffer serious long lasting disability.

Medically necessary physician (surgeon, pathologist, anesthesiologist, emergency room physician, internist, etc.) or midwife services rendered during an emergency service that meets the above criteria are covered.

Ancillary services (lab, x-ray, pharmacy, etc.) rendered during an emergency service that meets the above criteria are covered.

Emergency ambulance services to transport these individuals to and from the services defined above are also covered.

Services **not** covered for illegally residing, non-qualified ~~Non-Citizens~~ aliens include, but are not limited to:

- **ANY** service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital.
- **ANY** service (pharmacy, transportation, office visit, lab, x-ray, or home health, etc.) that *precedes or is subsequent* to a covered emergency service (except that emergency ambulance transportation directly related to the emergency service IS covered).
 - Organ transplants.
 - Long term care or rehabilitation care.
 - Routine prenatal care and post partum care.

Legally Residing, Qualified and Non-Qualified

Legally residing, qualified and non-qualified aliens may be found eligible for full Medicaid benefits.

Medicaid/Medicare Recipients

Medicaid "Buys-in" Part A and/or Part B Medicare for certain eligible recipients. Some of these recipients are eligible for the whole range of Medicaid services and some, such as QMBs and SLIMBs, are not. All are eligible

for the full range of Medicare services.

For these dual eligibles, DMAP will pay an amount equal to, part, or all of the incurred Part B deductible or coinsurance remaining after Medicare has paid. ~~Medicare Part A deductible and coinsurance amounts will be paid in full by DMAP.~~ The specific payment methodology is as follows:

For services that the DMAP normally covers, the amount paid for the Part B co-insurance and deductible will be limited to either: 1) the maximum Medicaid rate for the service minus the actual Medicare payment or, 2) the deductible/coinsurance, whichever is less. Zero payment will be made when the Medicare payment is equal to or higher than the Medicaid rate.

~~Effective September 1, 1996, Medicaid will reimburse the full co-insurance and deductible amounts for QMBs after Medicare payment.~~

For services that are not normally covered by the DMAP program, the provider will be reimbursed the full Part B coinsurance and/or deductible amount identified by Medicare.

If a dual eligible also carries other health insurance coverage in addition to Medicare and Medicaid, that resource must be billed before Medicaid.

Participating providers agree to accept the final DMAP payment disposition as payment in full. Therefore, recipients eligible for both Medicaid and Medicare should not be billed for any non-covered charges or remaining portions of the Medicare deductible and coinsurance. Exceptions to the DMAP policy prohibiting the billing of recipients can be referenced in the Billing DMAP Recipients section of this General Policy.

LONG-TERM CARE PROVIDER MANUAL

VII. NURSING FACILITY ANCILLARY CHARGES

The DMAP will reimburse private nursing facility providers for some ancillary charges that are separate from the facility's per diem rates as follows:

- Physical therapy, by RPT only.
- Occupational therapy.
- Speech therapy.
- Oxygen.

Facilities will be paid at the median cost for each service (cap) or their actual cost, whichever is lower. Facilities

must bill for these ancillary services utilizing their Ancillary provider Identification number ending in the number twenty-six (26) and utilizing a HCFA 1500 claim form. See APPENDIX C for valid HCPC procedure codes. A further explanation of covered ancillaries follows:

Oxygen

Oxygen H size Tank. (Maximum fee = \$30.50 per tank):

Oxygen must be ordered by a physician. For date of service, use first day the oxygen tanks were actually used by patient. Claims will pend for review if more than four (4) tanks per month are billed. Use of more than four (4) tanks may indicate need for more cost effective system. Supportive documentation must be attached to the claim justifying need for this method if patient used more than four (4) tanks in a month.

Oxygen per hour on monthly basis. (Maximum fee = \$1.25 per hour):

Oxygen must be ordered by physician. Claim will pend for review if facility bills for more than two hundred forty-eight (248) hours in a month. If after first month patient requires more than two hundred forty-eight (248) hours of oxygen, facility should switch to concentrator system for patient's future use.

Oxygen concentrator per day per month. (Maximum fee = \$8.00 per day):

Oxygen must be physician ordered. Facility must specify which days of the month the concentrator was used. Facility can only bill for maximum of thirty-one (31) days. If facility bills for more than thirty-one (31) days on a claim form, the claim will reject and will be returned for correction. After facility bills for more than three (3) months worth of oxygen, supportive documentation must be attached to the claim to justify need for continuous oxygen.

If more than one type of oxygen is used in a month, provide an explanation.

Physical Therapy

Physical Therapy Evaluation. (Maximum fee = \$45.00 evaluation):

The DMAP will reimburse for the initial evaluation performed by Registered Physical Therapist. The DMAP will pay for one (1) evaluation per treatment course. Date of service is the actual day evaluation was performed. If facility bills for more than one (1) evaluation in six (6) months, supporting documentation must be attached to the claim to justify the need for the new evaluation and new course of treatment.

Physical Therapy Treatment. (Maximum fee = \$31.00 per treatment):

The DMAP will reimburse for one treatment per session provided by Registered Therapist only. The DMAP will not reimburse for physical therapy treatment delivered on the same day as a physical therapy evaluation. The DMAP will reimburse for maintenance as well as restorative therapy if doctor ordered and if monthly progress notes are completed by the therapist indicating what treatment was rendered at each session and the progress of the patient.

The DMAP will reimburse for up to twenty-three (23) sessions in a month. If more than twenty-three (23) sessions are required in a month, prior authorization must be requested of the Long-Term Care Coordinator. Payment will not be made for more than twenty-three (23) sessions if they have not been prior authorized.

If therapy continues for longer than ninety (90) days, claims must have supporting documentation attached justifying need for therapy after ninety (90) days. Supporting documentation would include a copy of the physician's order for therapy and copies of the therapist's progress notes indicating that the resident is still making progress.

Speech Therapy

Speech Therapy Evaluation. (Maximum fee = \$55.00 per evaluation):

The DMAP will reimburse for the initial evaluation for a course of treatment. The evaluation must be performed by a MSCCCSLP (Master of Science Certification Clinical Competency Speech Language Pathologist). The facility should bill for actual date of service. If the facility bills for more than one (1) evaluation in a year, supporting documentation must be attached to the claim to justify the need.

Speech Therapy Treatment. (Maximum fee = \$35.00 per treatment):

The DMAP will reimburse for one (1) treatment per session. Therapy must be provided by a MSCCCSLP. Monthly progress notes must be written by MSCCCSLP. Reimbursement will not be made for speech therapy treatment delivered on the same day as a speech therapy evaluation.

The DMAP will reimburse for a maximum of twenty-three (23) sessions per month. If more than twenty-three (23) sessions are required in a month, prior authorization must be requested of the Long-Term Care Coordinator.

Reimbursement will not be made for more than twenty-three (23) sessions if they have not been prior authorized.

If therapy continues for more than ninety (90) days, the facility must attach supporting documentation to the claim to justify continuing need. Supporting documentation would include copies of the physician order for therapy and the therapist's progress notes. Notes must indicate what treatment was rendered in each session and progress or outcome of the session.

Occupational Therapy

Occupational Therapy Evaluation. (Maximum fee = \$60.00 per evaluation).

The DMAP will reimburse for one (1) evaluation per treatment course. Evaluation must be performed by a Registered Occupational Therapist (ROT). The facility should bill actual date evaluation was completed. If the facility bills for more than one (1) occupational therapy evaluation in a year, supporting documentation must be attached to the claims to justify the need for a new evaluation and new course of treatment.

Occupational Therapy Treatment. (Maximum fee = \$38.00 per treatment).

The DMAP will reimburse for one (1) treatment per session performed by a Registered Occupational Therapist or by an Certified Occupational Therapy Aide under the direct supervision of a Registered Occupational Therapist. The therapy must be ordered by a physician. Monthly progress notes must be completed by the therapist indicating what treatment was rendered at each session and progress made by the patient. Reimbursement will not be made for therapy treatments provided on the same day as an occupation therapy evaluation.

The DMAP will reimburse for up to twenty-three (23) sessions per month. If more than twenty-three (23) sessions are required in a month, prior authorization must be requested of the Long-Term Care Coordinator. Reimbursement will not be made for more than twenty-three (23) sessions if they have not been prior authorized.

If therapy continues for longer than ninety (90) days, claims must have supporting documentation attached justifying need for therapy after ninety (90) days. Supporting documentation would include copies of the physician's order for therapy and the therapist's progress notes.

NON-EMERGENCY MEDICAL TRANSPORTATION PROVIDER POLICY

I. GENERAL INFORMATION

In accordance with Federal Regulation 42 CFR 431.53 the Delaware Medical Assistance Program (DMAP) will assure transportation for eligible Medicaid recipients who need to secure necessary medical care ~~that is covered by the DMAP~~ and who have no other means of transportation. The DMAP is designed to assist eligible Medicaid recipients in obtaining medical care within the guidelines specified in this policy.

The DMAP defines non-emergency medical transportation services as transportation to or from medical care for the purpose of receiving treatment and/or medical evaluation. The DMAP will determine the transportation provider to be in compliance with this policy as long as the transport is to or from a medical service.

The DMAP assigns a unique provider number ending with "15" to each non-emergency transportation provider enrolled with the DMAP.

Scope of Service

~~Transportation services are available through the DMAP when provided by an enrolled Medical Transportation provider to an eligible Medicaid recipient when:~~

- ~~- The recipient is transported to or from a medical provider to receive a medical service that is covered by the DMAP;~~
- ~~- The transport is the least expensive available means suitable to the recipient's medical needs;~~
- ~~- The transport used to get a Medicaid recipient to a medical provider of their choice is generally available and used by other residents of the community;~~

The DMAP covers transportation is covered for eligible Medicaid clients from the point of pickup to the medical provider location or from the medical provider location to the point of delivery. If an individual only goes to a medical appointment and does not return to the original pick up designation, the DMAP will only be charged one way and not a round trip fare. The service will include all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and any and all other components necessary to provide a transportation service for the needs of the DMAP client.

The DMAP covers transportation for an individual **who is responsible for the care of a Medicaid client.** Transportation shall be provided to the individual to receive medical instructions in the care of the Medicaid client or to visit the Medicaid client when they are

hospitalized. The transport will be considered a service to the Medicaid client and therefore must be billed using the Medicaid ID# of the hospitalized client. The transportation provider must fully document these transports. The documentation must include the name(s) of those being transported and the reason they are being transported. The provider must bill these transports using the appropriate HCPCS procedure code found in Appendix A. In cases when there are two persons responsible for the care of a Medicaid client, and both are transported the provider must use the appropriate HCPCS procedure code with the modifier Y1.

~~Transportation services provided to Medicaid recipients are reimbursable by the DMAP only when the medical service received by the recipient is a service that is covered by the DMAP at the time the transportation service is provided or is a service provided by a Managed Care Organization (MCO) which is not normally covered by the DMAP (except routine eye care for adults). Transportation services provided to non-Medicaid recipients cannot be claimed for DMAP reimbursement.~~

Definitions

~~Non-emergency medical transportation services are defined as transportation to or from any DMAP covered medical service for the purpose of receiving treatment and/or medical evaluation. Whenever possible, medical transportation funded by the DMAP shall be integrated with transportation services provided by other departments of Health and Social Services. Transportation services available without cost to the general public must also be made available without cost to Medicaid recipients. Volunteer groups and non-profit agencies should be used to the extent possible, including, but not limited to, senior citizen organizations, agencies on aging, etc. If neighbors, friends, relatives or voluntary organizations have been providing transportation services to a Medicaid recipient, it is reasonable to expect them to continue.~~

The following definitions pertain to non-emergency medical transportation only.

Appropriate Method of Transportation is the least expensive type of transportation that best meets the physical and medical circumstances of a recipient requiring transportation to a medical service.

Assistance is when a recipient must be physically helped from within or into a building and/or from within or into the medical provider's site. Without such assistance, it would be unsafe or impossible for the recipient to reach the vehicle or the medical provider's site. The assistance

is included as part of the transportation rate.

Attendant is an employee of a transportation provider, who in addition to the driver, is required to assist in the transport of the recipient due to his/her physical, mental or developmental status.

~~*Available Transportation* is public transportation, an enrolled Medicaid provider, organization, or agency who offers appropriate transportation services to a recipient who requires medical transportation to a medical service.~~

Cancel Call is notification to the transportation provider, prior to the time the vehicle is enroute to the pickup point, not to provide services to a recipient.

Escort is an interested individual that must accompany a recipient due to recipient's physical/mental/developmental capacity. Examples of an escort include, but are not limited to, a parent, guardian, or an individual who assumes parental like responsibility, or a child of a geriatric parent. The escort's presence is required to ensure that the recipient receives proper medical service/treatment. Refer to Appendix A, modifier Y1 for billing information.

Loaded Mileage is the distance traveled by a motor vehicle while transporting a recipient from a pickup point to a drop-off point.

Night Call Charge is an additional fee that may be paid when transportation service is dispatched between the hours of 6:00 p.m. and 6:00 a.m. inclusive.

No-Show is when a recipient fails to cancel a scheduled transportation service.

Prior Authorization is the approval for a service by the DMAP or the DMAP's agent before the provider actually renders the service. In order to receive reimbursement from the DMAP, a provider must comply with all prior authorization requirements. The DMAP in its sole discretion determines what information is necessary in order to approve a prior authorization request.

Provider Agreement is the signed written contractual agreement between the DMAP and the provider of services or goods.

~~*Provider Headquarters* is the provider's base of operations closest to the pickup point. A provider may have more than one (1) headquarters.~~

Recipient/Client is a person eligible for services under the DMAP.

Shared Ride a shared ride is when more than one recipient occupies a vehicle during the same trip.

Trip - One Way and Round Trip A one way trip is the dispatching of a vehicle to the recipient(s)' pickup point and transporting the recipient(s) to a medical provider, or from a medical provider to the drop-off point. A round trip is the dispatching of a vehicle to the recipient(s)' pickup point, transporting the recipient(s) to a medical provider and transporting the recipient(s) back to the pickup point.

Unloaded Mileage is the distance traveled by the motor vehicle carrying no passengers, enroute to the point of pickup or enroute from the point of drop-off.

Waiting Time is the time a vehicle is waiting at a medical provider's facility, to which the transportation provider transported the recipient, in order to transport the recipient to another destination, during the same trip.

Covered Medical Services

The DMAP will reimburse non-emergency transportation providers for transporting eligible Medicaid recipients to or from one of the following a medical services covered by the DMAP: Examples of medical services are found in the General Policy section of the manual.

- Acute care inpatient general hospital services (other than services in institutions for tuberculosis or mental diseases)
- Outpatient hospital services
- Rural health clinic services and Federally-qualified health center services
- Laboratory and X-ray services
- Early and periodic screening, diagnosis, treatment (including routine eye care, dental services, and other medically necessary services that are not covered for the general population) for individuals under age 21
- Family planning services (including voluntary sterilization)
- Physician services
- Durable medical equipment (see Limitations and Exclusions)
- Nurse-midwife services
- Services furnished by a certified nurse practitioner
- Podiatry services for routine foot care only for recipients who are diagnosed as having diabetes or circulatory/vascular disorders
- Clinic services, including mental health clinics, ambulatory surgical centers (ASCs) or free-standing surgical centers (FSSCs)

- Extended/enhanced services for high risk pregnant women (Smart Start Program)
- Rehabilitative services, including Community Support Services (CSS) and personal care services for individuals active with the Division of Alcohol, Drug Abuse and Mental Health determined to need intervention due to alcoholism, drug abuse or mental illness, & Day Health and Rehabilitation Services for individuals with mental retardation
- HMO's
- Physical, Occupational, Speech and Hearing Therapies for adults when provided by an authorized rehabilitative agency, home health agency or outpatient hospital.

Non-emergency transportation providers who believe that they are furnishing transportation for a Medicaid recipient on the same day as another transportation company may wish to submit a paper claim to EDS with documentation attached that will verify the transport.

Non-Covered Medical Services

Examples of medical services that are not covered by the DMAP include, but are not limited to, those list below. If any of the medically-related services listed below are provided to a Medicaid recipient who is enrolled with an MCO as part of that MCO's benefit package, Medicaid reimbursement is available.

- Chiropractic Services
- Routine dental, vision, prosthetics, orthotics and psychological services for adults (age 21 and over)
- Cosmetic surgery
- Psychologist services for adults
- Social Services
- Educational Services
- Reversal of sterilization or fertility related services
- Autopsies
- Inter-Hospital transportation
- Vocational Training
- Day Care
- Supplies in a non-emergency ambulance incident to the patient's condition, i.e., oxygen, intravenous.

Limitations and Exclusions

Reimbursement for medical transportation will be made subject to the limitations and exclusions that apply to these services. The limitation and exclusions are, but not limited to:

Limitations

- The DMAP reserves the right to make the

determination as to which type of transportation is the most appropriate for the recipient.

- The DMAP may pay for only the least expensive appropriate method of transportation, depending on the availability of the service and the physical and medical circumstances of the patient (recipient).
- The DMAP reserves the right to limit its payment of transportation to the nearest appropriate provider of medical services when it has made a determination that traveling further distances provides no medical benefit to the recipient.
- ~~The DMAP may pay for transportation to procure Durable Medical Equipment (DME) which requires individualized fittings or measurements when the service cannot be provided in the home.~~

Exclusions

- ~~The DMAP will not provide transportation to receive services not covered by the Program.~~
 - The DMAP will not reimburse for services in which prior approval is required but was not obtained.
 - The DMAP will not be reimburse for services that are not medically necessary or which are not provided in compliance with the provisions of the Program.
- ~~The DMAP will not reimburse for any travel when the Medicaid recipient is not an occupant of the vehicle.~~
- ~~The DMAP will not transport a recipient to a medical facility for reasons other than a medical examination and/or treatment.~~
 - The DMAP will not reimburse for transportation provided by relatives or individuals living in the same household with the recipient.
 - The DMAP will not reimburse for transportation provided in the recipient's vehicle, driven by the recipient or another person.

The DMAP will not provide transportation to a medical facility when the visit is for the sole purpose of the recipient picking up a prescription or written prescription order.

- The DMAP will not reimburse for unloaded mileage, waiting time, or no-shows. The following definitions apply:

* Unloaded mileage is the distance traveled by the vehicle carrying no passengers, enroute to the point of pick-up or enroute from the point of drop-off.

* Waiting time is the time a vehicle is waiting at a pick-up point in order to transport the recipient.

* A no-show is when a recipient fails to cancel a scheduled transportation service and the transport arrives at the pick-up point.

Services Which Require Prior Approval

~~As a condition of reimbursement, the DMAP requires that certain services be approved prior to the time they are rendered. In order to be reimbursed for prior approved services, the recipient must be Medicaid eligible at the time the services are rendered.~~

~~Prior approval, when required, must be obtained before non-emergency transportation services are rendered and, if possible, at least forty-eight (48) hours in advance. When the recipient receives health care services from more than one provider and requires approved transportation to each, a separate prior approval must be obtained for transportation to each health care provider.~~

A non-emergency transportation provider must obtain prior approval from the DMAP before providing the following transport services listed below:

- Any transportation by commercial bus, train, or air service;
- Any transportation involving lodging and/or meals (reimbursement for meals is limited to the amount authorized for State employees or less);
- All transportation services outside the region (the region is D.C., PA. NJ and MD).

Requests for approval must be submitted in writing and mailed or faxed to the Medicaid Out-of-State Coordinator at:

Division of Social Services
Medicaid Unit, Lewis Building
P.O. Box 906
New Castle, DE 19720
FAX #: 302-577-4899

If possible, approval must be obtained at least forty-eight (48) hours before non-emergency transportation services are rendered. When the recipient receives health care services from more than one provider and requires approved transportation to each, a separate prior approval must be obtained for transportation to each health care provider.

Failure to secure approval from the Out-of-State Coordinator can result in non-payment from the DMAP.

Insurance Co-Payments

DMAP recipients may also be covered by plans such as BC/BS's Total Health Plus, CIGNA's Healthplan of Delaware, and Healthcare of Delaware, as well as other HMOs, etc. Under these kinds of plans, the patients choose a primary care physician who provides total care. The

primary care physician refers patients to member specialists when necessary. There is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc.

In those instances where a Medicaid recipient is also covered by a plan for which payment of the above mentioned co-pays is required, the DMAP will cover the applicable co-pay amounts. (co-pays are differentiated from amounts are not to be confused with "non-covered" or "non-allowed" charges.)

Any person who is a member of an accessible managed care organization must use the services of the accessible managed care organization. Refer to the Accessible Managed Care Insurance Carriers section of the General Policy.

~~There is a specific Level III HCPCS procedure codes that is used when billing the DMAP for co-pay amounts. See APPENDIX A for the Level III HCPCS procedure code for transportation co-pay.~~

When billing the DMAP for co-pay amounts, refer to Appendix A for the Specific Level III HCPCS procedure code for transportation co-pay.

When billing the DMAP for co-pay the transportation provider must complete the HCFA 1500 as instructed in the Billing Section with the following exceptions:

- Enter the appropriate HCPCS co-pay procedure code in block 24D rather than the HCPCS procedure code for the actual service provided.
- Enter only the co-pay amount in block 24F. Do not enter your usual and customary charge nor add in any non-allowed charges.
- Leave block 29 blank. Do not enter the capitation amount, do not carry over the co-pay amount as a balance due, and do not enter a percentage of the capitation payment in an effort to apply it to the service provided.
- A copy of the payment voucher MUST be attached to the HCFA 1500.

II. PROVIDER PARTICIPATION SPONSIBILITIES

~~The DMAP provides reimbursement for non-emergency transportation for Medicaid recipients to obtain necessary medical services. As a The provider of non-emergency transportation services, it is the responsibility of the provider must to abide by the following policies and procedures. of the DMAP. This includes, but is not limited to:~~

~~- Providers may bill only for transportation services rendered to Medicaid recipients (and escorts, as required) to receive necessary medical care that is covered by DMAP.~~

~~∴ The providers must is responsible for maintaining all state-and/or locally required insurance coverage for the protection of its fleet, clients, and personnel, and upon request, furnish the DMAP with proof of this coverage.~~

~~- Providers must install seat belts and/or shoulder straps, to be worn by Medicaid recipients. The vehicle operators shall be instructed to refuse to operate the vehicle as long as any occupant is not wearing seat belts and/or shoulder straps.~~

~~∴ The providers must is responsible for maintaining current licenses, permits, or certifications as required by all levels of government in Delaware for operation of a vehicle(s). This includes, but is not limited to, vehicle license, driver's license, and business license.~~

~~∴ The providers will is responsible to provide door-to-door service, and when necessary, the operator or attendant must provide will assistance to those recipients in boarding and/or alighting from the vehicle. An attendant is an employee of the transportation provider who in addition to the driver is required to assist I the transport of the recipient due to his/her physical, mental or developmental status. Providing assistance is necessary when a recipient must be physically helped into or out of the vehicle, residence, or the medical provider's site. Without such assistance it would be unsafe or impossible for the recipient to reach the destination. If it is the policy of a transportation provider not to provide an attendant to assist recipients, it is their responsibility to inform the recipient when completing the Mobility Limitations" line on the Transportation Scheduling Form (see Appendix B.)~~

~~- Provider will render transportation services in late model vehicles which will be maintained and kept in good condition at all times.~~

~~• fully disclose the extent of services provided and when required to furnish the Department DMAP and Federal or State representatives with information regarding transportation services. For example, Records must include; but, are not limited to the following:~~

- ~~- recipient's name, address and DMAP number;~~
- ~~- recipient's point of origin and destination;~~
- ~~- date of transportation service;~~
- ~~- escort's name, address, and relationship;~~
- ~~- number of miles traveled and mode of transportation;~~
- ~~- service provider's name, address and DMAP provider number;~~
- ~~- a copy of a properly signed approval form, when required.~~

* A Transportation Scheduling Form (see Appendix B of this manual. This form must be completed in its entirety. every line on the form must be completed with legible and accurate information;

* A driver's log that includes the recipient's name, address, time of pick-up, destination, and actual odometer reading.

∴ The providers may is responsible for billing the DMAP only for actual loaded miles provided.

• The provider is obligated to responsible for arranging and providing transportation services for DMAP recipients as follows:

* ~~receive request from recipient and complete screening form.~~ At the time of request for transportation the provider shall complete a Transportation Scheduling Form (see Appendix B) to accurately reflect the reason for the transport and to detail all information received from the recipient regarding the transport. The completion of the Transportation Scheduling Form will assist the transportation provider with a profile of the recipient and will help in determining the recipient's needs (if any);

- ~~determine that the transportation is to or from a covered service;~~

* Verify individual's DMAP eligibility. The provider may contact Confirm to verify an individual's eligibility;

* Obtain prior authorization if required. (see "Services Which Require Prior Approval section of this manual);

* Schedule transportation and confirm the transport with the recipient;

* Arrive at the location timely;

* Always provide prompt and courteous service; and

* ~~provide service and submit claim.~~

* Submit a claim to the DMAP for only those services that were rendered.

The provider must maintain records to verify the services provided to Medicaid recipients as required in the General Policy and Provider Specific Policy.

III. MINIMUM VEHICLE STANDARDS

Client ~~transportation vehicle~~ safety is of primary importance during operation of vehicles utilized by ~~providers~~ enrolled non-emergency transportation providers in the DMAP. ~~Providers of non-emergency transportation services must adhere to these minimum standards unless the vehicles used to transport clients are emergency ambulance vehicles. The DMAP places particular emphasis is placed on the safety of Medicaid clients while being transported in Medicaid reimbursed vehicles.the vehicles transporting Medicaid clients.~~

Providers of non-emergency transportation services must adhere to the following standards and must ensure that:

• A basic first aid kit is on each vehicle operated by DMAP providers.

- ~~Providers have~~ A regulation size Class B chemical type fire extinguisher is on each vehicle. Extinguisher must have a visible gauge or inspection tag reflecting annual inspections and be placed in easy reach of the driver. The extinguisher must be mounted in a bracket located in the driver's compartment and be readily accessible to the driver and passenger(s). A The extinguisher's pressure gauge shall must be mounted on the extinguisher so as to be easily read without moving the extinguisher from its mounted position. The operating mechanism shall be sealed with a type of seal which that will not interfere with the use of the fire extinguisher.

- ~~Passengers will wear~~ Seat belts and/or shoulder straps are installed in all vehicles at all times with only one passenger per belt where applicable. For children, see, "Vehicles Transporting Children".

- ~~Passengers will be seated while vehicle is in motion.~~

- ~~Passengers unable to care for themselves will not be left unattended in the vehicle.~~

• Passenger occupancy for adults will not exceed the vehicle manufacturer's approved seating occupancy.

- ~~Vehicle will be parked or stopped so that passengers will not have to cross the street to get their destination or pickup point.~~

• Vehicle interior and exterior will be free of hazardous debris or unsecured items.

• Interior vehicle equipment will be secured at all times.

- ~~Vehicles will be operated by driver's who possess appropriate licenses and current training.~~

• Vehicles will be operated within manufacturer's safe operating standards at all times.

- ~~There will be no smoking by drivers or passengers.~~

• Vehicles will display a Company Identification when transporting DMAP clients.

- ~~Non-Emergency ambulance vehicles will meet or exceed standards required by the appropriate state licensing authority.~~

- ~~Vehicles used to provide service shall be licensed, registered and insured according to State regulations.~~

∴ Transportation services are rendered in vehicles that are maintained and kept in good condition at all times.

Vehicles Transporting Mobility Impaired Clients

Additional policies for these clients are: In addition to the vehicle standards previously mentioned, providers of non-emergency transportation services who transport mobility impaired clients must provide the following:

- Safe physical arrangements ~~will~~ must be available for the transportation of clients in wheelchairs, ~~and clients requiring a stretcher~~. The wheelchair or stretcher must be secured to the vehicle at all times while the vehicle is in motion.
- Vehicles are handicap accessible, for example:
 - * Ramps must be available to provide easy access for a wheelchair to enter and exit the vehicle; and
 - * Doors of the vehicle must be wide enough to accommodate a wheelchair.

Vehicles Transporting Children

~~Additional policies for these clients are:~~ The following are additional policies for non-emergency transportation providers who transport children:

- An approved infant or child car seat or other specially adapted seating appropriate to age and size of child must be utilized for transporting children. The provider ~~shall~~ must exercise reasonable care that its infant or child car seats or other specially adapted seating are safe.
- The provider ~~shall~~ must assume responsibility for children transported without an escort from time and place of pickup until delivered to parents, guardians or responsible person(s) designated by parents or guardians.
- Passenger windows will not be opened more than 50% when children are in transport.

IV. MINIMUM DRIVER STANDARDS

General Safety

~~The first responsibility is the safety need of the client. Immediately evacuate passengers from vehicles in case of fire. Prior to evacuation, in case of an accident, evaluate injuries carefully.~~

Driver Qualifications

~~Driver's must be qualified by the minimum standards listed below as applicable:~~

Drivers of medical transportation vehicles are responsible for the following general safety standards:

- ~~Drivers will possess a current state license and appropriate training. All drivers who transport clients in vehicles designed to carry sixteen (16) or more passengers including the driver are required to have a Class C driver's license and adhere to the Delaware transportation code. The capacity of the vehicle, not the number of persons carried is the controlling factor.~~
- ~~Drivers must have a pre-employment health screening and a physical examination by a physician within six weeks of initial employment, or date of assignment to a driver's~~

~~position, with an annual review of health status. Providers must use all appropriate means to assure that all drivers employed are drug and alcohol free while transporting DMAP clients:~~

- ~~Valid documentation of a driver's previous training record must be obtained prior to employment to assist in assuring that the applicant has a safe and competent driving history. For three years prior to employment, drivers must not have D.U.I. (driving under influence) convictions or license revocation. Valid documentation of driving record must be obtained annually thereafter.~~
- ~~Drivers must receive training in the operation of all vehicle equipment, first aid, CPR, emergency exits, fire extinguishers, wheelchair lifts, stretchers, lockdowns, etc. This certification shall include training in passenger handling techniques, e.g., wheelchair movement and securement; stretcher loading; boarding assistance; etc. Training must also be given on patient confidentiality. Documentation of this training must be kept in the provider's files with proof of annual review.~~
- ~~Drivers must complete training such as defensive driving within six months of initial employment with review as set by State of Delaware Safety Council.~~
- ~~All drivers must practice safe driving, observe all Public Safety traffic laws and driving courtesy.~~
- ~~Drivers and passengers must wear seat belts at all times as required by Delaware law. For children, see "Vehicles Transporting Children".~~
- ~~Drivers must maintain a professional manner with all DMAP clients at all times.~~
- ~~Drivers should present valid Provider issued identification to DMAP passengers at the time service is rendered.~~
- : The driver must refuse to operate the vehicle as long as any occupant is not wearing a seat belt and/or a shoulder strap as required by Delaware law. Passengers must wear a seat belt at all times with only one passenger per belt where applicable. For children, see "Vehicles Transporting Children" section of this manual.
- : The driver must insist that all passengers be seated while the vehicle is in motion.
- : The driver must park or stop the vehicle so that passenger will not have to cross the street to get to their destination or pickup point.
- : The driver must not permit smoking by passengers. The driver is also expected to refrain from smoking while transporting DMAP recipients.
- : The driver must not leave passengers who are unable to care for themselves unattended in the vehicle.

Driver Qualifications

Enrolled transportation providers who employ drivers and/or sub-contract with drivers are responsible for the

following driver qualifications:

Drivers (employed or sub-contracted) must be qualified by the standards listed below (as applicable):

· Drivers (employed or sub-contracted) must possess a current state license and appropriate training. All drivers who transport clients in vehicles designed to carry sixteen (16) or more passengers including the driver are required to have a Class C driver's license and adhere to the Delaware transportation code. The capacity of the vehicle not the number of persons carried is the controlling factor.

· Drivers (employed or sub-contracted) must have a pre-employment health screening and a physical examination by a physician within six weeks of initial employment, or date of assignment to a driver's position, with an annual review of health status. Providers must use all appropriate means to assure that drivers (employed or sub-contracted) are drug and alcohol free while transporting DMAP clients.

· Valid documentation of a driver's (employed or sub-contracted) previous training record must be obtained prior to employment to assist in assuring that the applicant has a safe and competent driving history. For three years prior to transporting Medicaid clients, drivers (employed or sub-contracted) must not have D.U.I. (driving under the influence) convictions or license revocation for D.U.I., or must not have three moving traffic violations on his/her driving record. Valid documentation of driving record must be obtained annually thereafter.

· vehicle equipment, first aid, CPR, emergency exits, fire extinguishers, wheelchair lifts, lockdowns, etc. This certification must include training in passenger handling techniques, e.g., wheelchair movement and securement, boarding assistance, etc. Training must also be given on patient confidentiality. Documentation of this training must be kept in the provider's files with proof of annual review.

· All drivers (employed or sub-contracted) must complete training such as defensive driving with six months of initial employment with review as set by the State of Delaware Safety Council.

· Drivers (employed or sub-contracted) must maintain a professional manner with DMAP clients at all times. At the time transportation services are rendered, drivers (employed or sub-contracted) drivers should present a valid "provider issued" identification to DMAP passengers. A current picture of the driver must appear on the identification.

V. OPERATIONAL REQUIREMENTS

Providers must maintain office records which address the operational requirements listed below:

- Service Policies:
 - * Hours/days of service
 - * Booking/dispatch procedures
 - * Conditions for denial of service
 - * Complaint procedures
 - * Incident reports
 - * Waiting time provisions
 - * Attendant/escort provisions
 - * Miscellaneous operating regulations (e.g., smoking aboard vehicles)
 - * Entering client homes
 - * Stopping enroute for client's convenience
 - * Emergency procedures
 - * Passenger handling (wheelchair, stretcher, number of attendants, seat belts, weight restrictions, etc.
- Personnel Policy:
 - * Discipline procedures for safety violations, passenger mishandling and training programs.
 - * Provider must maintain and enforce policy regarding employee drug and alcohol use.
- Equipment Policies:
 - * Specifications (vehicle type, auxiliary equipment);
 - * Maintenance procedures;
 - * Replacement policy.
- Vehicle Maintenance:
 - * Maintenance records must be kept on all vehicle.
 - * Vehicle maintenance and safety checks must be done monthly.
 - * Maintenance and records must comply with Delaware Department of Motor Vehicle (DMV) standards and inspections.

Providers must have documentation of vehicles modified to adapt to alternate modes of service, e.g., passenger van converted to non-emergency ambulance, wheelchair lifts added, etc., and remain within the codes and regulations of the State of Delaware's DMV.

VI. REIMBURSEMENT

Non-emergency medical transportation providers, except taxi providers, are reimbursed a prospective rate per mile based on reported historic costs (cost reports).

Non-emergency medical transportation by taxi is reimbursed at the metered rate.

Reimbursement includes all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and all components necessary to provide medical transportation services.

HOME AND COMMUNITY BASED WAIVER FOR THE MENTALLY RETARDED PROVIDER SPECIFIC POLICY

Health care services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). ~~This manual reflects the policies as they relate to Medicaid clients who are exempt from managed care coverage or who may require practitioner orders to receive services outside the MCO package (see list of those exempt from managed care coverage in the Managed Care section of the General Policy).~~ However, Home and Community-Based Services (HCBS) waiver clients are exempt from managed care coverage. Services provided to clients eligible for HCBS waiver services will be reimbursed on a "fee-for-service" basis.

I. DEFINITION AND OVERVIEW

The waiver to provide home and community based services to mentally retarded adults was developed by the Divisions of Mental Retardation (DMR) and Social Services (DSS) in 1982 and received approval from the Health Care Financing Administration (HCFA) and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Mentally Retarded (HCBS/MR) shall not exceed the cost of care of the Intermediate Care Facility for the Mentally Retarded (ICF/MR).

VI. CONTENT/DESCRIPTION OF SERVICES

~~When billing the DMAP for HCBS/MR services, the provider must use their unique MR provider ID number that ends with "56". The procedure codes to be used for billing services under the Home and Community-Based Waiver for the Mentally Retarded are listed in Appendix A.~~

Services provided under the HCBS/MR waiver include:

Case Management Services

Case management services include responsibility for locating, managing, coordinating and monitoring:

- All proposed waiver services;
- Other State Plan services;
- Needed medical, social, educational and other publicly-funded services (regardless of funding source); and,
- Informal community supports needed by eligible persons.

The intent of case management services is to enable waiver participants to receive a full range of appropriate services in a planned, coordinated, efficient and effective manner.

Case management services consist of the following activities:

- Arranging for the provision of services;
- Initiation and oversight of the process of assessment and reassessment of program participant level of care and yearly review of plans of care;
- Determination and monitoring the cost-effectiveness of the provision of home and community services;
- Monitoring and review of waiver participant's services;
- Service coordination;
- Crisis intervention;
- Case planning;
- Assessment and referral; and,
- Follow-along to ensure quality of care and case reviews when focus on the individual's progress in meeting goals and objectives established through the care plan.

Case Management is administered by qualified mental retardation professional staff who meet the minimum requirements for job specifications as set forth by the State of Delaware Personnel Commission and outlined in the Merit System Procedure Manual.

Clinical Support

Clinical support includes physician services, home health care services, physical therapy services, occupational therapy services, speech, hearing and language services and prescribed drugs.

Clinical evaluation and consultation is administered by staff meeting the minimum requirements for job specifications as set forth by the State of Delaware Personnel Commission and outlined in the Merit System Procedure Manual.

Day Habilitation

Day habitation includes assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills which takes place in a non-residential setting, separate from the home or facility in which the recipient resides. Services shall normally be furnished four (4) or more hours per day on a regularly scheduled basis for one (1) or more days per week, unless provided as an adjunct to other day activities included in the recipient's plan of care. Day habilitation services shall focus on enabling the individual to attain his or her

maximum functional level, and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings.

Residential Habilitation

Residential Habilitation (State definition) is a continuum of settings where specialized training and supervision is provided within the following community residential settings:

- neighborhood group homes;
- ~~specialized foster care programs;~~
- foster training homes
- staffed apartments; and,
- supervised apartments.

Training services in these settings are provided in accordance with an IPP which has been designed in the client assessment. The objectives of the residential habilitation services are to:

- address functional needs by modifying inappropriate behavior and enhancing beneficiary competence;
- address physical needs by promoting proper diet, exercise and health care by taking the necessary action to remedy an impairment as soon as possible after it occurs, and by assisting the beneficiary to adapt to an impairment;
- address emotional needs by strengthening the client's self-image, by the development of constructive relationships and by counseling supports if necessary;

HOSPICE PROVIDER SPECIFIC POLICY MANUAL

II. HOSPICE SERVICES

Hospice services will be provided in accordance with Sections 4305 through 4307 of the State Medicaid Manual. This part of the State Medicaid Manual is reproduced in its entirety in APPENDIX A of this manual.

An individual may elect to receive hospice care during one or more of the following election periods:

- An initial 90 day period.
- A subsequent 90 day period.
- ~~A subsequent 30 day period.~~
- ~~A subsequent extension period of unlimited duration during the individual's lifetime.~~
- Unlimited number of subsequent 60 day periods.

The periods of care are available in the order listed and may be elected separately at different times.

PRACTITIONER PROVIDER SPECIFIC POLICY

Practitioner Laboratories

General Information

The DMAP reimburses enrolled providers for properly ordered, medically necessary, non-experimental, non-investigational, Clinical Laboratory Improvement Amendments (CLIA) certified laboratory services when properly performed, documented, and billed.

All tests performed by a practitioner in his/her laboratory must be documented by a written order from the ordering practitioner. The signing of the practitioner's name by another individual or the use of facsimiles are not acceptable. Any telephone order for laboratory testing must be supported by a signed order from the practitioner.

As a result of Public Law 98-369, the DMAP prohibits practitioners from billing for clinical diagnostic laboratory tests that are not personally performed or supervised by the practitioner start-to-finish in his/her office. The following policies apply:

- Practitioners may only bill the program for those laboratory procedures which they personally perform or supervise start-to-finish in their office.
- Laboratory procedures which the practitioner refers to an outside laboratory must be billed by the laboratory.
- Interpretation of laboratory results or the taking of blood or other specimens is considered part of the visit and may not be charged as a separate procedure by the practitioner.

CLIA

The Clinical Laboratory Improvement Amendments of 1988 were enacted by Congress to improve the quality and reliability of clinical laboratory testing. CLIA applies to any provider who performs any laboratory test used for health purposes, no matter how simple or routine.

CLIA Certificate of Waiver Tests

~~The following~~ Clinical diagnostic laboratory tests ~~are considered to be~~ CLIA Certificate of Waiver tests ~~are listed in Appendix H.~~ These are the only HCPCS procedure codes that may be billed to the DMAP by a provider who holds a CLIA Certificate of Waiver. If there is a specific product name or manufacturer listed, a provider who holds a CLIA Certificate of Waiver may only bill if the test is done **USING THE SPECIFIC PRODUCT AND MANUFACTURER AS LISTED.**

PROPOSED REGULATIONS

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
*80002 effective 1/23/96	Glucose; quantitative	Cholestech LDX	Cholestech
*80002 effective 1/23/96	Triglycerides	Cholestech LDX	Cholestech
*80002 effective 1/1/97 (replaces G0054)	Cholesterol, total	1. Chemtraka Accumeter 2. Advanced Care 3. Boehringer Mannheim AccuChek Instant Plus Cholesterol 4. Cholestech LDX	1. Chemtrak 2. Johnson & 3. Boehringer Mannheim 4. Cholestech
81002	Urinalysis; by dipstick or tablet reagent for bilirubin; glucose; hemoglobin; ketones; leukocytes; nitrite, pH; protein, specific gravity; urobilinogen, any number of these constituents; non automated, without microscopy	Various	Various
81025	Urine pregnancy test, by visual color comparison methods	Various	Various
82044 effective 1/23/96	Albumin; urine; microalbumin; semiquantitative (eg, reagent strip assay)	Boehringer Mannheim Chemstrip Mieral	Boehringer Mannheim
82270	Blood, occult; feces screening; 1-3 simultaneous determinations	Various	Various
82273 effective 1/23/96	Blood, occult; other sources, qualitative	SmithKline Gastrocult	SmithKline
82950 effective 1/1/97 (replaces	Glucose; post glucose dose (includes glucose)	HemoCue B Glucose Photometer	HemoCue

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
G0055) 82951 effective 1/1/97 (replaces G0056)	Glucose; tolerance test (GTT), three specimens (includes glucose)	HemoCue B-Glucose Photometer	HemoCue

*If one (1) or two (2) of these tests are done, the provider must bill procedure code 80002 with one (1) unit. If all three (3) of these tests are done, the provider must bill procedure code 80003 with one (1) unit.

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
82952 effective 1/1/97 (replaces G0057)	Glucose; tolerance test, each additional beyond three specimens	HemoCue B Glucose Photometer	HemoCue
82962	Glucose, blood by glucose monitoring device(s) cleared by the FDA specifically for home use	Various	Various
83026	Hemoglobin; by copper sulfate method, non automated	Various	Various
83718 effective 1/23/96	Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol)	Cholestech LDX	Cholestech
83986 effective 1/23/96	pH, body fluid; except blood. Using qualitative color comparison	Various	Various
85013	Blood count; spun microhematocrit	Various	Various
85018 effective 1/1/97 (replaces Q0116)	Blood count; hemoglobin	Hemoglobin by single instrument with self-contained or component features to perform specimen/reagent interaction; providing direct measurement and readout	HemoCue
85651	Sedimentation rate; erythrocyte; non automated	Various	Various
86588 effective 1/23/96	Streptococcus; screen, direct	Quick Vue In-Line One-Step Strep A Test	Quidel

PROPOSED REGULATIONS

87072 effective 4/23/96	Culture or direct bacterial identification method, each organism, by commercial kit, any source except urine	Serim Pyloritek Test Kit	Serim
-------------------------------	--	--------------------------	-------

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following waiver test is not reimbursable by the DMAP:

84830 Ovulation tests, by visual color comparison methods for human luteinizing hormone

CLIA Certificate for Provider-Performed Microscopy Procedures (PPMP)

The following Clinical diagnostic laboratory tests are considered CLIA provider-performed microscopy procedures are listed in Appendix I. A provider who holds a CLIA Certificate for Provider-Performed Microscopy may bill the DMAP for the following procedures in addition to the Certificate of Waiver tests.

- 81000 Urinalysis, by dipstick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; non-automated, with microscopy
- 81015 Urinalysis; microscopic only
- 89190 Nasal smear for eosinophils
- G0026 Fecal leukocyte examination

NOTE: The DMAP considers the following provider-performed microscopy procedures to be part of the physician evaluation and management service. Therefore, the following are not separately reimbursable by DMAP:

- Q0111 Wet mounts, including preparations of vaginal, cervical or skin specimen
- Q0112 All potassium hydroxide (KOH) preparations
- Q0113 Pinworm examinations

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following provider-performed microscopy procedures are not reimbursable by DMAP:

- Q0114 Fern test
- Q0115 Post-coital direct, qualitative examinations of vaginal or cervical mucous
- G0027 Semen analysis; presence and/or motility of sperm excluding Huhner test

CLIA Certificate of Registration Tests that DO NOT Require Additional Certification by the DMAP

A practitioner who holds a CLIA Certificate of Registration may bill the DMAP for the following some routinely performed clinical diagnostic laboratory tests in addition to both the Certificate of Waiver tests and the Provider-Performed Microscopy procedures without These tests do not require additional certification by the DMAP. Refer to Appendix J for a list of appropriate HCPCS procedure codes.

NOTE: Skin tests (86485-86586) are not considered to be clinical diagnostic laboratory tests and are, therefore, not monitored by CLIA.

- 80002 Automated multichannel test; 1 or 2 clinical chemistry tests
- 80003 Automated multichannel test; 3 clinical chemistry tests
- 80004 Automated multichannel test; 4 clinical chemistry tests
- 80005 Automated multichannel test; 5 clinical chemistry tests
- 80006 Automated multichannel test; 6 clinical chemistry tests
- 80007 Automated multichannel test; 7 clinical chemistry tests
- 80008 Automated multichannel test; 8 clinical chemistry tests
- 80009 Automated multichannel test; 9 clinical chemistry tests
- 80010 Automated multichannel test; 10 clinical chemistry tests
- 80011 Automated multichannel test; 11 clinical chemistry tests
- 80012 Automated multichannel test; 12 clinical chemistry tests
- 81001 Urinalysis, by dip stick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; automated, with microscopy
- 81003 Urinalysis, by dip stick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; automated, without microscopy
- 81005 Urinalysis; qualitative or semiquantitative, except immunoassays
- 82044 Albumin; urine, microalbumin, semiquantitative (eg, reagent strip assay)
- 82273 Blood, occult; other sources, qualitative
- 82948 Glucose; blood, reagent strip
- 82950 Glucose; post glucose dose (includes glucose)
- 82951 Glucose; tolerance test (GTT), three specimens (includes glucose)
- 82952 Glucose; tolerance test, each additional beyond three specimens
- 83718 Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol)
- 83986 pH, body fluid, except blood
- 84525 Urea nitrogen; semiquantitative (eg, reagent strip test)
- 84703 Gonadotropin, chorionic (hCG); qualitative
- 85014 Blood count; other than spun hematocrit
- 85018 Blood count; hemoglobin
- 85021 Blood count; hemogram, automated (RBC, WBC, Hgb, Het and indices only)
- 85022 Blood count; hemogram, automated, and manual differential

	WBC count (CBC)
85023	Blood count; hemogram and platelet count, automated, and manual differential WBC count (CBC)
85027	Blood count; hemogram and platelet count, automated
85031	Blood count; hemogram, manual, complete CBC (RBC, WBC, Hgb, Hct, differential and indices)
85044	Blood count; reticulocyte count, manual
85048	Blood count; white blood cell (WBC)
85585	Platelet; estimation on smear, only
85590	Platelet; manual count
85595	Platelet; automated count
86063	Antistreptolysin O; screen
86280	Hemagglutination inhibition test (HAI)
86308	Heterophile antibodies; screening
86403	Particle agglutination, screen, each antibody
86430	Rheumatoid factor; qualitative
86588	Streptococcus, screen, direct
86592	Syphilis test, qualitative (eg, VDRL, RPR, ART)
87072	Culture or direct bacterial identification method, each organism, by commercial kit, any source except urine
87081	Culture, bacterial, screening only, for single organisms
87082	Culture, presumptive, pathogenic organisms, screening only, by commercial kit (specify type); for single organisms
87083	Culture, presumptive, pathogenic organisms, screening only, by commercial kit (specify type); multiple organisms
87086	Culture, bacterial, urine; quantitative, colony count
87087	Culture, bacterial, urine; commercial kit
87101	Culture, fungi, isolation (with or without presumptive identification); skin
87102	Culture, fungi, isolation (with or without presumptive identification); other source (except blood)
87205	Smear, primary source, with interpretation; routine stain for bacteria, fungi, or cell types
87208	Smear, primary source, with interpretation; direct or concentrated, dry, for ova and parasites
87220	Tissue examination for fungi (eg, KOH slide)

~~A practitioner who holds a CLIA Certificate of Registration and has a specialty of rheumatology may also bill the DMAP for the following routinely performed tests without Medicaid certification.~~

83872	Mucin, synovial fluid (Ropes test)
89060	Crystal identification by light microscopy with or without polarizing lens analysis, any body fluid (except urine)

CLIA Certificate of Registration Tests that DO Require Additional Certification by the DMAP

Any other clinical diagnostic laboratory tests performed start-to-finish in a practitioner's office require **BOTH** a CLIA Certificate of Registration and certification by the Medicaid Laboratory Consultant.

To request this certification, submit a letter to:

Medicaid Laboratory Consultant
Division of Social Services
P.O. Box 906
Lewis Building
New Castle, DE 19720
with the following information:

- Describe the office procedure from start to finish in detail. You may enclose a copy of the package insert for commercial kits.
- Enclose a sample of how your test results will be recorded in your office record.
- Indicate your CLIA Certificate of Registration Number.
- Indicate the name of the physician(s) who will personally perform or supervise the laboratory procedure and include the DMAP provider ID number(s) which will be used for billing.

This information should not be submitted with a claim. When the laboratory consultant has certified your practice to perform the procedure, you will receive a certification letter.

If a claim is submitted for a HCPCS procedure code that requires certification and the practitioner has not followed the above outlined procedure, the claim will be denied with the message "Provider Not Specified to Provide Service." Once a particular HCPCS procedure code has been denied with this message, do not resubmit additional claims for this procedure code until the above noted procedure is complete.

Refer to Appendix K for specific billing instructions for:

- Multiple Units Of Service
- Pregnancy Tests
- Panels and Profiles
- Drug Testing
- Therapeutic Drug Assays
- Urinalysis
- Chemistry and Toxicology
- Hematology
- Immunology
- Microbiology

Multiple Units of Service

The following restrictions apply when billing for multiple units of service:

- Repetition of the same test on the same specimen must

not be billed:

- When the same test is performed on separate specimens collected on the same day from the same patient, bill for multiple units of the appropriate HCPCS procedure code. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, note the times that the specimens were collected.

EXAMPLE: If a glucose is drawn at 8 AM and again at 2 PM on the same day, bill for two units of 80002. In block 19 of the HCFA 1500, note that the specimens were collected at 8 AM and 2 PM.

- When different procedures are described by one HCPCS procedure code, bill for multiple units of service. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, identify the procedures performed.

EXAMPLE: When both a wound culture and an eye culture are performed on the same day, bill for two units of 87070. In block 19 of the HCFA 1500, state that one wound culture and one eye culture were performed.

Pregnancy Tests

The following restrictions apply:

- HCPCS procedure code 81025 (Urine pregnancy test, by visual color comparison methods) should be used for pregnancy tests performed on urine samples that are reported as positive or negative by a visual color comparison.
- HCPCS procedure code 84703 [Gonadotropin, chorionic (hCG); qualitative] should be used for pregnancy tests reported as positive or negative.
- HCPCS procedure code 84702 [Gonadotropin, chorionic (hCG); quantitative] should be used when determining the range of values of the beta sub-unit of the chorionic gonadotropin. **DO NOT USE THIS CODE FOR ROUTINE PREGNANCY TESTS.**

Panels And Profiles (80002-80090)

Panels or profiles are groups of laboratory tests that are performed and billed as a single unit. Practitioners must use the appropriate single procedure code that describes the group of tests being performed.

The individual HCPCS procedure codes for the 22 tests listed below are NOT used by the DMAP:

<u>Name of Test</u>	<u>Individual HCPCS Procedure Codes Which Are Not Used</u>
Alanine aminotransferase (ALT, SGPT)	84460
Albumin	82040
Aspartate aminotransferase (AST, SGOT)	84450
Bilirubin; direct	82250, 82251
Bilirubin; total	82250, 82251
Calcium	82310
Carbon dioxide content	82374
Chloride	82435
Cholesterol	82465
Creatine kinase (CK, CPK)	82550
Creatinine	82565
Glucose (Sugar)	82947
Gamma-glutamyltransferase (GGT)	82977
Lactic dehydrogenase (LD)	83615
Phosphatase, alkaline	84075
Phosphorus (inorganic phosphate)	84100
Potassium	84132
Protein, total	84155, 84160
Sodium	84295
Triglyceride	84478
Urea nitrogen (BUN)	84520
Uric acid	84550

When reporting any of these 22 tests, regardless of whether the tests are performed using manual or semi-automated methods, or on automated multichannel equipment, use the appropriate profile code 80002 - G0060 listed below:

USE THESE CODES:

80002	Automated multichannel test; 1 or 2 clinical chemistry tests
80003	Automated multichannel test; 3 clinical chemistry tests
80004	Automated multichannel test; 4 clinical chemistry tests
80005	Automated multichannel test; 5 clinical chemistry tests
80006	Automated multichannel test; 6 clinical chemistry tests
80007	Automated multichannel test; 7 clinical chemistry tests
80008	Automated multichannel test; 8 clinical chemistry tests
80009	Automated multichannel test; 9 clinical chemistry tests
80010	Automated multichannel test; 10 clinical chemistry tests
80011	Automated multichannel test; 11 clinical chemistry tests
80012	Automated multichannel test; 12 clinical chemistry tests
80016	Automated multichannel test; 13-16 clinical chemistry tests
80018	Automated multichannel test; 17-18 clinical chemistry tests
80019	Automated multichannel test; 19 clinical chemistry tests
G0058	Automated multichannel test; 20 clinical chemistry tests
G0059	Automated multichannel test; 21 clinical chemistry tests
G0060	Automated multichannel test; 22 clinical chemistry tests

EXAMPLE: If a BUN and a glucose were run on the same specimen, the correct code would be one unit of 80002. If only a glucose was ordered, the correct code would still

be one unit of 80002. If a glucose was run a 9 AM and again at 2 PM on the same day on different specimens, two units of 80002 would be billable.

EXAMPLE: If five of the above tests are ordered, the correct code would be one unit of 80005. Fifteen tests would be billed as one unit of 80016 while twenty-one tests would be one unit of G0059. In each case, the unit of service would be one, not the number of tests actually performed.

Drug Testing (80100-80103)

HCPCS procedure code 80100 (Drug, screen; multiple drug classes, each procedure) should be used for a qualitative drug screen that detects multiple drug classes in a single procedure. HCPCS procedure code 80101 (Drug, screen; single drug class, each drug class) should be used for a qualitative drug screen that detects a single drug class. HCPCS procedure code 80102 (Drug, confirmation, each procedure) should be used for confirmation (by a second method) of any drugs detected in a drug screen.

HCPCS procedure code 83518 (Immunoassay for analyte other than antibody or infectious agent antigen, qualitative or semiquantitative; single step method [eg, reagent strip]) should be used for a qualitative or semiquantitative immunoassay of an analyte other than an antibody. This includes quick screens, using low technology testing (e.g., reagent strips, dip stick, etc.).

Confirmed drugs may be quantitated using the appropriate code in the chemistry section (82000-84999) or therapeutic drug assay section (80150-80299).

Therapeutic Drug Assays (80150-80299)

Use the specific procedure code listed in the CPT book for individual quantitative assay. For non quantitative testing, use codes 80100-80103.

Urinalysis (81000-81099)

Code 81000 is described as a complete urinalysis, non-automated. Code 81001 is a complete urinalysis, automated. Neither is to be used in conjunction with the following HCPCS procedure codes: 81002, 81003, 81005, and 81015. Any stick, dip, or tablet tests performed on a single specimen are considered to be part of the 81000 or 81001 and are not eligible for separate reimbursement. In order to bill for an 81000 or 81001, a microscopy must be performed.

Chemistry And Toxicology (82000-84999)

When billing for any specific chemistry test that is noted under the list of automated, multichannel tests, do not use the individual HCPCS procedure codes regardless of whether the tests are performed using manual methods or automated, multichannel equipment. The practitioner should bill using the appropriate profile code.

Hematology (85000 - 85999)

When billing codes for a complete blood count (CBC) or hemogram, identified as HCPCS procedure codes 85021, 85022, 85023, 85024, 85025, 85027, or 85031, do not bill for any code that is a component of a CBC for the same specimen. The following are the HCPCS procedure codes for components: 85007, 85008, 85013, 85014, 85018, 85029, 85030, 85041, 85048, 85585, 85590, and 85595.

Providers are reminded not to use multiple procedure codes when a single procedure code accurately describes the service rendered.

Immunology (86000 - 86999)

When there is no specific code for an immunology procedure, the code for the methodology is to be used. Certain codes can be used to describe many different tests. When two or more different tests are described by the same code and are performed on the same patient on the same day, bill on a single line using multiple units of service. Identify the procedures performed in Block 19 of the HCFA 1500, which is used to explain unusual services or circumstances.

Microbiology (87001 - 87999)

The following policies apply:

- A definitive culture is one in which ALL probable pathogens are isolated and identified. Commercial kits are not considered to be definitive culture methods.

EXAMPLE: When billing code 87060 (Culture, bacterial, definitive; throat or nose), the practitioner is expected to be able to isolate and identify Haemophilus, gram negative rods, staphylococci, pneumococci, and other probable naso-pharyngeal pathogens in addition to beta hemolytic streptococci.

- A presumptive or screening culture is one in which a single pathogen is isolated but may or may not be definitively identified.

~~EXAMPLE: When a throat culture is screened for the presence or absence of group A beta streptococci using a low concentration bacitracin disc, bill for one unit of 87081. Identification aids such as bacitracin and neomycin discs are considered part of the screen and should not be billed in addition to the 87081.~~

~~EXAMPLE: When a genital culture is screened for the presence or absence of Neisseria gonorrhoea (GC), bill for one unit of 87081.~~

~~- Commercial kits are self-contained microbiology systems that offer screening information on one or more probable pathogens. HCPCS procedure codes for commercial kits are found in the microbiology section of the CPT book. Cultures performed using commercial kits are not considered definitive. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, identify the commercial kit used.~~

~~EXAMPLE: When a culture of the urethra for Neisseria gonorrhoea (GC) is performed using the Isocult commercial kit for gonorrhoea, bill for one unit of HCPCS procedure code 87082. In block 19 of the HCFA 1500, note that Isocult was the commercial kit used.~~

~~- Direct sensitivities are not reimbursable. A direct sensitivity is inoculated directly from the specimen at the time of the initial culture. DO NOT use HCPCS procedure codes 87181, 87184, 87186, or 87188 to describe direct sensitivities. Sensitivities will only be reimbursed after a pathogen has been isolated and set up for sensitivities.~~

~~- HCPCS procedure code 87088 is described as a culture, bacterial, urine; identification, in addition to quantitative or commercial kit. It is not to be used in conjunction with procedure code 87086 (Culture, bacterial, urine; quantitative, colony count) or with procedure code 87087 (Culture, bacterial, urine; commercial kit). They are considered to be part of procedure code 87088 when performed on the same specimen.~~

Laboratory Codes

HCPCS procedure codes 80002 - 80019 and G0058 - G0060 have been deleted in the CPT book but Delaware Medicaid will continue to use this coding series for automated multichannel testing.

The newly added 1998 CPT codes for organ or disease oriented panels will not be used. Use the appropriate automated multichannel test in the 80002 - 80019 series. For 80049, use 80007. For 80051, use 80004. For 80054, use 80012.

IV. BILLING FOR SPECIFIC LABORATORY SERVICES

HCPCS procedure codes 80002-80019 and G0058-G0060 have been deleted in the CPT book but Delaware Medicaid will continue to use this coding series for automated multichannel testing.

The newly added 1998 CPT codes for organ or disease oriented panels will not be used. Use the appropriate automated multichannel test in the 8002-80019 series. For 80049, use 80007. For 80051, use 80004. For 80054, use 80012.

CLIA Certificate of Waiver Tests

The following Clinical diagnostic laboratory tests are considered to be CLIA Certificate of Waiver tests are listed in Appendix A. These are the only HCPCS procedure codes that may be billed to the DMAP by a provider who holds a CLIA Certificate of Waiver. If there is a specific product name or manufacturer listed, a provider who holds a CLIA Certificate of Waiver may only bill if the test is done **USING THE SPECIFIC PRODUCT AND MANUFACTURER AS LISTED.**

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
*80002 effective 1/23/96	Glucose; quantitative	Cholestech LDX	Cholestech
*80002 effective 1/23/96	Triglycerides	Cholestech LDX	Cholestech
*80002 effective 1/1/97 (replaces G0054)	Cholesterol, total	1. Chemtraka Accumeter 2. Advanced Care 3. Boehringer Mannheim AccuChek Instant Plus-Cholesterol 4. Cholestech LDX	1. Chemtrak 2. Johnson & 3. Boehringer Mannheim 4. Cholestech
81002	Urinalysis; by dipstick or tablet reagent for bilirubin; glucose; hemoglobin; ketones; leukocytes; nitrite, pH; protein, specific	Various	Various

PROPOSED REGULATIONS

	gravity; urobilinogen, any number of these constituents; non automated, without microscopy		
81025	Urine pregnancy test, by visual color comparison methods	Various	Various
82044 effective 1/23/96	Albumin; urine; microalbumin; semiquantitative (eg, reagent strip assay)	Boehringer Mannheim Chemstrip Mical	Boehringer Mannheim
82270	Blood, occult; feces screening; 1-3 simultaneous determinations	Various	Various
82273 effective 1/23/96	Blood, occult; other sources, qualitative	SmithKline Gastrocult	SmithKline
82950 effective 1/1/97 (replaces G0055)	Glucose; post glucose dose (includes glucose)	HemoCue-B Glucose Photometer	HemoCue
82951 effective 1/1/97 (replaces G0056)	Glucose; tolerance test (GTT), three specimens (includes glucose)	HemoCue-B-Glucose Photometer	HemoCue

*If one (1) or two (2) of these tests are done, the provider must bill procedure code 80002 with one (1) unit. If all three (3) of these tests are done, the provider must bill procedure code 80003 with one (1) unit.

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
82952 effective 1/1/97 (replaces G0057)	Glucose; tolerance test, each additional beyond three specimens	HemoCue-B Glucose Photometer	HemoCue
82962	Glucose, blood by glucose monitoring device(s) cleared by the FDA specifically for home use	Various	Various
83026	Hemoglobin; by copper sulfate method; non	Various	Various

	automated		
83718 effective 1/23/96	Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol)	Cholestech LDX	Cholestech
83986 effective 1/23/96	pH, body fluid; except blood. Using qualitative color comparison	Various	Various
85013	Blood count; spun microhematocrit	Various	Various
85018 effective 1/1/97 (replaces Q0116)	Blood count; hemoglobin	Hemoglobin by single instrument with self-contained or component features to perform specimen/reagent interaction; providing direct measurement and readout	HemoCue
85651	Sedimentation rate; erythrocyte; non automated	Various	Various
86588 effective 1/23/96	Streptococcus; screen, direct	Quick Vue In-Line One-Step Strep A Test	Quidel
87072 effective 1/23/96	Culture or direct bacterial identification method, each organism, by commercial kit, any source except urine	Serim Pyloritek Test Kit	Serim

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following waiver test is not reimbursable by the DMAP:

84830 Ovulation tests, by visual color comparison methods for human luteinizing hormone

CLIA Certificate for Provider-Performed Microscopy Procedures (PPMP)

The following Clinical diagnostic laboratory tests are considered CLIA provider-performed microscopy procedures are listed in Appendix B. A provider who holds a CLIA Certificate for Provider-Performed Microscopy may bill the DMAP for the following procedures in addition to the Certificate of Waiver tests.

81000 Urinalysis, by dipstick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH,

protein, specific gravity, urobilinogen, any number of these constituents; non-automated, with microscopy

- 81015 Urinalysis; microscopic only
- 89190 Nasal smear for eosinophils
- G0026 Fecal leukocyte examination

NOTE: The DMAP considers the following provider-performed microscopy procedures to be part of the physician evaluation and management service. Therefore, the following are not separately reimbursable by DMAP:

- Q0111 Wet mounts, including preparations of vaginal, cervical or skin specimen
- Q0112 All potassium hydroxide (KOH) preparations
- Q0113 Pinworm examinations

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following provider-performed microscopy procedures are not reimbursable by DMAP:

- Q0114 Fern test
- Q0115 Post-coital direct, qualitative examinations of vaginal or cervical mucous
- G0027 Semen analysis; presence and/or motility of sperm excluding Huhner test

CLIA Certificate of Registration Tests

An independent laboratory who holds a CLIA Certificate of Registration may bill the DMAP for any clinical diagnostic laboratory test for which they have received CLIA certification.

Refer to Appendix C for specific billing instructions for:

- . Multiple Units of Service
- . Pregnancy Tests
- . Panels and Profiles
- . Drug Testing
- . Therapeutic Drug Assays
- . Urinalysis
- . Chemistry and Toxicology
- . Hematology
- . Immunology
- . Microbiology

Multiple Units of Service

The following restrictions apply when billing for multiple units of service:

- Repetition of the same test on the same specimen must

not be billed.

- When the same test is performed on separate specimens collected on the same day from the same patient, bill for multiple units of the appropriate HCPCS procedure code. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, note the times that the specimens were collected.

EXAMPLE: If a glucose is drawn at 8 AM and again at 2 PM on the same day, bill for two units of 80002. In block 19 of the HCFA 1500, note that the specimens were collected at 8 AM and 2 PM.

- When different procedures are described by one HCPCS procedure code, bill for multiple units of service. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, identify the procedures performed.

EXAMPLE: When both a wound culture and an eye culture are performed on the same day, bill for two units of 87070. In block 19 of the HCFA 1500, state that one wound culture and one eye culture were performed.

Pregnancy Tests

The following restrictions apply:

- HCPCS procedure code 81025 (Urine pregnancy test, by visual color comparison methods) should be used for pregnancy tests performed on urine samples that are reported as positive or negative by a visual color comparison.
- HCPCS procedure code 84703 [Gonadotropin, chorionic (hCG); qualitative] should be used for pregnancy tests reported as positive or negative.
- HCPCS procedure code 84702 [Gonadotropin, chorionic (hCG); quantitative] should be used when determining the range of values of the beta sub-unit of the chorionic gonadotropin. **DO NOT USE THIS CODE FOR ROUTINE PREGNANCY TESTS.**

Panels and Profiles (80002-G0060)

Panels or profiles are groups of laboratory tests that are performed and billed as a single unit. Practitioners must use the appropriate single procedure code that describes the group of tests being performed.

The individual HCPCS procedure codes for the 22 tests listed below are NOT used by the DMAP.

PROPOSED REGULATIONS

Name of Test	Individual HCPCS Procedure Codes Which Are Not Used
Alanine aminotransferase (ALT, SGPT)	84460
Albumin	82040
Aspartate aminotransferase (AST, SGOT)	84450
Bilirubin; direct	82250, 82251
Bilirubin; total	82250, 82251
Calcium	82310
Carbon dioxide content	82374
Chloride	82435
Cholesterol	82465
Creatine kinase (CK, CPK)	82550
Creatinine	82565
Glucose (Sugar)	82947
Gamma-glutamyltransferase (GGT)	82977
Lactic dehydrogenase (LD)	83615
Phosphatase, alkaline	84075
Phosphorus (inorganic phosphate)	84100
Potassium	84132
Protein, total	84155, 84160
Sodium	84295
Triglyceride	84478
Urea nitrogen (BUN)	84520
Uric acid	84550

When reporting any of these 22 tests, regardless of whether the tests are performed using manual or semi-automated methods, or on automated multichannel equipment, use the appropriate profile code 80002 - G0060 listed below:

USE THESE CODES:

80002	Automated multichannel test; 1 or 2 clinical chemistry tests
80003	Automated multichannel test; 3 clinical chemistry tests
80004	Automated multichannel test; 4 clinical chemistry tests
80005	Automated multichannel test; 5 clinical chemistry tests
80006	Automated multichannel test; 6 clinical chemistry tests
80007	Automated multichannel test; 7 clinical chemistry tests
80008	Automated multichannel test; 8 clinical chemistry tests
80009	Automated multichannel test; 9 clinical chemistry tests
80010	Automated multichannel test; 10 clinical chemistry tests
80011	Automated multichannel test; 11 clinical chemistry tests
80012	Automated multichannel test; 12 clinical chemistry tests
80016	Automated multichannel test; 13 - 16 clinical chemistry tests
80018	Automated multichannel test; 17 - 18 clinical chemistry tests
80019	Automated multichannel test; 19 clinical chemistry tests
G0058	Automated multichannel test; 20 clinical chemistry tests
G0059	Automated multichannel test; 21 clinical chemistry tests
G0060	Automated multichannel test; 22 clinical chemistry tests

EXAMPLE: If a BUN and a glucose were run on the same specimen, the correct code would be one unit of 80002. If only a glucose was ordered, the correct code would still

be one unit of 80002. If a glucose was run a 9 AM and again at 2 PM on the same day on different specimens, two units of 80002 would be billable.

EXAMPLE: If five of the above tests are ordered, the correct code would be one unit of 80005. Fifteen tests would be billed as one unit of 80016 while twenty-one tests would be one unit of G0059. In each case, the unit of service would be one, not the number of tests actually performed.

Drug Testing (80100-80103)

HCPCS procedure code 80100 (Drug, screen; multiple drug classes, each procedure) should be used for a qualitative drug screen that detects multiple drug classes in a single procedure. HCPCS procedure code 80101 (Drug, screen; single drug class, each drug class) should be used for a qualitative drug screen that detects a single drug class. HCPCS procedure code 80102 (Drug, confirmation, each procedure) should be used for confirmation (by a second method) of any drugs detected in a drug screen.

HCPCS procedure code 83518 (Immunoassay for analyte other than antibody or infectious agent antigen, qualitative or semiquantitative; single step method [e.g., reagent strip]) should be used for a qualitative or semiquantitative immunoassay of an analyte other than an antibody. This includes quick screens, using low technology testing (e.g., reagent strips, dip stick, etc.).

Confirmed drugs may be quantitated using the appropriate code in the chemistry section (82000-84999) or therapeutic drug assay section (80150-80299).

Therapeutic Drug Assays (80150-80299)

Use the specific procedure code listed in the CPT book for individual quantitative assay. For non-quantitative testing, use codes 80100-80103.

Urinalysis (81000-81099)

Code 81000 is described as a complete urinalysis, non-automated. Code 81001 is a complete urinalysis, automated. Neither is to be used in conjunction with the following HCPCS procedure codes: 81002, 81003, 81005, and 81015. Any stick, dip, or tablet tests performed on a single specimen are considered to be part of the 81000 or 81001 and are not eligible for separate reimbursement. In order to bill for an 81000 or an 81001, a microscopy must be performed.

Chemistry And Toxicology (82000-84999)

When billing for any specific chemistry test that is noted under the list of automated, multichannel tests, do not use the individual HCPCS procedure codes regardless of whether the tests are performed using manual methods or automated, multichannel equipment. The practitioner should bill using the appropriate profile code.

Hematology (85000 - 85999)

When billing codes for a complete blood count (CBC) or hemogram, identified as HCPCS procedure codes 85021, 85022, 85023, 85024, 85025, 85027, or 85031, do not bill for any code that is a component of a CBC for the same specimen. The following are the HCPCS procedure codes for components: 85007, 85008, 85013, 85014, 85018, 85041, 85048, 85585, 85590, and 85595.

Providers are reminded not to use multiple procedure codes when a single procedure code accurately describes the service rendered.

Immunology (86000 - 86999)

When there is no specific code for an immunology procedure, the code for the methodology is to be used. Certain codes can be used to describe many different tests. When two or more different tests are described by the same code and are performed on the same patient on the same day, bill on a single line using multiple units of service. Identify the procedures performed in Block 19 of the HCFA 1500, which is used to explain unusual services or circumstances.

Microbiology (87001 - 87999)

The following policies apply:

- A definitive culture is one in which ALL probable pathogens are isolated and identified. Commercial kits are not considered to be definitive culture methods.

EXAMPLE: When billing code 87060 (Culture, bacterial, definitive; throat or nose), the practitioner is expected to be able to isolate and identify Haemophilus, gram negative rods, staphylococci, pneumococci, and other probable naso-pharyngeal pathogens in addition to beta hemolytic streptococci.

- A presumptive or screening culture is one in which a single pathogen is isolated but may or may not be definitively identified.

EXAMPLE: When a throat culture is screened for the presence or absence of group A beta streptococci using a low concentration bacitracin disc, bill for one unit of 87081. Identification aids such as bacitracin and neomycin discs are considered part of the screen and should not be billed in addition to the 87081.

EXAMPLE: When a genital culture is screened for the presence or absence of Neisseria gonorrhea (GC), bill for one unit of 87081.

- Commercial kits are self-contained microbiology systems that offer screening information on one or more probable pathogens. HCPCS procedure codes for commercial kits are found in the microbiology section of the CPT book. Cultures performed using commercial kits are not considered definitive. In block 19 of the HCFA 1500 which is used to explain unusual services or circumstances, identify the commercial kit used.

EXAMPLE: When a culture of the urethra for Neisseria gonorrhea (GC) is performed using the Isocult commercial kit for gonorrhea, bill for one unit of HCPCS procedure code 87082. In block 19 of the HCFA 1500, note that Isocult was the commercial kit used.

- Direct sensitivities are not reimbursable. A direct sensitivity is inoculated directly from the specimen at the time of the initial culture. DO NOT use HCPCS procedure codes 87181, 87184, 87186, or 87188 to describe direct sensitivities. Sensitivities will only be reimbursed after a pathogen has been isolated and set up for sensitivities.

- HCPCS procedure code 87088 is described as a culture, bacterial, urine; identification, in addition to quantitative or commercial kit. It is not to be used in conjunction with procedure code 87086 (Culture, bacterial, urine; quantitative, colony count) or with procedure code 87087 (Culture, bacterial, urine; commercial kit). They are considered to be part of procedure code 87088 when performed on the same specimen.

—END OF MANUALS—

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State

Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than March 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) hereby publishes notice of proposed policy amendments to the Medicaid eligibility policy manual reflecting changes made to the program as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (PRWORA) and changes to coverage for aliens mandated by PRWORA and new coverage for some aliens funded by the State. The proposed policy changes are as follows:

240.10 CITIZENSHIP AND ALIENAGE

Overview

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to restore coverage of full Medicaid benefits to legally residing noncitizens who lost eligibility for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens are not eligible for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid. For example, enrollment in a managed care organization is a technical eligibility requirement for adults in the expanded population under the Diamond State Health Plan demonstration waiver. A nonqualified alien or a qualified alien who is subject to the 5 year PRWORA bar cannot be found eligible in the expanded population. This is because the state funded benefits are provided on a fee for service basis. An individual cannot be found eligible under the expanded population for emergency services only because those benefits are provided on a fee for service basis. Adults in the expanded population are required to enroll in managed care to receive benefits.

I. United States Citizens

An individual qualifies as a U.S. citizen if the person was

born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S., may automatically be eligible for a Certificate of Citizenship. In order to receive the certificate, an INS Form N-600 needs to be filed.

A. Medicaid Eligibility for U.S. citizens

Medicaid must be provided to eligible citizens or nationals of the United States.

II. Noncitizens or Aliens

The word "alien" is a technical, legal term for a person who is not a U.S. citizen. Common immigration terms are listed at the end of this section. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The previous category of lawful permanent resident becomes a subcategory of the new term qualified alien. The category known as permanently residing in the United States under color of law (PRUCOL) no longer applies and is no longer an eligibility classification. Individuals who were formerly PRUCOL are now considered nonqualified aliens.

III. Qualified Aliens

A qualified alien is:

a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA). ~~An American Indian born in Canada is included in this designation provided he or she is of at least one-half American Indian blood. This does not include a spouse or child of the Indian or a non citizen whose membership in an Indian tribe or family is created by adoption, unless the person is of at least 50% or more Indian blood.~~

b) a refugee who is admitted to the United States under §207 of the INA

c) an alien who is granted asylum under §208 of the INA

d) an alien whose deportation is being withheld under §243(h) of the INA or §241(b)(3) of the INA

e) an alien who is paroled into the United States under §212(d)(5) of the INA for a period of at least 1 year

f) an alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect before April 1, 1980

g) honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman. The discharge must not be due to alien status and the active duty status must not be for training. For example, the 2 weeks of active duty training usually required of members of the National Guard does not meet the definition of active duty. Hmong and other Highland

Lao veterans who fought on behalf of the Armed Forces of the U.S. during the Vietnam conflict and who have lawfully been admitted for permanent residence are considered veterans.

h) an alien granted status as a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980)

i) an alien admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988

j) aliens who have been subjected to battery or extreme cruelty and who meet certain criteria, including an alien whose child has been battered or an alien child whose parent has been battered

k) an American Indian born in Canada who is at least one-half American Indian blood and to whom the provisions of §289 of the INA apply or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

A. Medicaid Eligibility for Qualified Aliens

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits, including long term care services.

The Delaware legislature appropriated state only funds to restore full Medicaid benefits to legally residing noncitizens who lost eligibility for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 were subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the 5 year PRWORA bar, is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

Under PRWORA, there are both mandatory and optional coverage groups for qualified aliens depending upon the alien's date of entry into the U.S. Delaware has decided to cover both the mandatory and optional groups.

The date of entry is significant for the aliens listed as a), e), f), j). These aliens who enter the U.S. on or after 8/22/96 are not eligible for full Medicaid benefits for 5 years after date of entry. These aliens are eligible only for emergency services and labor and delivery services during

the first 5 years in the U.S.

The following qualified aliens may be found eligible for Medicaid regardless of their date of entry into the U.S.:

- Refugees (§207 of INA)
- Asylees (§208 of INA)
- Aliens who have had deportation withheld under §243(h) or §241(b)(3) of the INA
- Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman.
- Cuban and Haitian entrants
- Amerasians
- American Indian born in Canada or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

In addition, title IVE Foster Children and Adoption Assistance children may be found eligible for Medicaid regardless of date of entry provided the foster or adoptive parent of the child is also a qualified alien or a citizen. The IVE agency is responsible for making that determination about the parent. If a IVE payment is being made on behalf of the child, then the child is deemed eligible for Medicaid.

For the following qualified aliens, eligibility under PRWORA is determined based upon the date of entry into the U.S.:

- Lawful permanent residents
- Aliens granted parole (parolees)
- Aliens granted conditional entry (conditional entrants)
- battered immigrants

If these aliens (lawful permanent residents, parolees, conditional entrants, battered immigrants) were living in the U.S. before August 22, 1996, they may be found eligible for Medicaid. If these aliens entered the U.S. on or after August 22, 1996, they are not eligible for full Medicaid benefits for 5 years from the date of entry into the U.S. They may be found eligible for emergency services only during the first 5 years after entering the U.S. Once these aliens have been in the U.S. for 5 years, they may be found eligible for full Medicaid.

IV. Legally Residing Nonqualified Aliens

These are aliens who do not meet the above definition of qualified aliens. Individuals formerly known as PRUCOL are now considered nonqualified aliens. Nonqualified aliens have to provide a Social Security Number (SSN) if

one is available, or apply for a SSN if the applicant does not have one.

Legally residing nonqualified aliens include the following:

- aliens granted permission to remain and work in the U.S.
- individuals who have been paroled into the U.S. for less than 1 year
- applicants for immigration status such as applicants for asylum, adjustment to lawful permanent resident status, suspension of deportation
- aliens in Temporary Protected Status (TPS)
- aliens in temporary resident status
- Family unity beneficiaries
- aliens under deferred enforced departure
- aliens in deferred action status
- aliens who are the spouses or children of U.S. citizens with approved visa petitions and pending adjustment of status application.

A. Medicaid Eligibility for Legally Residing Nonqualified Aliens

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits, including long term care services.

The Delaware legislature appropriated state only funds to restore full coverage of Medicaid benefits to legally residing noncitizens who lost eligibility for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for legally residing nonqualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described below.

Under PRWORA, legally residing nonqualified aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group, are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Under PRWORA, legally residing nonqualified aliens are not eligible for any long term care Medicaid program.

V. Illegally Residing Nonqualified Aliens

The term nonqualified aliens also includes aliens who are

illegally residing in the U.S. These aliens either were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the

United States when the period of time expired. Unlike other nonqualified aliens, they are not issued SSNs. Aliens who are illegally residing in the U.S. do not have to provide a SSN.

Legal nonimmigrants are not included in the group of nonqualified aliens. Legal nonimmigrants are included with the group known as ineligible aliens.

A. Medicaid Eligibility for Illegally Residing Nonqualified Aliens

Illegally residing nonqualified aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group, are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Illegally residing nonqualified aliens are not eligible for any long term care Medicaid program.

VI. Ineligible Aliens

Some aliens may be lawfully admitted to the United States but only for a temporary or specified period of time as legal nonimmigrants. They are known as ineligible aliens. These aliens do not have to provide a Social Security Number. The following categories of individuals are known as ineligible aliens:

- Foreign government representative on official business and their families and servants
- Visitors for business or pleasure, including exchange visitors
- Aliens in travel status while traveling directly through the U.S.
- Crewmen on shore leave
- Treaty traders and investors and their families
- Foreign students
- International organization representation and personnel and their families and servants
- Temporary workers including agricultural contract workers
- Members of foreign press, radio, film, or other information media and their families.

Ineligible aliens may present the following documentation:

- Form I-94 Arrival-Departure Record with codes other than those listed for qualified aliens, such as a

nonimmigrant code

- Form I-185, Canadian Border Crossing Card
- Form I-186, Mexican Border Crossing Card
- Form I-95A, Crewman's Landing Permit.

A. Medicaid Eligibility for Ineligible Aliens

In some cases an alien in a currently valid nonimmigrant classification may meet State residence rules. When this is the case, the alien may be found eligible for Medicaid.

Ineligible aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group (including State residency), are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Ineligible aliens are not eligible for any long term care Medicaid program.

VII. Treatment of an Emergency Medical Condition

To be eligible for coverage of labor and delivery and emergency services, the alien must meet all eligibility requirements for a specific Medicaid eligibility group such as in the SSI related groups, poverty level related groups, or AFDC related groups. The alien does not have to meet the requirement concerning declaration of satisfactory immigration status and verification of that status.

Under PRWORA, nonqualified noncitizens (aliens) are eligible ONLY for coverage of emergency services and labor and delivery services. As noted previously, legally residing nonqualified aliens may be found eligible for full Medicaid benefits effective January 1, 1998. Illegally residing aliens and ineligible aliens are eligible ONLY for coverage of emergency services and labor and delivery services. These services must be rendered in an acute care hospital emergency room or in an acute care inpatient hospital. In addition, emergency services must be rendered for diagnoses designated by the Delaware Medical Assistance Program (DMAP) as an emergency. A comprehensive list of the covered diagnoses is available in Appendix G of the DMAP Provider General Policy Manual.

The DMAP defines an emergency as:

- a sudden serious medical situation that is life threatening; OR
- a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; AND
- without the treatment a person's life could be threatened or he or she could suffer serious long lasting

disability.

Medically necessary physician (surgeon, pathologist, anesthesiologist, emergency room physician, internist, etc.) or midwife services rendered during an emergency service that meets the above criteria are covered. Ancillary services (lab, x-ray, pharmacy, etc.) rendered during an emergency service that meets the above criteria are also covered. Emergency ambulance services to transport these individuals to and from the services defined above are also covered.

Services not covered for nonqualified noncitizens who are determined to be eligible for emergency service and labor and delivery only include but are not limited to:

- any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital.
- any service (such as pharmacy, transportation, office visit, lab or x-ray, home health) that precedes or is subsequent to a covered emergency service. Exception: ambulance transportation that is directly related to the emergency is covered.
- organ transplants
- long term care or rehabilitation care
- routine prenatal and post partum care

VIII. Documentation and Verification of Citizenship or Alien Status

A. Declaration of Satisfactory Immigration Status

As a condition of eligibility, applicants must sign a written declaration under penalty of perjury stating if he or she is a citizen, national of the United States or an alien in satisfactory immigration status. (qualified alien or alien in lawful status) This declaration is obtained on the Affidavit of Citizenship or Lawful Immigration Status form as part of the application for Medicaid. In the case of a child or incompetent applicant, an adult must sign on the applicant's behalf. The applicant must also sign the Consent of Disclosure (Form SAVE 2), which allows the Immigration and Naturalization Service (INS) to provide verification of the individual's alien status.

If the applicant is not a citizen, national of the United States, qualified aliens or an alien in lawful status, the declaration of citizenship or satisfactory immigration status and verification of such status is not required. If the applicant will not sign the declaration, he or she may be found eligible for coverage for labor and delivery and emergency services only.

B. Documentation of Citizenship or Alien Status

Applicants must provide documentation of citizenship, qualified alien status, or lawful alien status. All noncitizens who declare they are qualified aliens or in lawful alien status, must provide INS documents to establish immigration status. Examples of acceptable documentation for U.S. citizens, qualified aliens, and lawful alien status are given in this section.

If the applicant will not provide evidence of citizenship or alien status and does not allege qualified or lawful alien status, the application is not denied, but an eligibility determination is completed for coverage of labor and delivery and emergency services only.

As required by §1137(d)(4) of the Social Security Act, Medicaid will be provided to individuals who meet all other nonimmigration Medicaid eligibility requirements, pending verification of immigration status. We will provide Medicaid to an otherwise eligible individual who has presented INS documents showing qualified or lawful alien status, pending verification of the document.

For noncitizen applicants who declare they are qualified or lawful aliens or for individuals who declare citizenship but have no documentation, we must allow the individual a reasonable opportunity to produce evidence of immigration or citizenship status. We will give the individual 30 days from the date of the receipt of application to produce an INS document or documentation of citizenship. If the individual meets all other eligibility requirements except for this documentation, we will provide Medicaid during this 30 day period.

If the applicant provides an expired INS document or has no documentation regarding his or her immigration status, refer the individual to the local INS district office to obtain evidence of status. As noted previously, Medicaid coverage is provided for a 30 day period pending verification of alien status. If the applicant can provide an alien registration number, follow the secondary verification procedures outlined below under Section "C. Verification of Immigration Alien Status".

C. Verification of Immigration Alien Status

States are required to verify alien status with the INS. Delaware Medicaid will verify alien status through the Systematic Alien Verification for Entitlements (SAVE) mechanism in operation in the Division of Social Services. Verification must be completed at initial application and at redetermination.

Staff will institute primary verification to INS through the DSS form "Record of Contact with ASVI Data Base" (SAVE-1). ASVI is the acronym for Alien Status Verification Index. Clear copies of alien immigration documentation must be attached to the SAVE-1 form. If the response verifies alien status, process the case using the INS information. If the response states institute secondary verification, begin that process by completing all parts of Section A on the revised G-845S. A separate G-845S must be completed for each applicant and must include copies of the documents for that person only. If a family has applied for benefits, each member will require a separate G-845S. The local INS office will complete the G-845S and return it to the State Office SAVE point-of-contact person, who will forward the response to the eligibility worker.

INS verification requests and responses (both primary and secondary) must be dated and filed in the case record.

An alien registration number is required for both primary and secondary verifications. If the applicant provides an alien registration number but does not have the INS document, complete Form G-845S including the alien registration number. If an applicant provides a receipt indicating that he or she has applied to INS for a replacement document, use a Form G-845S attaching a copy of the receipt.

D. Documentation of U.S. Citizenship

The following are examples of acceptable documentation of U.S. citizenship for Medicaid applicants:

- Birth certificate
- Religious record of birth recorded in the U.S. or its territories within 3 months of birth, which indicates a U.S. place of birth. The document must show either the date of birth or individual's age at the time the record was made.
- Hospital record of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam (on or after April 10, 1899), the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)
- U.S. passport (not time limited passports, which are issued for periods of less than 5 years)
- Report of Birth Abroad of a Citizen of the U.S. (INS Form FS-240)

- TPQY from Social Security Administration showing citizen code "A" or "C"
- Certification of Birth (INS Form FS-545)
- U. S. Citizen I.D. Card (INS Form I-197)
- Naturalization Certificate (INS Form N-550 or N-570)
- Certificate of Citizenship (INS Form N-560 or N-561)
- Northern Mariana Identification Card (issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986)
- American Indian Card with a classification code "KIC" and a statement on the back (issued by the INS to identify U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border)
- Other alternative documentation that is determined to be acceptable by the State

E. Documentation of Qualified Aliens

Acceptable documentation of qualified alien status is listed below. The card should show the date of admission or date of entry into the United States.

1. Lawful Permanent Residents

INS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.

NOTE: INS has replaced Forms I-151, AR-3 and AR-3a. If a lawful permanent resident presents one of these old INS forms as evidence of status, contact INS using a G-845S and attach the old card.

~~An American Indian Born in Canada is considered to be lawfully admitted for permanent residence if he or she is of at least one-half American Indian blood. Documentation to be used includes birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs or school records.~~

2. Refugees

INS Form I-94 annotated with stamp showing entry as refugee under §207 of the Immigration and Naturalization Act (INA) and date of entry to the United States; INS Form I-688B annotated 274a.12(a)(3); I-766 annotated A3; or

Form I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the U.S. However, for purposes of eligibility, the individual is still considered a refugee and it is important to check the coding on Form I-551 for codes RE-6, RE-7, RE-8, or RE-9.

3. Asylees

INS Form I-94 annotated with stamp showing grant of asylum under §208 of the INA; a grant letter from the Asylum Office of the INS; Form I-688B annotated 274a.12(a)(5); I-766 annotated A5; or an order of an Immigration Judge granting asylum. If the applicant provides a court order contact INS using a G-845S and attach a copy of the court order.

4. Alien who has had deportation withheld under §243(h) of the INA

Order of an Immigration Judge showing deportation withheld under §243(h) or §241(b)(3) and date of the grant; Form I-688B annotated 274a.12(a)(10); or I-766 annotated A10. If applicant provides a court order contact INS using G-845S and attach copy of court order.

5. Parolees

INS Form I-94 annotated with stamp showing grant of parole under §212(d)(5) of the INA and a date showing granting of parole for at least 1 year. INS Form I-688B annotated 274a.12(a)(4) or 274a.12(c)(11) or I-766 annotated A4 or C11 indicates status as a parolee but does not reflect the length of the parole period.

6. Conditional Entrant

INS Form I-94 annotated with stamp showing admission under §203(a)(7) of the INA, refugee-conditional entry; Forms I-688B annotated 274a.12(a)(3); or I-766 annotated A-3.

7. Evidence of Honorable Discharge or Active Duty Status

- Discharge - a copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member. (Department of Defense Form 214)
 - Active Duty Military - a copy of the applicant's current orders showing the individual is on full-time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or an active military identification card, DD Form 2.
2. Full time National Guard duty is excluded.

- A self declaration under penalty may be accepted pending receipt of acceptable documentation. The individual is given 30 days to produce evidence; and, if the individual is otherwise eligible, Medicaid is provided during this 30 day period.

8. Cuban and Haitian entrants

I-551 annotated CH6, CNP, CU6, CU7; I-688B annotated 274a.12(a)(4); I-94 annotated 212(d)(5)

9. Amerasian

I-94 annotated AM1, AM2, AM3; I-551 annotated AM1, AM2, AM3.

10. Battered Immigrant

In order to be a qualified alien based on battery or extreme cruelty, the alien must meet the requirements of 10.1. through 10.4 below:

10.1 the alien must not now be residing in the same household as the individual responsible for the battery or extreme cruelty

10.2 the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty

10.3 there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought. There is a substantial connection under any one or more of the following circumstances:

- a) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;
- b) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;
- c) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;
- d) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to the

battery or cruelty (such as child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

e) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

f) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g. inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

g) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

h) Where the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of or relationship with the alien or his or her child; and/or to care for any resulting children; or where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

10.4 the alien or alien's child must have a petition approved by or pending with INS under one of several subsections of the INA that sets forth a prima facie case for the status.

11. American Indian born in Canada under section 289 of the INA or member of Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

INS Form I-551 with the code S13; unexpired temporary I-551 stamp with code S13 in a Canadian passport or on Form I-94; satisfactory evidence of birth in Canada and a document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation or a record issued by the tribe; a membership card or other tribal document showing membership in the tribe that is on the list of recognized Indian tribes published annually by the Bureau of Indian Affairs in the Federal Register.

IX. Common Immigration Terms

1. Immigrant

A general term for new arrivals, this includes legal immigrants, refugees, asylees, parolees, and others. Legal immigrants are granted admission to the U.S. on the basis

of family relation or job skill.

2. Nonimmigrant

An alien allowed to enter the U.S. for a specific purpose and for a limited period of time such as a student, visitor, or tourist.

3. Refugee

A person who flees his or her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group.

4. Asylee

Similar to a refugee, this is a person who seeks asylum and is already present in the U.S. when he or she requests permission to stay.

5. Parolee

The Justice Department has discretionary authority to permit certain persons or groups to enter the U.S. in an emergency or because it serves an overriding public interest. Parole may be granted for humanitarian, legal, or medical reasons. Some persons who fear persecution are "paroled" into the U.S. as refugees when the number of refugees allowed to enter that year has been exceeded.

6. Alien not lawfully present in the U.S.

Also known as an undocumented immigrant, this is someone who enters or lives in the U.S. without official authorization, either by entering without inspection by the INS, overstaying their visa, or violating the terms of their visa.

7. Cuban/Haitian entrants

This category was created for the Cuban and Haitian arrivals in 1980, who were allowed to obtain work permits.

8. PRUCOL

Permanently residing under color of law is not a method for entering the country, but indicates that an individual is legally present under statutory authority and may remain under administrative discretion. PRUCOL is no longer an eligibility classification under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (PRWORA)

9. Deeming

Some legal immigrants come to the U.S. with the aid of citizens who serve as their sponsors. That sponsor signs an affidavit of support agreeing to help support and sustain the immigrant. Deeming means that the income and resources of the sponsor and his or her spouse are deemed or considered available when determining the sponsored alien's eligibility.

10. Affidavit of Support

An affidavit of support is the contract that an immigrant's sponsor signs, agreeing to financially assist the immigrant to prevent him or her from becoming a public charge. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 make affidavits of support legally binding documents and are enforceable until the immigrant naturalizes.

11. Public Charge

Immigrants who become dependent upon public assistance, fail to find employment, and are unlikely to be self-supporting in the future may be deported on the grounds that they have become a "public charge."

12. Naturalization

Naturalization is the process by which a foreign-born individual becomes a citizen of the U.S. Naturalization requires that the person be over 18 years old, lawfully admitted to the U.S., reside in the country continuously for five years, and have a basic knowledge of English, American government, and U.S. history. There is an exemption from the English and civics requirements for certain disabled immigrants.

301.10 AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)**A BETTER CHANCE**

~~Any family who is determined eligible, by the Public Assistance Units, for Aid to Families with Dependent Children (AFDC) or Aid to the Unemployed (AU) is also eligible for Medicaid coverage.~~

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, amended title IV-A of the Social Security Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children. The Personal

Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaces AFDC with a program of block grants to States for Temporary Assistance for Needy Families (TANF). Under TANF, States have broad flexibility to provide assistance to needy families. Delaware implemented its TANF program, A Better Chance, on March 10, 1997.

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, families receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established by Section 1931 of the Social Security Act as added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in Section 301.15.

Section 1931 also gives States more flexibility in determining Medicaid eligibility. Delaware has used the authority in Section 1931 to keep the rules for A Better Chance and for Medicaid consistent and use a single application form to determine eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.

The beginning date for Medicaid eligibility is generally the same as for the ~~AFDC-ABC~~ case with the following exceptions:

1. In cases where the cash assistance payment is prorated from the date of eligibility, the Medicaid effective date will be the first of that prorated month. The Medicaid state plan provides for full month eligibility.

2. Effective January 1, 1991, any infant born to a mother receiving Medicaid is also eligible for Medicaid effective the date of birth. The baby remains continuously eligible for one year provided the infant remains in the mother's household and the woman remains eligible or would be eligible if she were pregnant.

3. In cases where the family has unpaid medical bills in any of the three months prior to their month of application for cash assistance and would have been eligible if they had applied in that month, Medicaid may be provided for that month. Effective January 1, 1996, retroactive coverage is not available if, in the month of application, the family is eligible for enrollment into managed care. (see Section 306.40).

Ineligibility for cash assistance under AFDC-ABC does not mean automatic_ineligibility for Medicaid under Section 1931. Workers must determine if AFDC-ABC applicants or recipients would be eligible for Section 1931 Medicaid or any other type of Medicaid coverage before taking an action to close or deny the Medicaid case.

Transitional Medicaid

If a family becomes ineligible for Medicaid under this eligibility group because of either employment reasons or child support payments, determine if the family is eligible for extended Medicaid coverage under Section 301.55 or 301.60.

301.15 LOW INCOME FAMILIES WITH CHILDREN UNDER SECTION 1931

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, added Section 1931 of the Social Security Act. Section 1931 establishes a new Medicaid eligibility group for low income families with children. Coverage for this mandatory categorically needy group of families with children is effective March 10, 1997, the date that Delaware's TANF plan was approved.

Section 1931 defines the basic criteria for determining Medicaid eligibility based upon AFDC eligibility criteria. The criteria includes income and resource standards and methodologies as in effect on July 16, 1996, and deprivation and specified relative rules that were in effect on that date. Section 1931 gives states flexibility to change these criteria. Delaware has amended its Medicaid state plan to provide that the rules used to determine eligibility under this group are the same as the rules used to determine eligibility under ABC.

Families who are eligible for Medicaid under Section 1931 may be receiving ABC cash assistance or may be Medicaid only families.

Technical Eligibility

Applicants must meet general technical eligibility criteria such as state residency, citizenship or qualified alien status, Social Security number, assignment of rights, etc., as described in Section 200.

In addition to the general technical eligibility requirements, the family composition rules of the ABC cash assistance program must be met. The family must include a child who is living with a parent or specified

relative. A child is an individual under the age of 18 or under age 19 and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday.

To be eligible for Medicaid under Section 1931, a child must be living in the home of a relative by blood, marriage, or adoption who is within the fifth degree of kinship to the child. The degree of relationship is as follows:

- parent (1st degree)
- grandparent (2nd degree)
- sibling (2nd degree)
- great-grandparent (3rd degree)
- uncle or aunt (3rd degree)
- nephew or niece (3rd degree)
- great-great-grandparent (4th degree)
- great-uncle or aunt (4th degree)
- first cousin (4th degree)
- great-great-great-grandparent (5th degree)
- great-great-uncle or aunt (5th degree)
- first cousin once removed (5th degree)

Any other persons named in the above groups whose relationship is one of the child's parents is established by legal adoption; the spouse of any person named in the above groups even though the marriage terminated by death or divorce.

The child must be living in the home of a parent or specified relative. The home is defined as the family setting where the child and the caretaker relative reside. The home exists as long as the relative is the responsible caretaker even if the child or the relative is temporarily absent. The rules of A Better Chance are used to determine if the child is living in the home of a parent or specified relative.

NOTE: Deprivation is not an eligibility requirement for this group. If the child is deprived of parental support, a referral to the Division of Child Support Enforcement must be made.

Financial Eligibility

Follow ABC income and resource standards and methodologies (disregards, exclusions, allocations).

Extended Medicaid

If a family becomes ineligible for Medicaid under this eligibility group because of either employment reasons or child support payments, determine if the family is eligible for extended Medicaid under Section 301.55 or 301.60.

301.30 FAMILIES WITH LESS THAN A \$10.00 NEED

Federal Regulation 42CFR 435.115(b)

Effective October 1, 1981, the Federal Government has declared that "no payment of aid shall be made ... for any month if the amount of such payment ... would be less than \$10.00, but an individual ... to whom a payment of aid ... is denied solely by reason of this ... is deemed to be a recipient of aid..."

Therefore, anyone who would otherwise be eligible for an AFDC grant, or any person under age 18 who would otherwise be eligible for a GA grant, but who does not receive a grant because their need for assistance is less than \$10.00, is eligible for Medicaid.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, amended title IV-A of the Social Security Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaces AFDC with a program of block grants to States for Temporary Assistance for Needy Families (TANF). Under TANF, States have broad flexibility to provide assistance to needy families. Delaware implemented its TANF program, A Better Chance, on March 10, 1997.

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established by Section 1931 of the Social Security Act as added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in Section 301.15.

Section 1931 also gives States more flexibility in determining Medicaid eligibility. Delaware has used the authority in Section 1931 to keep the rules for A Better Chance and for Medicaid consistent and use a single application form to determine eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid without having to complete a separate Medicaid eligibility determination.

Anyone who is otherwise eligible for ABC cash assistance

but does not receive cash because their need for assistance is less than \$10.00 is still eligible for Medicaid under Section 1931.

301.40 DEEMING CASES

Federal Regulation 42 CFR 435.113, 435.122, 435.602

Any individual who is denied or loses AFDC benefits solely based on the budgeting of stepparent, grandparent, sibling, or alien sponsor income or resources may be eligible for Medicaid. An individual who is denied SSI benefits solely based on the budgeting of alien sponsor income or resources may be eligible for Medicaid.

Application Process

For AFDC deeming cases, the DSS application is used for the eligibility determination. A Medicaid application must be completed for SSI sponsor cases.

AFDC Deeming Cases

Following all AFDC rules and procedures, except for the deeming of income or resources from grandparents, stepparents, siblings, or alien sponsors, to determine Medicaid eligibility.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, amended title IV-A of the Social Security Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaces AFDC with a program of block grants to States for Temporary Assistance for Needy Families (TANF). Under TANF, States have broad flexibility to provide assistance to needy families. Delaware implemented its TANF program, A Better Chance, on March 10, 1997.

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, families receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established by Section 1931 of the Social Security Act as added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in Section 301.15.

Section 1931 also gives States more flexibility in determining Medicaid eligibility. Delaware has used the authority in Section 1931 to keep the rules for A Better Chance and for Medicaid consistent and use a single application form to determine eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.

Any individual who is denied or loses Medicaid under Section 1931 based on the budgeting of stepparent, grandparent, or sibling income or resources may be eligible for Medicaid.

Follow all rules for Medicaid under Section 1931 (same as ABC rules) except for the deeming of income or resources from grandparents, stepparents, or siblings.

Alien Sponsor cases

Many aliens with little or no income who want to become lawful permanent residents have “sponsors” who pledge to support them. A sponsor is someone who completes an affidavit of support with the Immigration and Naturalization Service (INS) to help the alien friend or relative obtain lawful permanent resident status. The sponsor’s income and resources are “deemed” or considered available when determining if the alien is eligible for certain assistance programs.

~~An alien who files an application and is determined ineligible for cash assistance under AFDC or SSI due to sponsor deeming, may be found eligible for Medicaid. The individual must meet all technical and financial requirements of either the AFDC or SSI program without the application of sponsor deeming. The alien must be determined ineligible for AFDC or SSI solely due to sponsor deeming.~~

A. AFDC alien sponsor

~~For AFDC alien sponsor deeming cases, follow all the AFDC rules published in the Division of Social Services Policy Manual.~~

B. SSI alien sponsor

~~For SSI alien sponsor deeming cases, follow the rules of the SSI program. The alien must be aged (65 or older), blind, or disabled. If the alien is not aged, a Comprehensive Medical Report must be sent to the Medical Review Team for the disability determination. A~~

~~social summary is not required. The eligibility worker will send the medical report with a cover memo stating that the individual is claiming to be disabled under the SSI definition of disability.~~

~~Use the income and resource rules, including income disregards, described in the QMB section of this manual. (Section 307) Use the income standards of the SSI program. Effective 1/1/97, the SSI income limit is \$484.00 for an individual and \$726.00 for a couple. The resource limits are \$2,000 for an individual and \$3000 for a couple.~~

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires Medicaid deeming for family sponsored immigrants who enter the U.S. on or after August 22, 1996. The deeming rules apply only to sponsors and immigrants who have signed the legally binding affidavits of support that are promulgated by the Attorney General. Sponsor deeming is required until the naturalization of the immigrant or until the sponsored immigrant can be credited with 40 qualifying quarters of work. Since family sponsored immigrants are subject to the 5 year bar on receiving benefits, there will be no new sponsor deeming for approximately 5 years.

For SSI-related Medicaid eligibility groups, use the rules of the SSI program. For AFDC-related Medicaid eligibility groups, use the rules of the ABC program.

301.55 TRANSITIONAL MEDICAID COVERAGE

~~The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards. It replaces the previous four and nine month extensions. Transitional Medicaid begins with the month of ineligibility for AFDC. The month of ineligibility is defined as the month following the last month AFDC was correctly received under the State’s AFDC plan. Transitional Medicaid is divided into two discrete periods that have different eligibility requirements.~~

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, A Better Chance (ABC), on March 10, 1997.

Prior to PRWORA, a family’s eligibility for Transitional Medicaid was linked to receipt of AFDC. Under

PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 301.15 "Low Income Families with Children under Section 1931".

The eligibility group described in Section 301.15, "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section. Any family eligible for and receiving ABC benefits is also eligible for Medicaid under Section 1931 and may be found eligible for Transitional Medicaid. This means references to "Medicaid under Section 1931" also refers to families receiving ABC.

Delaware's welfare reform waiver, "A Better Chance" (ABC) includes a modification to the length of the Transitional Medicaid period. The ABC waiver extends Transitional Medicaid benefits for up to 24 months.

Families must meet the initial eligibility requirements described in this section to receive the first 12 months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need. The standard of need used is the same as the ABC standard of need.

To continue to receive Medicaid for the second 12 months, the family's gross earned income less child care costs must be at or below 185% FPL. Family income will be budgeted prospectively.

Initial Eligibility for First Six Months

NOTE: All references to "Medicaid under Section 1931" includes families determined eligible under Section 301.15 "Low Income Families with Children under Section 1931" and families who receive ABC benefits. ABC families are also eligible for Medicaid under Section 1931.

At the time a family becomes ineligible for ~~AFDC Medicaid under Section 1931~~ determine whether the family meets the following three requirements.

1. The family must have received ~~AFDC Medicaid under Section 1931~~ in three of the six months immediately preceding the month the family became ineligible for ~~AFDC Medicaid under Section 1931~~.

A family is considered to have received ~~AFDC Medicaid under Section 1931~~ in any month ~~payments were correctly paid Medicaid assistance was correctly provided~~. This does not include ~~payments made Medicaid assistance provided~~ in error; ~~payments made Medicaid assistance provided~~ pending a hearing if the family loses the hearing and the ~~payments Medicaid assistance provided is~~

recoverable as an overpayment; or ~~payments made Medicaid assistance provided~~ for a month of ineligibility because of administrative notice requirements. Recipients are obligated to report changes promptly. When a change is reported, the worker must review eligibility. If the change will result in ineligibility, the worker must take action to close the case. This can affect the month of ineligibility.

1. The family must have received ~~AFDC Medicaid under Section 1931~~ in Delaware for three of the six months. Families who move into Delaware and who have not received three months of ~~AFDC Medicaid under Section 1931~~ here are not eligible for transitional Medicaid. Transitional Medicaid benefits are not transferable from one state to another. If a family is entitled to and receives six months of transitional Medicaid benefits in another state and then moves into Delaware, they are not eligible for transitional Medicaid here.

2. The family must become ineligible for ~~AFDC Medicaid under Section 1931~~ because of an increase in the hours of or increased income from the employment of the caretaker relative or because a member of the family loses the \$30 and 1/3 earned income disregard or the \$30 disregard.

This happens when:

- an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible or
- an increase in other income when combined with an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible.

~~It is assumed in a two-parent family, both parents are "caretakers" and therefore the principal wage earner would be a caretaker relative.~~

The following examples illustrate this requirement for a family of 4. The standard of need is \$1004.

Example 1

A family has recurring monthly unearned income of \$500. The mother becomes employed on June 6 and has countable earned income of \$600 in June. The family is no longer eligible for

~~AFDC Medicaid under Section 1931~~ in June due to excess income that is both earned and unearned. Without the increase in earned income, the family would have remained

eligible for ~~AFDC Medicaid under Section 1931~~. The family is eligible for transitional Medicaid.

Example 2

The mother becomes employed on June 6 and has countable earned income of \$400. At the same time, she reports that beginning in June the family will receive monthly unearned income of \$1200. The family is no longer eligible for ~~AFDC Medicaid under Section 1931~~ in June due to excess income that is both earned and unearned.

Since the \$1200 increase in unearned income alone was sufficient to make the family ineligible for ~~AFDC Medicaid under Section 1931~~, but the \$400 earned income was not sufficient on its own to make the family ineligible, the family did not lose ~~AFDC Medicaid~~ because of the increase in earned income. The family is not eligible for transitional Medicaid.

Example 3

The family has no income. The mother becomes employed on June 6 and reports countable earned income of \$900 in June. In July, one child leaves the household. As a result, the income limit for the family in July is reduced to \$833. The family is no longer eligible for ~~AFDC Medicaid under Section 1931~~ in July due to excess income, all of which is earned. However, the family is not eligible for transitional Medicaid because the earnings did not increase in July, the month of ineligibility for ~~AFDC Medicaid under Section 1931~~.

Example 4

The mother is employed and has monthly countable earned income of \$900. She reports that she no longer has to pay for day care in June because free care is available. Without child care expenses, her countable earned income increases to \$1200 in June. The family is no longer eligible for ~~AFDC Medicaid under Section 1931~~ in June because of excess income. The earnings did not increase in June. Her countable income increased because of the loss of a child care deduction. The family is not eligible for transitional Medicaid.

3. The family must continue to have a child living in the home.

The family must continue to have a child living in the home that meets the age requirement for ~~AFDC Medicaid under Section 1931~~; that is, an individual under age 18, or under age 19, and who is still a full-time student in

high school, GED, or equivalent program and will graduate prior to his or her 19th birthday. The earned income of a child that meets the age requirement is excluded. The child does not have to meet the former AFDC definition of dependent child. For AFDC purposes, a child must be both needy and deprived of parental care and support because of the absence, disability, unemployment, etc., of the parent. This means that for transitional Medicaid there is no deprivation requirement.

When the only child in the family no longer meets the age requirement, the family is no longer eligible for transitional Medicaid because there is no longer a child in the family. When one child turns age 18 or 19, but there is another child in the family, the child who turns age 18 or 19 is no longer considered a member of the transitional family unit. The rest of the family remains eligible.

Transitional Family Unit

Transitional Medicaid provides eligibility for families rather than individual eligibility. Transitional Medicaid coverage is provided to all individuals who were included in the ~~AFDC~~ family unit at the time the family ~~lost AFDC~~ became ineligible for Medicaid under Section 1931. In addition, family members who enter the household or family members who were absent but return may be found eligible.

An individual who enters the family unit (including a child born to the family during the transitional period) may be eligible for transitional Medicaid if that individual would have been included in the caretaker relative's assistance unit if the family were now applying for ~~AFDC Medicaid under Section 1931~~. The rules for the composition of the assistance unit for Medicaid under Section 1931 are the same as the rules for the composition of the assistance unit for ABC. These rules are found in ABC policy at Section 3015 of the Division of Social Services Manual. The individual who enters the family must be one who could be found eligible for ~~AFDC Medicaid under Section 1931~~ in their own right.

The transitional family includes:

- family members who were in the ~~AFDC Medicaid under Section 1931~~ assistance unit when the ~~AFDC Medicaid under Section 1931~~ was terminated, and
- family members who have since entered the household and who would be included in the assistance unit if the family were applying for ~~AFDC Medicaid under Section 1931~~ in the current month.

PROPOSED REGULATIONS

The earned income of an individual who has entered or returned to the family unit is included in the gross earnings and that individual is counted when determining the family size. Follow the income rules of the ABC program. The earned income of a dependent child, regardless of student status, is not counted.

Example

A grandmother is payee for her two grandchildren. They have been receiving ~~AFDC~~ Medicaid under Section 1931 for two years. The children's mother has been in prison during this period. She is released from prison and returns to the home. She becomes payee for the children and herself. Within two months, she becomes employed and her earnings cause ~~AFDC~~ Medicaid ineligibility. Is the family eligible for transitional Medicaid?

No. The family (Mom and two children) did not receive ~~AFDC~~ Medicaid in three of the six preceding months.

Example

A mother and her child are receiving transitional Medicaid. The father of the child returns to the home in the second 12 month period. How does his return to the home affect the family's continued eligibility for transitional Medicaid?

~~Since AFDC policy requires that a natural father be included in the assistance unit, the father is considered to be a member of the family unit for transitional Medicaid. We must use the family composition rules for Medicaid under Section 1931. The family composition rules for Medicaid under Section 1931 are the same as the family composition rules for ABC. The natural father must be included in the assistance unit. His earnings are considered in determining if the family's earned income exceeds 185% of the federal poverty level (FPL). If the family remains eligible, the father is also eligible for transitional Medicaid.~~

Example

A mother receiving transitional Medicaid gives birth and the baby is deemed eligible. Is the baby counted when establishing family size for purposes of the 185% FPL test?

Yes.

Sanctioned Individuals

~~Individuals who are under any AFDC sanction may be included as part of the transitional family during both the~~

~~first and second 12-month periods. This includes:~~

- ~~- individuals who have not received 3 out of 6 months prior to the month of ineligibility (i.e., were not included on the grant) because of a sanction, and~~
- ~~- sanctioned individuals who are not on the grant in the month of ineligibility for AFDC.~~

Individuals who are under any ABC sanction are eligible for Medicaid under Section 1931. These individuals are included in the transitional family.

Eligibility Determination

Families who lose ~~AFDC~~ Medicaid under Section 1931 because of earnings or loss of earned income disregards are eligible for transitional Medicaid when their income exceeds either 185% of the standard of need OR the standard of need. The standard of need is the same as the ABC standard of need.

NUMBER OF PEOPLE IN BUDGET	185% OF THE STANDARD OF NEED*	STANDARD OF NEED (75% FPL)**
1	\$ 912	\$ 493
2	1,228	664
3	1,541	833
4	1,857	1,004
5	2,170	1,173
6	2,484	1,343
7	2,800	1,514
8	3,115	1,684

- * Add \$318 per person above eight in the family
- ** Add \$170 per person above eight in the family

Example

185% Standard of Need \$1,541 Standard of Need \$833

~~Mrs. Johnson receives AFDC Medicaid under Section 1931. She earns \$7.00 per hour and works 40 hours per week. Her monthly income is \$1212.40 (\$7.00 x 40 x 4.33). She has been receiving the 30 and 1/3 disregard. Budget follows:~~

\$1212.40	monthly earned income
- 90.00	earned income deduction
1122.40	
- 30.00	\$30 disregard
1092.40	
- 364.13	1/3 disregard

§ 728.27 net income < \$833 standard of need

Her income does not change but she will lose 1/3 disregard effective December. Without the 1/3 disregard her countable income is \$1092.40. This exceeds the standard of need of \$833 and the family is ineligible for Medicaid under Section 1931 because of earnings. The family is eligible for transitional Medicaid beginning December 1.

Month of Ineligibility for AFDC Medicaid under Section 1931

~~Transitional Medicaid begins with the month following the last month in which AFDC was correctly received. An AFDC payment is not correctly received when it is recoverable as an overpayment.~~

~~If ineligibility results because of an increase in income, the worker determines if income received in the month it began was enough to make the family unit totally ineligible. If so, the payment must be recovered in an overpayment. Anytime ineligibility occurs after the first day of the month because of increased income, the case must be closed effective the following month. When the change is reported too late in the month to allow advance notice, the case is closed effective the next month.~~

Transitional Medicaid begins with the month of ineligibility for Medicaid under Section 1931 due to an increase in income or loss of earned income disregards. The month of ineligibility for Medicaid is the month in which the family's income exceeds either 185% of the standard of need or the standard of need. The standard of need for Medicaid under Section 1931 is the same as the ABC standard of need.

Example: Ms. Smith reports a new job on November 3 and is determined prospectively ineligible. ~~She is also ineligible for November.~~ The family income exceeds the standard of need. Transitional Medicaid begins in November because that is the month ~~AFDC the family income exceeds the standard of need for Medicaid under Section 1931.~~

Example: Ms. Little begin working November 27 and reports to her worker promptly. The family is determined prospectively ineligible for ABC and Medicaid under Section 1931 for December. ~~Because of advance notice requirements, the case is closed on December 31.~~ The transitional Medicaid period begins in December because December is the month ~~of ineligibility for AFDC the family income exceeds the standard of need.~~

Someone who is not timely in reporting the start of

employment or increased wages could have their family's transitional benefits reduced so that they only receive the 24 months of transitional coverage from when they should have been closed. But, we will not totally disqualify a family.

Example: Mrs. Thomas begins working on April 15, 1996. She does not report her job until she receives her first pay on May 25. ~~Because of advance notice requirements, her case is not closed until June 30, 1996. She should have reported April 15 and her AFDC case would have been closed April 30, 1996. The family income exceeds the standard of need in May.~~ The transitional Medicaid should begin on May 1, 1996, and finish April 30, 1998.

Eligibility During the First 12-Month Period

The family will receive Transitional Medicaid without any reapplication for the first 12 months. The family must be notified at the time of the termination of AFDC when they lose eligibility for Medicaid under Section 1931 that they are eligible for transitional Medicaid and the reasons why the benefits could be terminated. DCIS will automatically notify AFDC transitional Medicaid families and issue a card for the AFDC family members. The notice will include this information about termination of benefits.

To continue to receive Medicaid throughout the first 12-month period the following conditions must be met in addition to the initial eligibility requirements:

there is a child living in the home.

The rules of ABC are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

Eligibility During Second 12-Month Period

A redetermination of eligibility must be completed at the end of the first 12-month period. To continue to receive Medicaid during the second 12-month period, the following conditions must be met in addition to the initial eligibility requirements:

1. there is a child living in the home, and
2. the caretaker relative is employed during each month unless good cause exists, and

3. the family's gross monthly earnings (less the monthly costs of necessary child care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second 12-month period.

There are no limits on necessary child care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members (except the earned income of a dependent child, regardless of student status) living in the home who were members of the family unit the month the family became ineligible for ~~AFDC~~ Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for ~~AFDC~~ Medicaid under Section 1931.

Income Limits for Second 12 Months

Family Size	Income Limit \$
1	1,217
2	1,636
3	2,056
4	2,475
5	2,894
6	3,314
7	3,733
8	4,152
9	4,572
10	4,991

Good cause for terminating employment is:

1. Circumstances beyond the individual's control such as but not limited to illness, illness of another family member requiring the wage earner's presence, a household emergency, the unavailability of transportation, and the lack of adequate child care.

2. Instances in which employment was unsuitable such as:

- wages offered less than the Federal minimum wage,
- employment on a piece-rate basis and the average hourly yield the employee receives is less than the Federal minimum wage,
- unreasonable degree of risk to one's health and safety,
- the individual is physically or mentally unfit to perform the employment as documented by medical evidence or reliable information from other sources,
- the distance from the individual's house to place of employment is unreasonable considering the expected wage and the time and cost of commuting,
- the working hours or nature of employment interferes

with the members religious observance, convictions or beliefs.

3. Discrimination by an employer based on age, race, sex, disability, religious belief, national origin, or political belief.

4. Work demands or conditions that are unreasonable such as working without being paid on schedule.

5. Acceptance of other employment or enrollment at least half-time in a school, training program, or college.

6. Resignations by persons under the age of 60 that are recognized by the employer as retirement.

7. Leaving a job in connection with patterns of employment in which workers move from one employer to another as in migrant farm labor or construction work.

24-month Period of Eligibility

A family gets 24 months of transitional Medicaid from the month of ineligibility for ~~AFDC~~ Medicaid under Section 1931, even if they become eligible again for ~~AFDC~~ Medicaid under Section 1931. The clock on the 24-month period does not stop running when ~~AFDC~~ eligibility for Medicaid under Section 1931 is reestablished. The 24 months of transitional Medicaid run concurrently with months of ~~AFDC~~ eligibility for Medicaid under Section 1931.

If the family is again loses eligibility for ~~AFDC~~ Medicaid under Section 1931 for non-work reasons, the transitional benefit period is unaffected. If the family is terminated again for earned income reasons, a new transitional period may begin.

Example 1

A mother and her children have received ~~AFDC~~ Medicaid under Section 1931 continuously since April 1997. Mom becomes employed and loses ~~AFDC~~ eligibility for Medicaid under Section 1931 effective October 1997 due to earned income. The family is determined eligible for transitional Medicaid effective October. In December she loses her job and applies for ~~AFDC~~ ABC. She is approved for ~~AFDC~~ ABC effective January 1998. She is also eligible for Medicaid under Section 1931. She becomes employed again in February and her earned income causes her to be ineligible for ~~AFDC~~ Medicaid under Section 1931 in February. Does the family continue with the original transitional period?

No. A new 24 month period of transitional Medicaid begins in February. When ~~AFDC Medicaid under Section 1931~~ eligibility was lost in February because of earnings, the family had received ~~AFDC Medicaid under Section 1931~~ in three of the six preceding months. The six preceding months are January 1998, December, November, October, September, and August 1997. The family received ~~AFDC Medicaid under Section 1931~~ in January 1998, September and August 1997.

Example 2

A family is determined eligible for transitional Medicaid from 11/1/96 to 10/31/98. The mother is employed for the entire period. The family becomes eligible for ~~AFDC Medicaid under Section 1931~~ during May and June 1997. The family becomes ineligible for ~~AFDC Medicaid under Section 1931~~ due to wages effective July. Does the family continue with the original transitional period?

Yes. The family is not eligible for a new transitional Medicaid period because the family did not receive ~~Medicaid under Section 1931~~ in the six months preceding the month of ineligibility (July). The family continues to be eligible for the original transitional Medicaid period.

Example 3

A family has been receiving ~~AFDC Medicaid under Section 1931~~ from June 1997 to October 1997. The ~~AFDC Medicaid under Section 1931~~ is closed for earned income and transitional Medicaid begins November 1997. In December Mom loses her job and the family is opened in ~~AFDC ABC~~. ~~The family is also eligible for Medicaid under Section 1931~~. In January 1998 Mom is approved for Social Security and the ~~AFDC ABC case and Medicaid under Section 1931~~ are closed 1/31/98. Is the family eligible for transitional Medicaid?

Yes. The family continues with the transitional Medicaid period that began in November 1997.

Reporting Requirements

~~The Social Security Act at §1925 describes the reporting requirements under Transitional Medicaid.~~

~~Effective 11/1/95 Delaware's welfare reform program "A Better Chance" eliminated monthly reporting requirements for AFDC families and the Section 1115 Medicaid Demonstration Waiver, "Diamond State Health Plan" eliminated the quarterly reporting requirements for Transitional Medicaid. Instead, families are required to report significant changes in circumstances. A significant~~

~~change in circumstances is as follows:~~

- ~~- change in household size~~
- ~~- a new job~~
- ~~- a change from full-time to part-time employment~~
- ~~- loss of employment~~
- ~~- an increase or decrease of forty hours in employment per month~~
- ~~- a new unearned income~~
- ~~- unearned income goes up or down more than \$50.00 per month~~

~~NOTE: Changes in unearned income do not affect continued eligibility for transitional Medicaid.~~

~~The eligibility requirements for transitional Medicaid remain the same; however, the family does not have to meet the reporting requirements described at §1925 of the Social Security Act.~~

Termination of Benefits

First 12-month period

Medicaid benefits will be terminated if:

1. The family no longer has a child living in the home. Use the definition for child as defined under ~~AFDC Section 1931 Medicaid~~. A child is under age 18 or is under age 19 and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday.
2. The family is found to have received ~~AFDC Medicaid under Section 1931~~ "fraudulently" in the preceding six months. Fraud is defined at the end of this section.

Second 12 month period

Medicaid benefits will be terminated if:

1. The family no longer has a child (defined above) living in the home.
2. The caretaker relative is no longer employed and good cause does not apply.
3. The family's monthly gross earned income minus child care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before transitional Medicaid is terminated.

Notices

Families who lose AFDC Medicaid under Section 1931 receive a notice that advises them of the eligibility requirements for continued coverage under transitional Medicaid. The notice contains a statement advising families of the right to extended Medicaid benefits and an explanation of circumstances that could result in termination during the extended periods.

Fraud

Section 1925(d) of the Social Security Act specifies that extended Medicaid must not be granted to any individual who has committed fraud during the last 6 months in which the family was receiving aid before otherwise being provided extended Medicaid eligibility. been legally determined by the Medicaid agency to be ineligible for Medicaid under Section 1931 because of fraud at any time during the last prior six months in which the family received Medicaid under Section 1931. The fraud determinations are subject to the fraud and program abuse provisions under Sections 1128, 1128A, and 1128B of the Social Security Act.

~~Under the AFDC program, a determination of fraud must be made following a hearing. Under Medicaid, a conviction for fraud must be made by a court of competent jurisdiction.~~

~~For purposes of the exclusion from transitional Medicaid, an individual is considered to have been convicted of a criminal offense:~~

~~when a judgment of conviction has been entered against the individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;~~

~~when there has been a finding of guilt against the individual by a Federal, State, or local court;~~

~~when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or~~

~~when the individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.~~

301.60 PROSPECTIVE PROGRAM (CHILD SUPPORT)

42 CFR 435.115(f),(g),(h)

Section 406(h) of the Social Security Act

~~An individual will be deemed to be receiving AFDC if a~~

~~new collection or increased collection of child or spousal support under title IV-D of the Social Security Act results in the termination of AFDC eligibility according to section 406(h) of the Social Security Act. This regulation also covers families that do not receive a grant because their need is below \$10.00. Medicaid will be continued for four consecutive calendar months, beginning with the first month of AFDC ineligibility, to each dependent child and each relative with whom such a child is living (including the eligible spouse of such relative) who:~~

- ~~- becomes ineligible for AFDC on or after August 16, 1984; and~~
- ~~- has received AFDC for at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and~~
- ~~- becomes ineligible for AFDC wholly or partly as a result of new or increased child or spousal support collections under title IV-D;~~

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Prior to PRWORA, a family's eligibility for Prospective Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for Prospective Medicaid is linked to receipt of Medicaid under Section 301.15, "Low Income Families with Children under Section 1931.

NOTE: All references to Medicaid under Section 1931 also include families who receive ABC benefits. ABC families are also eligible for Medicaid under Section 1931.

Medicaid eligibility is extended for four consecutive months to families who become ineligible for Medicaid under Section 1931 because of a new or increased collection of child or spousal support under title IV-D of the Social Security Act.

Collection of Support

Regulations require that the collection of support made by absent parents and spouses be paid directly to the IV-D agency; the Division of Child Support Enforcement (DCSE). ~~AFDC Medicaid recipients occasionally receive child or spousal support directly. Extended Medicaid coverage will be provided when collections of child or spousal support that are received by the assistance unit are turned over to the DCSE. Support payments that are not forwarded to the DCSE do not constitute a "collection" under title IV-D; therefore, the family would not be eligible for prospective Medicaid. The amount of support ordered~~

is not material when establishing eligibility for prospective Medicaid. Eligibility is based on the amount of support collected.

Eligibility Determination

~~The family is eligible if the collected support exceeds 185% of the standard of need or the standard of need. The collection of support must actually cause or actively contribute to ineligibility for AFDC, even if there are other factors that also contribute to ineligibility or could simultaneously cause it.~~

At the time the family becomes ineligible for Medicaid under Section 1931, determine whether the family meets the following three requirements:

1. The family has received Medicaid under Section 1931 in three of the six months immediately preceding the month the family became ineligible for Medicaid under Section 1931.

2. The family lost eligibility for Medicaid under Section 1931 wholly or partly as a result of new or increased child or spousal support collections under title IV-D. The family is eligible if the collected support exceeds 185% of the ABC standard of need or the ABC standard of need. The collection of support must actually cause or actively contribute to ineligibility for Medicaid under Section 1931, even if there are other factors that also contribute to ineligibility or could simultaneously cause it.

Example

An family receives \$300 in countable child support collections and \$400 in Social Security benefits. The standard of need is \$833. In the next month both the child support collection and the Social Security benefit increase by \$150, for a total increase of \$300 a month. The family is ineligible for ~~AFDC Medicaid under Section 1931~~ due to the child support collection because the change in support by itself, when added to the unchanged Social Security would cause ineligibility for ~~AFDC Medicaid under Section 1931~~. The family is eligible for extended Medicaid.

Example

An family receives \$750 in countable child support collections and the standard of need is \$1004. In the next month, the countable child support collection increases to \$900 and at the same time one of the older children leaves home. As a result, the standard of need is reduced to \$833. The countable child support collection of \$900 exceeds

the new standard of need of \$833. The family is eligible for extended Medicaid, since the collection of child support increased and contributed to the ineligibility for ~~AFDC Medicaid under Section 1931~~. The reduction in the standard of need worked in combination with the increased support collection to cause the ineligibility. Thus, the support collection contributed to the family's ineligibility for ~~AFDC Medicaid under Section 1931~~. Neither change would have caused ineligibility by itself.

However, suppose that in this example the \$750 in support collection was raised to \$900 and the \$1004 standard of need was reduced to \$664. In this case, the increase in support collection would have no effect on eligibility for ~~AFDC Medicaid under Section 1931~~. That is because the change in the standard of need would have caused ineligibility for ~~AFDC Medicaid under Section 1931~~ even before the child support collection was raised from \$750 to \$900. Because the change in the support collection did not cause or contribute to ineligibility for ~~AFDC Medicaid under Section 1931~~, the family would not be eligible for prospective Medicaid.

3. The family must continue to have a dependent child living in the home.

The family must continue to have a child living in the home that meets the age requirement for Medicaid under Section 1931; that is, an individual under age 18 or under age 19, and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday.

Month of Ineligibility for ~~AFDC Medicaid under Section 1931~~

Families are eligible for prospective Medicaid beginning with the month of ineligibility for Medicaid under Section 1931 due to a new or increased collection of support. The month of ineligibility for Medicaid under Section 1931 is the month in which the family's income exceeds either 185% of the standard of need or the standard of need. The standard of need for Medicaid under Section 1931 is the same as the ABC standard of need.

If a family's ineligibility for ~~an AFDC grant Medicaid under Section 1931~~ is a result of the collection or increased collection of support and employment or increased earnings, review the file to determine which factor caused the ineligibility. If the collection of support was the determining factor the family will qualify for four months of continued coverage. If it is determined that earnings caused the ineligibility, the family will qualify for up to 24 months of continued coverage under transitional

Medicaid. (See Section 301.55) If a family is eligible for extended Medicaid under Transitional Medicaid as a result of earned income and is also simultaneously eligible to extended Medicaid as a result of the support collection, the family is eligible for up to 24 months of extended Medicaid. The periods of extended Medicaid run concurrently.

Family Unit

All members of the family unit who were eligible for ~~AFDC~~ Medicaid under Section 1931 are eligible for the four months continued coverage. In addition, family members who enter or return to the household are eligible for prospective Medicaid if that individual would have been included in the assistance unit if the family were now applying for ~~AFDC~~ Medicaid under Section 1931. Individuals under an ABC sanction are eligible for Medicaid under Section 1931 any may be found eligible for the four month extension. If a member of the family is added to an existing ~~AFDC~~ assistance unit that is receiving Medicaid under Section 1931 and the mother receives an increase in support the same month the member is added, that member is entitled to four months of continued Medicaid. A child born to the family during the four-month period will also be covered through the end of the four month period. Remember a child born to a Medicaid mother is deemed eligible for one year.

A person or family who becomes ineligible during the four-month period for reasons other than the collection or increased collection of support (such as a child who attains age 18 or a family member who leaves the household) will not be entitled to continued coverage beyond the date of ineligibility.

Prospective Medicaid ends for any individual family member who moves to another state. Coverage ends the month following the month the individual moves to the new state. Eligibility can be reinstated if the individual returns during the four-month period. For example, if the family moved to another state in March, the first month of prospective Medicaid, and moved back in May, the family would again be eligible for prospective coverage in May and June.

There is no requirement that a member of the family be employed throughout the four-month period.

—END OF MANUALS—

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O.

Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than March 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF JUSTICE

DELAWARE SECURITIES ACT

Statutory Authority: 6 Delaware Code, Sections 7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309(c), 7309A(f), 7312, 7314(b)(4), 7317(c), 7325(b) (6 **Del.C.** §§7306(a)(17); 7307; 7309(b)(2), (b)(9), (c); 7309A(f); 7312, 7314(b)(4), 7317(c), 7325(b))

NOTICE OF ISSUANCE OF PROPOSED RULES AND REGULATIONS PURSUANT TO THE DELAWARE SECURITIES ACT

The Securities Commissioner is issuing for notice and comment proposed rules and regulations pursuant to the Delaware Securities Act. The proposed rules and regulations are intended to replace the current regulations and cover the following subject areas:

- A. Organization and Functions of the Securities Division
- B. Practice and Procedure in Administrative Hearings
- C. Investigations
- D. Securities Registration and Notice Filings
- E. Exemptions from Registration
- F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents
- G. Investment Advisers and Investment Adviser Representatives

The proposed rules and regulations are issued pursuant to the authority granted in 6 Del. C. §§7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309(c), 7309A(f), 7312, 7314(b)(4), 7317(c) and 7325(b).

Comments may be presented in writing to the attention of Charles F. Walker, Securities Commissioner, State of Delaware Department of Justice, 820 N. French Street, Wilmington, Delaware, 19801. Comments must be received no later than 5:00 p.m. on March 5, 1998, for consideration.

Attachments:

- Index to Proposed Rules and Regulations
- Text of Proposed Rules and Regulations
- Cross-reference to Existing Regulations

INDEX TO PROPOSED RULES AND REGULATIONS

PROPOSED RULES AND REGULATIONS
PURSUANT TO THE DELAWARE SECURITIES ACT

Part A. Organization and Functions of the Securities Division

- 100 General Statement and Statutory Authority
- 101 Regulatory Functions
- 102 General Organization
- 103 Administrative Hearing Officers

Part B. Practice and Procedure in Administrative Hearings

General Rules

- 200 Construction of Rules of Practice and Procedure
- 201 Appearance and Practice in Administrative Proceedings
- 202 Business Hours
- 203 Delegated Authority of Administrative Hearing Officer
- 204 Disqualification and Recusal of Administrative Hearing Officer
- 205 Ex Parte Communications
- 206 Orders and Decisions of Administrative Hearing Officer

Service and Filing of Papers

- 210 Service of Papers by Parties
- 211 Filing of Papers with the Commissioner: Procedure
- 212 Filing of Papers: Form
- 213 Filing of Papers: Signature Requirement and Effect
- 214 Computation of Time

Pleadings and Prehearing Practice

- 220 Complaints: General
- 221 Complaints: Form and Content
- 222 Complaints: Amendment and Withdrawal
- 223 Order Delegating Authority to Hearing Officer
- 224 Answers to Complaints
- 225 Request for Hearing
- 226 Prehearing Conferences
- 227 Prehearing Submissions
- 228 Disclosure of Evidence by the Parties
- 229 Production of Witness Statements
- 230 Motions
- 231 Motions for Summary Disposition
- 232 Default; Motion to Set Aside Default

Administrative Hearings

- 240 Hearings
- 241 Hearings Open to the Public
- 242 Continuance of Hearing
- 243 Procedure
- 244 Testimony
- 245 Evidence: Admissibility
- 246 Evidence: Objections and Offers of Proof
- 247 Evidence: Reference to Delaware Uniform Rules of Evidence
- 248 Proposed Findings of Fact, Conclusions of Law and Post-Hearing Briefs
- 249 Record of Hearings
- 250 Supplementation of Record
- 251 Decision of Administrative Hearing Officer
- 252 Failure to Appear at Hearing: Default
- 253 Contemptuous Conduct

Practice and Procedure Regarding Summary Orders Issued Pursuant to Sections 7308(c), 7309(c), 7316(c) and Section 7325(c) of the Act

- 260 Basis for Issuance of Summary Order Postponing or Suspending the Effectiveness of a Registration Statement Pursuant to Section 7308(c)
- 261 Basis for Issuance of Summary Order Denying or Revoking Exemption Pursuant to Section 7309(c)
- 262 Basis for Issuance of Summary Order Postponing or Suspending the Registration of a Broker-Dealer,

<p>Broker-Dealer Agent, Investment Adviser or Investment Adviser Representative Pursuant To Section 7316(c)</p> <p>263 Basis for Issuance of Summary Cease and Desist Order Pursuant to Section 7325(c)</p> <p>264 Application for Issuance of Summary Order</p> <p>265 Procedure After Issuance of Order</p> <p>266 Violation of Cease and Desist Order</p> <p>Appeal to the Court of Chancery</p> <p>270 Right to Judicial Review</p> <p>271 Procedure</p> <p>272 Application to the Court for Leave to Adduce Additional Material Evidence</p> <p style="text-align: center;">Part C. Investigations</p> <p>300 Scope of Rules Regarding Investigations</p> <p>301 Nature and Purpose of Investigations</p> <p>302 Information Obtained in Investigations</p> <p>303 Rights of Witnesses</p> <p>304 Subpoenas</p> <p>305 Testimony Under Oath</p> <p>306 Production of Things and Documents</p> <p>307 Written Submissions by Interested Persons</p> <p>Part D. Securities Registration and Notice Filings</p> <p>400 Registration by Coordination</p> <p>401 Registration by Qualification</p> <p>402 Small Company Offering Registration</p> <p>403 Notice Filings for Offerings of Investment Company Securities</p> <p>404 Fees</p> <p>405 Quarterly Reports on Registered Securities</p> <p>406 Filing of Sales Literature</p> <p>407 Notice Filings for SEC Regulation D Offerings</p> <p style="text-align: center;">Part E. Exemptions from Registration</p> <p>500 Exemptions for Federal Covered Securities</p> <p>501 Designated Exchange Exemption</p> <p>502 Limited Offering Exemption</p> <p>503 Accredited Investor Exemption</p> <p>504 World Class Issuer Exemption</p> <p>505 Offers of Securities through the Internet</p> <p>506 Claim of Exemption by Persons Organized Not for Private Profit but Exclusively for Religious Purposes</p> <p>507 Claim of Exemption for Nine-Month Commercial Paper</p> <p>508 Recognized Securities Manuals</p> <p>509 Unsolicited Sales</p> <p>510 Transactional Exemption for Certain Institutional</p>	<p>Buyers</p> <p>511 Confirmation of Availability of Exemption</p> <p>Part F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents</p> <p>600 Registration of Broker-Dealers</p> <p>601 Registration of Broker-Dealer Agents</p> <p>602 Registration of Issuer Agents</p> <p>603 Continuing Obligation of Registrants to Keep Information Current</p> <p>604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers</p> <p>605 Bonding Requirements of Intrastate Broker- Dealers</p> <p>606 Recordkeeping Requirements of Broker-Dealers</p> <p>607 Use of the Internet for General Dissemination of Information on Products and Services</p> <p>608 Registration Exemption for Certain Canadian Broker-Dealers</p> <p>609 Prohibited Practices</p> <p>Part G. Investment Advisers and Investment Adviser Representatives</p> <p>700 Registration of Investment Advisers</p> <p>701 Registration of Investment Adviser Representatives</p> <p>702 Notice Filing Requirements for Federal Covered Advisers</p> <p>703 Continuing Obligation of Registrants to Keep Information Current</p> <p>704 Minimum Financial Requirements for Investment Advisers</p> <p>705 Bonding Requirements of Certain Investment Advisers</p> <p>706 Recordkeeping Requirements of Investment Advisers</p> <p>707 Use of the Internet for General Dissemination of Information on Products and Services</p> <p>708 Custody of Client Funds or Securities</p> <p>709 Prohibited Practices</p> <p>* Please note that the above page numbers refer to the original document, not to pages in the Register.</p> <p style="text-align: center;">PROPOSED RULES AND REGULATIONS PURSUANT TO THE DELAWARE SECURITIES ACT</p> <p>Part A. Organization and Functions of the Securities Division</p> <p>§100 General Statement and Statutory Authority</p>
---	--

The Securities Division was created in 1973 with the passage of the Delaware Securities Act, which is found at Chapter 73 of Title 6 of the Delaware Code. The Securities Act is administered by the Attorney General through a Deputy Attorney General designated to act as Securities Commissioner. The Securities Commissioner is the principal executive officer of the Securities Division and acts for the Attorney General in administering that statute. The purpose of the Delaware Securities Act is to prevent the public from being victimized by unscrupulous or over-reaching broker-dealers, investment advisers or agents in the context of selling securities or giving investment advice, as well as to remedy any harm caused by securities law violations. The Act provides for the following:

(a) Public disclosure of pertinent facts concerning public offerings of securities to Delaware investors, and protection of the interests of those investors in connection with the offer and sale of securities.

(b) Investigation of securities frauds, manipulations and other violations, and the imposition and enforcement of legal sanctions therefor.

(c) Registration and the regulation of certain activities of broker-dealers, broker-dealer agents and issuer agents.

(d) Registration and the regulation of certain activities of state-registered investment advisers and investment adviser representatives.

(e) Administrative sanctions, injunctive and other equitable remedies, and criminal prosecution. There are also private rights of action for investors injured by violations of the Act.

§101 Regulatory Functions

Following is a brief description of the Securities Division's regulatory functions under the Delaware Securities Act:

(a) Securities Registration and Notice Filings. (1) It is unlawful for any person to sell a security in Delaware unless that security is registered; or the security or transaction is exempt under Section 7309 of the Act; or the security is a federal covered security for which a notice filing has been made pursuant to Section 7309A of the Act. Securities for which a federal registration statement has been filed under the Securities Act of 1933 may be registered by coordination under Section 7305. Any security may be registered by qualification under Section 7306. Notice filings are required for federal covered securities offered or sold to Delaware investors. A stop order prohibiting the offering of a security, or suspending or revoking the effectiveness of a registration statement, may be issued where the offeror has made a material misstatement or omission in connection with that offer, or otherwise where the public interest so dictates and the

statutory criteria of Section 7308 are met. Any registrant or offeror subject to such an order is entitled to a hearing under the Act. Registration or the filing of a notice filing is not a finding by the Commissioner as to the accuracy of the facts disclosed; and it is unlawful to so represent. Moreover, registration of securities or the filing of a notice filing does not imply approval of the issue by the Commissioner or insure investors against loss in their investment, but serves rather to provide information upon which investors may make an informed and realistic evaluation of the worth of the securities.

(2) Persons responsible for filing false information with the Commissioner or otherwise disseminating false and misleading information in connection with the purchase or sale of securities subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors, officers, and the underwriters and dealers and others may be liable in damages to purchasers of registered securities if disclosures are materially defective. In addition, the statute contains antifraud provisions which apply generally to the sale of securities, whether or not registered.

(b) Registration and Licensing of Broker-Dealers, Broker-Dealer Agents and Issuer Agents. The Act provides for registration with, and regulation by, the Commissioner of broker-dealers, broker-dealer agents and issuer agents. Registrations must be renewed annually. The activities of broker-dealers, broker-dealer agents and issuer agents in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices within or outside the State, and which make unlawful those practices which would constitute fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

(c) Registration and Licensing of Investment Advisers and Investment Adviser Representatives; Notice Filings for Federal Covered Advisers. The Act provides that persons who, for compensation, engage in the business of advising others with respect to securities transactions must register with the Commissioner unless they are registered with the Securities and Exchange Commission ("SEC") or otherwise exempted from registration under the Act. Federal covered advisers (those registered with the SEC) who have a place of business in Delaware or who had more than five Delaware

residents as clients in the past 12 months must file a notice filing and filing fee with the Commissioner as provided by Section 7314 of the Act. All investment adviser representatives (whether employed by or associated with a federal covered adviser or a state-registered adviser) who have a place of business in Delaware must register with the Commissioner. Registrations must be renewed annually. The activities of investment advisers and investment adviser representatives in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices within or outside the State, and which make unlawful those practices which would constitute a fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

§102 General Organization

(a) The Securities Division is part of the Fraud Division of the State Department of Justice. In addition to the Securities Commissioner, the Securities Division has a staff which includes lawyers, a securities analyst, investigators and examiners, as well as administrative and clerical employees. The Securities Commissioner and other staff members shall perform, in addition to their duties under the Securities Act, such additional duties as the Attorney General may assign from time to time.

(b) The Securities Division is a statewide office with authority over all three counties in Delaware. The Securities Commissioner is located at 820 North French Street, Wilmington, Delaware, 19801. The telephone number is (302) 577-8424. The Securities Division's Kent County mailing address is 45 The Green, Dover, Delaware, 19901.

(c) Enforcement activities are conducted and supervised by Deputy Attorneys General assigned to the Division with the assistance of staff securities investigators. Administrative and injunctive actions may be instituted and prosecuted by a Deputy Attorney General after review and determination that there exists sufficient evidence to support the allegations in any proposed complaint. Criminal charges may be presented to the Grand Jury for indictment after review by the Director of the Fraud Division and/or the State Prosecutor.

(d) Registration and renewal of securities filings are reviewed by the Securities Division for adherence to standards of reporting and financial disclosure under the Securities Act, as well as substantive business requirements

of the Act. The staff also reviews exempt securities filings for compliance with the exemptive provisions of Section 7309 and the disclosure requirements of the Act.

(e) Registration of broker-dealers, broker-dealer agents, issuer agents, investment advisers and investment adviser representatives is conducted by staff members in the Division's Firm/Agent Registration Section, with review and oversight by the Securities Commissioner and other Deputy Attorneys General.

(f) Compliance audits and examinations of state-registered investment advisers are undertaken by the Division's investment adviser examiners on a periodic basis. Special examinations of both broker-dealers and investment advisers may also be undertaken by the staff. Access to all books and records is required in any examination pursuant to Section 7315 of the Act. The Securities Division may cooperate, by joint examination or otherwise, with the securities administrators of other states, the SEC, and any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(g) The Securities Division is also responsible for the Attorney General's investor education program. The Program includes, but is not limited to:

(1) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commissioner; and increasing public knowledge of the functions of the Securities Division.

(2) Providing information to investors who inquire about individuals and entities regulated by the Commissioner, the operation of the securities markets, or the functions of the Securities Division.

(h) The Securities Division provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Commissioner and accompanied by a fee of \$75.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or any rule or regulation adopted thereunder.

§103 Administrative Hearing Officers

(a) Pursuant to Section 7325(b) of the Act, the Securities Commissioner hereby delegates to an administrative hearing officer the authority to preside in any administrative proceeding brought under the Securities Act. The administrative hearing officer shall have, with respect to any such proceeding, all powers and duties as are possessed by the Securities Commissioner when presiding over a proceeding under the Delaware

Securities Act, and any order issued by the administrative hearing officer shall constitute an order of the Commissioner for purposes of judicial review under Section 7324 of the Act.

(b) The administrative hearing officer shall be designated by the Attorney General or Chief Deputy Attorney General. The administrative hearing officer may be a Deputy Attorney General (other than a Deputy Attorney General assigned to the Securities Division) or any other attorney admitted to practice law in the State of Delaware.

(c) The Rules of Practice and Procedure in Administrative Hearings (Sections 200-272) shall govern all proceedings by and before the administrative hearing officer.

Part B. Practice and Procedure in Administrative Hearings

General Rules

§200 Construction of Rules of Practice and Procedure

(a) Unless otherwise provided, these Rules of Practice govern proceedings before administrative hearing officers under the Delaware Securities Act. These rules do not apply to investigations by the Securities Division, which are governed by Part C of the Rules and Regulations.

(b) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(c) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, the latter shall control.

(d) For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and (3) unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

§201 Appearance and Practice in Administrative Proceedings

A person shall not be represented before a hearing officer except as stated in paragraphs (a) and (b) of this section or as otherwise permitted by the hearing officer:

(a) Representing oneself. In any proceeding, an individual may appear on his or her own behalf.

(b) Representing others. In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of

Delaware. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.

(c) Requirement of Delaware Counsel. Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted pro hac vice in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the administrative hearing officer, unless excused by that hearing officer.

(d) Designation of address for service; notice of appearance; power of attorney; withdrawal.

(1) Representing oneself. When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the Commissioner or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) Representing others. When a person first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, that person shall file with the Commissioner, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) Power of attorney. Any individual appearing or practicing before a hearing officer in a representative capacity may be required to file a power of attorney with the Commissioner showing his or her authority to act in such capacity.

(4) Withdrawal. Withdrawal by any individual appearing in a representative capacity shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) Public Hearings. All hearings shall be public unless otherwise ordered by the hearing officer on his own motion or after considering the motion of a party.

§202 Business Hours

The office of the Securities Division, at 820 North French Street, Wilmington, Delaware, 19801, is open

each day, except Saturdays, Sundays, and State legal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Wilmington, Delaware. State legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr; Presidents Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday by the Governor or the State Legislature.

§203 Delegated Authority of Administrative Hearing Officer

The administrative hearing officer, as designated by the Attorney General or Chief Deputy Attorney General under §103 of these Rules, holds delegated authority to preside in any administrative proceeding brought under the Securities Act and shall have in any such proceeding all powers and duties as are possessed by the Securities Commissioner when presiding over a proceeding under the Delaware Securities Act, and any order issued by the administrative hearing officer shall constitute an order of the Commissioner for purposes of judicial review under Section 7324 of the Act.

§204 Disqualification and Recusal of Administrative Hearing Officer

(a) Notice of disqualification. At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) Motion for Withdrawal. Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

§205 Ex Parte Communications

Unless on notice and opportunity for all parties to participate, or to the extent required for the disposition of ex parte matters as authorized by Sections 7308(c), 7309(c), 7316(c) and/or 7325(c) of the Act:

(a) No party, or counsel to or representative of a party, shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to the administrative hearing officer with respect to that proceeding.

(b) No administrative hearing officer with respect

to a proceeding shall make or knowingly cause to be made to a party, or counsel to or representative of a party, an ex parte communication relevant to the merits of that proceeding.

§206 Orders and Decisions of Administrative Hearing Officer

(a) Availability for inspection. Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(b) Date of entry of orders. The date of entry of an order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

Service and Filing of Papers

§210 Service of Papers by Parties

(a) When required. In every administrative proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard ex parte.

(b) Upon a person represented by counsel. Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to §201, service shall be made pursuant to paragraph (c) of this section upon counsel, unless service upon the person represented is ordered by the hearing officer.

(c) How made. Service shall be made by delivering a copy of the filing. Delivery means:

(1) Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

(3) Sending the papers through a commercial courier service or express delivery service; or

(4) Transmitting the papers by facsimile machine where the following conditions are met:

(i) The persons serving each other by

facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) When service is complete. Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

§211 Filing of Papers With the Commissioner: Procedures

(a) When to file. All papers required to be served by a party upon any person shall be filed with the Commissioner at the time of service or promptly thereafter. Papers required to be filed with the Commissioner must be received within the time limit, if any, for such filings.

(b) Where to file. Filing of papers with the Commissioner shall be made by filing the original papers with the Commissioner and one (1) copy with the hearing officer.

(c) To whom to direct the filing. All motions, objections, applications or other filings made during a proceeding shall be directed to and decided by the hearing officer.

(d) Certificate of Service. Papers filed with the Commissioner and the hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person.

§212 Filing of Papers: Form

(a) Specifications. Papers filed in connection with any administrative proceeding shall:

(1) Be on one grade of unglazed white paper measuring 8-1/2 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(2) Be typewritten or printed in either ten or twelve-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Include at the head of the paper, or on a title page, the title of the proceeding, the names of the parties,

the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least one inch wide, and other margins of at least one inch;

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) Be stapled, clipped or otherwise fastened in the upper left corner.

(b) Signature required. All papers must be dated and signed as provided in §213.

(c) Suitability for recordkeeping. Documents which, in the opinion of the Commissioner, are not suitable for computer scanning or microfilming may be rejected.

(d) Form of briefs. All briefs containing more than ten pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(e) Scandalous or impertinent matter. Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the hearing officer.

§213 Filing of Papers: Signature Requirement and Effect

(a) General requirements. Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) Effect of signature. (1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

§214 Computation of Time

(a) Computation. In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the hearing officer, the day of the act, event or

default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday (as defined in §202), in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Intermediate Saturdays, Sundays and State legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.

(b) Additional time for service by mail. If service is made by mail, three days shall be added to the prescribed period for response.

Pleadings and Prehearing Practice

§220 Complaints: General

If the Securities Division believes that any person is violating or has violated any provision of the Delaware Securities Act or any rule or regulation thereunder, it may issue a complaint as set forth in Rule 221. The complaint shall be served on each party as provided in Rule 210 and filed at the time of service with the Securities Commissioner pursuant to Rule 211. The service and filing of the complaint constitutes the commencement of the administrative proceeding.

§221 Complaints: Form and Content

Each complaint shall be in writing and signed by a Deputy Attorney General. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the statutory provision, rule or regulation the respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately.

§222 Complaints: Amendment and Withdrawal

(a) At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Securities Division may amend a complaint to include new matters of fact or law. After the filing of a responsive pleading or the commencement of a hearing, upon motion by the Securities Division, the hearing officer may permit amendment of a complaint to include new matters of fact or law.

(b) At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Securities Division may withdraw its complaint. Such withdrawal shall be without prejudice to

refiling, and the Securities Division shall be permitted to file a complaint based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. The Securities Division may withdraw its complaint after the filing of a responsive pleading or commencement of a hearing; however, upon motion of the respondent, the hearing officer, after considering the facts and circumstances of the withdrawal, shall determine whether the withdrawal shall be with prejudice.

§223 Order Delegating Authority to Hearing Officer

In each case in which a complaint is filed pursuant to Rule 211, the Securities Commissioner shall promptly file and serve on the parties an order delegating authority to an administrative hearing officer pursuant to Rule 103.

§224 Answers to Complaints

(a) Form, Service, Notice. Each respondent named in a complaint shall answer and serve an answer to the complaint on the Securities Division and all other parties within 25 days after service of the complaint on such respondent pursuant to Rule 210 and at the time of service file such answer with the hearing officer pursuant to Rules 211, 212 and 213. The hearing officer may extend such period for good cause.

(b) Content, Affirmative Defenses. Unless otherwise ordered by the hearing officer, an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

(c) Amendments to Answer. Upon motion by a respondent, the hearing officer may permit an answer to be amended.

(d) Extension of Time to Answer Amended Complaint. If a complaint is amended pursuant to Rule 222, the time for filing an answer or amended answer shall be extended to 10 days after service of the amended complaint. If any respondent has already filed an answer, such respondent shall have 15 days after service of the amended complaint, unless otherwise ordered by the hearing officer, within which to file an amended answer.

(e) Failure to Answer, Default. If the respondent does not file an answer within the time required, the hearing officer shall order the Securities Division to send a second notice to such respondent requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The second notice shall state that

failure of the respondent to reply within the period specified shall allow the hearing officer, in the exercise of his or her discretion, to:

(1) treat as admitted by the respondent the allegations in the complaint; and

(2) enter a default decision against the respondent pursuant to Rule 232(a). If no answer is filed with the hearing officer within the time required by the second notice, the allegations of the complaint may be considered admitted by such respondent and a default decision may be issued by the hearing officer. A respondent may, for good cause shown, move to set aside a default pursuant to Rule 232(b).

§225 Request for Hearing

(a) **Securities Division Request for Hearing.** With the filing of its complaint or at any time later, the Securities Division may request a hearing. The Securities Division may request that the hearing be convened within a specified time after the filing of the complaint, but in no event shall that hearing be required to be held earlier than 30 days after service and filing of the complaint other than in summary proceedings under Sections 7308(c), 7309(c), 7316(c) or 7325(c) of the Act.

(b) **Respondent Request for Hearing.** With the filing of respondent's answer such respondent may request a hearing. If a respondent requests a hearing, a hearing shall be granted. A respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless the hearing officer grants, for good cause shown, a later filed motion by such respondent requesting a hearing.

(c) **Hearing Officer Order Requiring Hearing.** Any complaint may be set down for a hearing upon order of the hearing officer. The hearing officer may set a complaint for hearing in the absence of a request for hearing by any party.

(d) **Notice of Hearing.** The hearing officer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties at least 28 days before the hearing, unless (1) in the discretion of the hearing officer, he or she determines that extraordinary circumstances require a shorter notice period; or (2) the parties waive the notice period.

§226 Prehearing Conferences

(a) **Purpose of conferences.** The purpose of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) **Procedure.** On his or her own motion or at the

request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) **Subjects to be discussed.** At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates;

(10) Amendments to the complaint or answers thereto;

(11) Disclosure of evidence by the parties as set forth in Rule 228 and production of witness statements as set forth in Rule 229; and

(12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) **Prehearing orders.** At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(e) **Failure to appear: default.** Any person who is named as a respondent in a complaint and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to Rule 232(a). A party may make a motion to set aside a default pursuant to Rule 232(b).

§227 Prehearing Submissions

(a) **Submissions generally.** The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the Securities Division, to furnish such information as deemed appropriate, including any or all of the following:

(1) An outline or narrative summary of its case or

defense;

(2) The legal theories upon which it will rely;

(3) Copies and a list of documents that it intends to introduce at the hearing; and

(4) A list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) Expert witnesses. Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

§228 Disclosure of Evidence by the Parties

(a) Disclosure of Evidence by the Securities Division. Upon request of a respondent, the Securities Division shall disclose to respondent and make available for inspection, copying or photographing:

(1) Any relevant written or recorded statements made by the respondent or co-respondent, or copies thereof, within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division; and that portion of any written record containing the substance of any relevant oral statement made by the respondent in response to interrogation by any person then known to the respondent to be a state agent. Where the respondent is a corporation, partnership or association, the Securities Division shall disclose any written or recorded statements of any witness who (i) was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the respondent in respect to conduct constituting the offense, or (ii) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the respondent in respect to that alleged conduct in which the witness was involved.

(2) Documents and tangible objects. Upon request of the respondent the Securities Division shall permit the respondent to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing, or were obtained from or belong to the respondent.

(3) Reports of examinations and tests. Upon request of a respondent, the Securities Division shall permit respondent to inspect and copy or photograph any results or reports of physical or mental examinations, and

of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing.

(4) Expert witnesses. Upon request of a respondent, the Securities Division shall disclose to the respondent any evidence which the Division may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703, or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witness and the substance of the opinions to be expressed.

(5) Information not subject to disclosure. Except as provided in Rule 228(a)(1), (2) and (3), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the Securities Division or its agents in connection with the investigation or prosecution of the case, or of statements by Division witnesses or prospective Division witnesses.

(b) Disclosure of evidence by the respondent.

(1) Documents and tangible objects. Upon request of the Securities Division, the respondent shall permit the Division to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the respondent and which the respondent intends to introduce as evidence in chief at the hearing.

(2) Reports of examination and tests. The respondent, on request of the Securities Division, shall permit the Division to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the respondent, which the respondent intends to introduce as evidence in chief at the hearing or which were prepared by a witness whom the respondent intends to call at the hearing when the results or reports relate to that witness' testimony.

(3) Expert witnesses. The respondent, on request of the Securities Division, shall disclose to the Division any evidence the respondent may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703 or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witnesses and the substance of the opinions to be expressed.

(4) Information not subject to disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports,

memoranda, or other internal defense documents made by the respondent or the respondent's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the respondent, or by Division or respondent witnesses, or by prospective Division or respondent witnesses, to the respondent, the respondent's agents or attorneys.

(c) Procedure. Any party may serve a request for discovery after filing of respondent's answer or, if no answer has been filed, after expiration of the period for filing an answer. The request shall set forth the items sought with reasonable particularity and shall specify a reasonable time, place and manner of compliance with the request. The party upon whom the request is served shall serve a response within 20 days after service of the request or at such other time as ordered by the hearing officer. The response shall comply with the request or specify any objection to it. The response may specify a reasonable alternative time, place and manner of compliance.

(d) Continuing duty to disclose. If, prior to or during an administrative hearing, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the hearing officer of the existence of the additional evidence or material.

(e) Regulation of disclosure.

(1) Protective and modifying orders. Upon a sufficient showing the hearing officer may at any time order that the disclosure or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the hearing officer may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the hearing officer alone. If the hearing officer enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the hearing officer to be made available to the Chancery Court in the event of an appeal.

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the hearing officer that a party has failed to comply with this rule, the hearing officer may order such party to permit the disclosure or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or he may enter such other order as he deems just under the circumstances. The hearing officer may specify the time, place and manner of making the disclosure and inspection and may prescribe such terms and conditions as are just.

§229 Production of Witness Statements

Any party may file a motion requesting that any other party produce for inspection and copying a statement in its

possession, custody or control of any person called or to be called as a witness that pertain, or is expected to pertain, to his or her direct testimony, including statements that would be required to be produced pursuant to Rule 26.2 of the Delaware Superior Court Criminal Rules. The production shall be made at a time and place fixed by the hearing officer and shall be made available to all parties.

§230 Motions

(a) Generally. Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 210, be filed in accordance with Rule 211, meet the requirements of Rule 212, and be signed in accordance with Rule 213. The hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the hearing officer, if a motion is properly made, the proceeding before the hearing officer shall continue pending the determination of the motion. No oral argument shall be heard on any motion unless the hearing officer otherwise directs.

(b) Opposing and reply briefs. Briefs in opposition to a motion shall be filed within ten days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) Length limitation. A brief in support of or opposition to a motion shall not exceed ten pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of ten pages are disfavored.

§231 Motion for Summary Disposition

(a) After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 228, the respondent or the Division may make a motion for summary disposition of any or all allegations of the complaint with respect to that respondent. Any motion for summary disposition shall be filed within 30 days after the filing of the respondent's answer or at such other time as ordered by the hearing officer. Notwithstanding the provisions of Rule 230, any opposition or response to a motion for summary disposition shall be filed within 14 days after service of the motion. Reply briefs shall be filed within five days after service of the opposition or response.

(b) A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations

that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters therein. The motion for summary disposition, supporting memorandum of points and authorities, and any declarations, affidavits or attachments shall not exceed 35 pages in length.

(c) The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

§232 Default; Motion to Set Aside Default

(a) A party to a proceeding may be deemed to be in default and the hearing officer may determine the proceeding against that party upon consideration of the record, including the complaint, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the hearing officer.

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer may for good cause shown set aside a default.

Administrative Hearings

§240 Hearings

Hearings for the purpose of taking evidence shall be held upon order of the hearing officer. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

§241 Hearings to be public

All hearings, except hearings on ex parte applications for a summary order under Sections 7308(c), 7309(c), 7316(c) or 7325(c) of the Act, shall be public unless otherwise ordered by the hearing officer on his or her own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

§242 Continuance of Hearing

Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions should state with specificity the reason for the continuance request.

§243 Procedure

(a) Unless otherwise ordered by the hearing officer, no later than three days prior to the hearing each party shall submit to all other parties and to the hearing officer copies of all documentary evidence and the names of the witnesses each party intends to present in its case-in-chief at the hearing.

(b) In the administrative hearing, each party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

§244 Testimony

Witnesses shall testify under oath or affirmation. The oath or affirmation may be administered by a Deputy Attorney General, notary public or any other officer authorized to administer oaths and affirmations under Delaware law.

§245 Evidence: Admissibility

The hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious.

§246 Evidence: Objections and Offers of Proof

(a) Objections. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Court of Chancery, however, unless raised in a proposed finding or conclusion filed pursuant to Rule 248.

(b) Offers of proof. Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 249.

§247 Evidence: Reference to Delaware Uniform Rules of Evidence

The hearing officer may make reference to and be guided by the Delaware Uniform Rules of Evidence in receiving relevant evidence under Rule 245 and ruling on

objections under Rule 246. Notwithstanding those rules, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence. Evidence may not be excluded solely on the ground that it is hearsay.

§248 Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

(a) At the discretion of the hearing officer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The hearing officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

(b) Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

(c) In any case in which the hearing officer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the hearing officer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law or post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

(d) Unless the hearing officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents and tables of authorities.

§249 Record of Hearings

(a) Contents of the record. The record shall consist of:

(1) The complaint and answers thereto; the notice of hearing; and any amendments to those documents;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under Rule 204, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(5) All proposed findings and conclusions;

(6) Each written order issued by the hearing

officer; and

(7) Any other document or item accepted into the record by the hearing officer.

(b) Retention of documents not admitted. Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record but shall be retained until the later of the date upon which an order ending the proceeding becomes final, or the conclusion of any judicial review of the hearing officer's order.

(c) Substitution of copies. A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

§250 Supplementation of Record

Upon motion filed within ten days of the conclusion of the hearing, any party may seek leave from the hearing officer to supplement the record with additional relevant material evidence. Where the party shows to the satisfaction of the hearing officer that there were reasonable grounds for failure to adduce the evidence in the hearing, the hearing officer may allow the evidence to be heard in such manner and upon such conditions as the hearing officer considers proper.

§251 Decision of Administrative Hearing Officer

In any administrative proceeding in which a hearing is held, the hearing officer shall issue a decision. The decision shall include: (i) findings of fact and conclusions of law, and the reasons or basis therefor, as to all material issues of fact, law or discretion presented on the record; (ii) the appropriate order, sanction or relief, or denial thereof; (iii) a statement that the decision constitutes a final order for purposes of judicial review under Section 7324 of the Act; and (iv) the date on which sanctions, if any, take effect.

§252 Failure to Appear at Hearing: Default

Any respondent who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to Rule 232(a). A party may make a motion to set aside a default pursuant to Rule 232(b).

§253 Contemptuous Conduct

If a party, counsel to a party or witness engages in conduct in violation of an order of the hearing officer, or other contemptuous conduct during an administrative proceeding, the hearing officer may impose sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the proceeding; (ii) striking pleadings or evidence from the record; (iii) providing that certain facts

shall be taken to be established for purposes of the proceeding; or (iv) providing for such other relief as is just and equitable under the circumstances.

Practice and Procedure Regarding Summary Orders
Issued Pursuant to Sections 7308(c), 7309(c), 7316(c)
and 7325(c) of the Act

§260 Basis for Issuance of Summary Order Postponing or Suspending the Effectiveness of a Registration Statement Pursuant to Section 7308(c)

The Securities Division may make application for, and an Administrative Hearing Officer may issue, a summary order postponing or suspending the effectiveness of any registration statement, if such an order is in the public interest and any of the following criteria are met:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment or report is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Any provision of the Act or any rule, order, or condition lawfully imposed under the Act has been violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering;

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) The applicant or registrant has failed to pay the proper filing fee; but the hearing officer shall vacate any such order when the deficiency has been corrected;

(h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 7305(b)(4) of the Act.

§261 Basis for Issuance of Summary Order Denying or Revoking Exemption Pursuant to Section 7309(c)

The Securities Division may make application for, and an Administrative Hearing Officer may issue, a summary order denying or revoking any exemption claimed under Sections 7309(a)(9), (a)(11), or (b)(1)-(13) of the Act, whenever it appears that such exemption is inapplicable, either generally or with respect to a specific security or transaction.

§262 Basis for Issuance of Summary Order Postponing or Suspending the Registration of a Broker-Dealer, Broker-Dealer Agent, Investment Adviser or Investment Adviser Representative Pursuant to Section 7316(c)

The Securities Division may make application for, and an Administrative Hearing Officer may issue, a summary order postponing or suspending the registration of a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative if such an order is in the public interest and the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(b) Has wilfully violated or wilfully failed to comply with any provision of the Act; or

(c) Has been convicted of a felony, infamous crime, or other crime involving moral turpitude; or

(d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(e) Is the subject of a cease and desist order or of an order denying, suspending, or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative; or

(f) Is the subject of an order entered within the past ten years by the securities administrator of any other state or by the Securities and Exchange Commission either ordering the person to cease and desist from engaging in or continuing any conduct or practice involving any aspect of the securities business, or suspending, denying or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser

representative, or the substantial equivalent of those terms as defined in the Act and these rules; or is suspended or expelled from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. §78a et seq.] either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by administrative or judicial order or is the subject of a United States post office fraud order; or

(g) Has engaged in dishonest or unethical practices within or outside this State; or

(h) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; or

(i) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or

(j) Has failed reasonably to supervise (1) his agents or employees, if he is a broker-dealer or broker-dealer agent with supervisory responsibilities; or (2) his adviser representatives or employees if he is an investment adviser or investment adviser representative with supervisory responsibilities, and such failure may be inferred from an agent's, investment adviser representative's, or employee's violations;

(k) Has failed to pay the proper filing fee, but the hearing officer shall vacate any denial or suspension order when the deficiency has been corrected; or

(l) Has violated or failed to comply with any lawful order issued by the Commissioner or by an Administrative Hearing Officer acting pursuant to delegated authority under Rule 103; or

(m) Has within the past ten years been a partner, officer, director, controlling person or any person occupying a similar status or performing similar functions in a broker-dealer or investment adviser whose registration in this State or any state, or with the SEC, has been revoked for disciplinary reasons, or whose membership in a national securities exchange or national securities association has been terminated for disciplinary reasons.

§263 Basis for Issuance of Summary Cease and Desist Order

Whenever it appears that a person has violated the Delaware Securities Act by failing to register or engaging in fraud or other prohibited conduct, an Administrative Hearing Officer may summarily issue a cease and desist order against that person under Section 7325(c) of the Act.

§264 Application for Issuance of Summary Order

(a) Procedure. A request for entry of a summary order shall be made by application filed by the Division.

The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent; and whether the relief is sought ex parte.

(b) Accompanying documents. The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought ex parte, a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent order has not already been commenced, a complaint instituting proceedings to determine whether a permanent order should be imposed shall also be filed with the application or as soon thereafter as practicable.

(c) Record of proceedings. A record from which a verbatim transcript can be prepared shall be made of all hearings, including ex parte presentations made by the Division.

§265 Procedure After Issuance of Order

(a) Notice. Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor. Notice shall be given by means reasonably calculated to give actual notice of issuance of the order, including telephone notification and service of the order pursuant to Rule 210. Such notice shall include notification that the subject of the order may request a hearing and that if such a request is made in writing the hearing shall be scheduled within 15 days from the date the written request is received.

(b) Request for hearing. Any person who is the subject of a summary order may request a hearing before an administrative hearing officer on an application to set aside, limit or suspend the summary order. That hearing shall be scheduled within 15 days from the date the written request is received.

(c) Procedure at hearing. The procedure at a hearing on a summary order shall be determined by the hearing officer, with the understanding that each party shall be entitled to be heard in person or through counsel. The hearing officer shall rule on the admissibility of evidence and other matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs and/or proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submissions.

(d) Decision of Hearing Officer. After hearing evidence pursuant to subsection (c) of this Rule, the hearing officer shall issue a decision on respondent's application to set aside, limit or suspend the order, and may grant or deny that application; modify or vacate the

order; or extend it until final determination. If no hearing has been requested and none has been ordered by the hearing officer, the summary order shall remain in effect until it is modified or vacated by the hearing officer.

(e) Duration. Unless set aside, limited or suspended, either by the hearing officer or a court of competent jurisdiction, a summary order shall remain in effect until the completion of the proceedings on whether a permanent order shall be entered or, if no such proceedings occur, until otherwise modified or vacated by the hearing officer.

§266 Violation of Cease and Desist Orders

If any person who is the subject of a cease and desist order, or any agent or employee of such person, subsequent to the issuance of the order engages in the prohibited conduct, the Commissioner may certify the facts and apply for a contempt order to any Judge of the Superior Court, who shall upon such application hear the evidence as to the acts complained of. If the evidence warrants, the Judge shall punish such person, in the same manner and to the same extent as for a contempt committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Superior Court.

Appeal to the Court of Chancery

§270 Right to Judicial Review

Any person aggrieved by an order of the administrative hearing officer may obtain a review of the order in the Court of Chancery. Upon review, the Court of Chancery has the authority to determine questions of law de novo. The factual findings of the hearing officer, if supported by material and substantial evidence, shall be conclusive on the Court of Chancery. The filing of a complaint seeking review does not operate as a stay of the hearing officer's order unless specifically ordered by the Court.

§271 Procedure

A party seeking review must file a written complaint with the Court of Chancery within 60 days of entry of the hearing officer's order. The complaint shall be forthwith served on the hearing officer and the other parties to the administrative proceeding. The party seeking review must pay the costs of transcribing the record. Upon completion of the record transcription, the hearing officer shall certify and file with the Court of Chancery a copy of the record transcription; all evidence upon which the order was entered; and any documents or other proffered evidence retained pursuant to Rule 249(b) relevant to the complaint (together, the "Administrative Record"). If the

Administrative Record is not filed with the Chancery Court within 20 days of the filing of the complaint, the hearing officer shall notify the Court and receive additional time in which to file and certify the record. A continued failure by the party seeking review to pay the costs of transcription shall result in dismissal of the complaint without any need for the administrative hearing officer to file the record in Court.

§272 Application to the Court for Leave to Adduce Additional Material Evidence

If, within 20 days of the filing of the record with the Court, either party applies to the Court for leave to adduce additional material evidence, and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the administrative hearing, the Court may order the additional evidence to be taken before the administrative hearing officer and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper.

Part C. Investigations

§300 Scope of Rules Regarding Investigations

The rules of this part apply only to investigations conducted by the Securities Division. They do not apply to administrative proceedings under the Act.

§301 Nature and Purpose of Investigations

(a) The Commissioner may in his or her discretion make such public or private investigations within or outside the State as he or she deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of the Act or the rules or regulations thereunder or otherwise to aid in the enforcement of the Act. Where, from complaints received from members of the public, communications from Federal or State agencies, examination of filings made with the Division, or otherwise, it appears that there may be violations of the Securities Act, or the rules or regulations thereunder, a preliminary investigation is generally made. Unless otherwise ordered by the Division, all investigations are non-public and the reports thereon are for Division use only.

(b) After investigation or otherwise, the Division may in its discretion take one or more of the following actions: Institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of injunctive proceedings in the courts, and, in the case of a willful violation, criminal prosecution. The Division may also, in an appropriate case, refer the matter to, or grant requests for access to its files made by, domestic and foreign governmental authorities or foreign securities authorities, self-regulatory organizations (such as stock

exchanges or the National Association of Securities Dealers, Inc.), and other persons or entities.

§302 Information Obtained in Investigations

(a) Information or documents obtained by the Division in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public.

(b) The Commissioner may in his discretion and upon a showing that such information is needed, provide nonpublic information in his possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commissioner deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78, et seq.) (the "Exchange Act"), or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Exchange Act), the Commodity Exchange Act (7 U.S.C. 1, et seq.) or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Exchange Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(7) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commissioner's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in the Division's possession in accordance with such other authority or discretion as the Commissioner possesses by statute, rule or regulation; or

(2) The Commissioner's responsibilities under the Freedom of Information Act, 29 Del. C. §10001 et seq.

§303 Rights of Witnesses

(a) Any person compelled to appear, or who appears by request or permission of the Division, in person in any investigative proceeding may be accompanied, represented and advised by counsel, provided, however, that all witnesses shall be sequestered, and unless permitted in the discretion of the Division, no

witness or counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(b) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any investigative proceeding and to have this attorney (1) advise such person before, during and after the conclusion of such examination, (2) question such person briefly at the conclusion of the examination to clarify any of the answers such person has given, and (3) make summary notes during such examination solely for the use of such person.

§304 Subpoenas

(a) For the purpose of any investigation or proceeding under the Act, the Commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems relevant or material to the inquiry. The Commissioner's authority to subpoena witnesses and documents outside the State shall exist to the maximum extent permissible under federal constitutional law.

(b) Subpoenas may be issued to any person and may require that person, among other things, to:

(1) Testify under oath;

(2) Answer written interrogatories under oath;

(3) Produce documents and tangible things; and

(4) Permit inspection and copying of documents.

(c) Content of subpoena. A subpoena shall:

(1) Describe generally the nature of the investigation;

(2) If the subpoena requires testimony under oath, specify the date, time and place for the taking of testimony;

(3) If the subpoena requires answers to written interrogatories, contain a copy of the written interrogatories;

(4) If the subpoena requires the production of tangible things or documents: (a) describe the things and documents to be produced with reasonable specificity, and (b) specify a date, time, and place at which the things and documents are to be produced;

(5) Notify the person to whom the subpoena is directed of the obligation to supplement responses under Rule 306;

(6) Advise the person to whom the subpoena is directed that the person may be represented by counsel; and

(7) Identify a member of the Securities Division who may be contacted in reference to the subpoena.

(d) Subpoenas to corporations and other entities.

(1) A subpoena directed to a corporation, partnership, or other entity that requires testimony under oath shall describe with reasonable particularity the subject matter of the testimony.

(2) An entity that receives a subpoena to answer written interrogatories or to testify under oath shall designate one or more of its officers, agents, employees, or other authorized persons familiar with the subject matter specified in the subpoena to respond to the subpoena on its behalf.

(3) The persons designated by an entity to respond to a subpoena on its behalf shall answer the interrogatories or testify as to all matters known or reasonably available to the entity.

(4) A subpoena directed to an entity that requires testimony under oath or answers to written interrogatories shall advise the entity of its obligations under this regulation.

(e) Service of subpoena.

(1) A subpoena may be served by personal service or by mail.

(2) The person who serves a subpoena shall complete a certificate of service attesting to the method and date of service.

(f) Effect of other proceedings. The pendency or beginning of administrative or judicial proceedings against a person by the Commissioner does not relieve the person of his obligation to respond to a subpoena issued under this regulation.

(g) Refusal to testify or produce documents. (1) No person is excused from attending and testifying or from producing any document or record before the Commissioner, or in obedience to the subpoena of the Commissioner or any officer designated by him or in any proceeding instituted by the Commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person registered under Section 7313 of the Act, the Commissioner may suspend or revoke that registrant's license pursuant to the provisions of Section 7316 of the Act.

(h) Petition to modify or quash subpoena.

(1) A person served with a subpoena under this

regulation may request that the subpoena be modified or quashed.

(2) A petition to modify or quash a subpoena issued under this regulation shall be filed with the administrative hearing officer within ten days of service of the subpoena or by the date specified for compliance with the subpoena, whichever is earlier. The petition shall set forth good cause why the subpoena should be modified or quashed.

(i) Application to Court of Chancery upon refusal to obey subpoena. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Court of Chancery, upon application by the Commissioner, may issue to the person an order requiring him to appear before the Court of Chancery or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the Court may be punished by the court as a contempt of court.

§305 Testimony Under Oath

A witness may be required to provide testimony under oath as part of an investigation under the Act. A witness who provides testimony under oath may be accompanied and represented by counsel as provided for in Rule 303. Testimony shall be recorded by tape recorder, stenographer or other device. The recording of the testimony shall be maintained in the custody of the Division.

§306 Production of Things and Documents

(a) Any person may be required to produce things or documents in response to a subpoena under the Act.

(b) If a person responding to a subpoena for production of things or documents withholds a record or document on the basis of a privilege, the person shall state, with respect to each document:

(1) The name and title of the author of the document;

(2) The names and titles of all persons to whom the document was addressed;

(3) The names and titles of all persons to whom copies of the document were sent;

(4) The date on which the document was written or otherwise produced and the date on which it was mailed, sent, or delivered to its addressee;

(5) The number of pages in the document;

(6) A brief description of the nature or subject matter of the document;

(7) The basis on which the document is being withheld; and

(8) The paragraph number of the subpoena to which the document is responsive.

(c) Obligation to supplement responses. If a person has responded to a subpoena under this regulation and

later discovers or obtains additional documents or things responsive to the subpoena, the person shall supplement the response as soon as reasonably possible.

§307 Written Submissions by Interested Persons

(a) Persons who become involved in an investigation may, on their own initiative, submit a written statement to the Commissioner setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the Division, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a Division recommendation to the Commissioner for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the Securities Commissioner with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the Division, any submissions by interested persons will be considered prior to commencement of any proceeding.

(b) Regardless of any voluntary written submission provided under Rule 307(a), the Commissioner may, pursuant to Section 7319(a) of the Act, require any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to any or all of the facts and circumstances concerning the matter under investigation.

Part D. Securities Registration and Notice Filings

§400 Registration by Coordination

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A person who seeks to register a security by coordination shall file with the Division the following documents and information:

(1) A completed application Form U-1, Uniform Application to Register Securities;

(2) An irrevocable consent appointing the Securities Commissioner agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process;

(3) One copy of the registration statement, as amended, filed with the SEC, which shall include (or which information shall otherwise be provided): a specification of the amount of the securities offered in Delaware; the states in which the offering has been or is

being made; and any adverse order, judgment or decree entered in connection with the offering by any regulatory authority, court or the SEC;

(4) One copy of the prospectus in the latest form on file with the SEC;

(5) The appropriate filing fee as determined under Rule 404; and

(6) Any other document or information requested by the Division.

(c) An application for registration by coordination shall become effective in Delaware simultaneously with the registration statement filed with the SEC provided the following conditions have been met:

(1) All documents and information required by

(d) above have been filed with the Division;

(2) No stop order is in effect and no proceeding is pending under Section 7308 of the Act;

(3) The registration statement has been on file with the Division for at least ten days; and

(4) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for at least two business days and the offering is made within those limitations.

§401 Registration by Qualification

(a) Any security may be registered by qualification. A person who seeks to register a security by qualification shall file with the Division the following documents and information:

(1) A completed application Form U-1, Uniform Application to Register Securities;

(2) An irrevocable consent appointing the Securities Commissioner agent for the service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process;

(3) One copy of an executed registration statement which complies with SEC Form S-1, together with all exhibits, which shall include all information required under Sections 7306(b)(1)-(16) and 7307(b) of the Act.

(4) One copy of the Prospectus which is to be provided to offerees under Section 7306(d) of the Act;

(5) The appropriate filing fee as determined under Rule 404; and

(6) Any other document or information requested by the Division.

(b) Unless otherwise ordered by the Commissioner, the prospectus which is sent or given to each person to whom an offer is made shall contain all the information contained in the registration statement filed with the Division under subsection (a) of this Rule. The prospectus shall be written in plain English and presented in a format that is clear and easy to understand, with

appropriate headings and subheadings.

(c) An application for registration by qualification shall become effective in Delaware when so ordered by the Securities Commissioner provided no order has been issued pursuant to Section 7308 of the Act.

§402 Small Company Offering Registrations

(a) Availability of Small Company Offering Registration ("SCOR").

(1) An issuer may register securities by qualification under Section 7306 of the Act by using the Form U-7 (Small Company Offerings Registration Form) if the conditions set forth in this regulation and in the instructions to Form U-7 are satisfied.

(2) In general, a company may do a SCOR offering if it is relying upon an exemption from registration with the SEC under the Federal Securities Act of 1933 provided by SEC Regulation A (17 C.F.R. §§230.251-263); Rule 504 of SEC Regulation D (17 C.F.R. §230.504); or by Section 3(a)(11) of the Securities Act of 1933 and Rule 147 promulgated thereunder (17 C.F.R. §230.147).

(3) Under SEC Regulation A, the aggregate amount of the offering cannot exceed \$5,000,000.00. Under Rule 504 of SEC Regulation D, the aggregate offering amount cannot be more than \$1,000,000.00. An offering under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147 may be in any amount but, among other requirements, all securities must be offered and sold only to Delaware residents. The company also must be resident and doing business in Delaware and eighty percent of the net proceeds of the offering must be used in the operation of the company's business in Delaware.

(b) Prospectus. A completed Form U-7 that has been declared effective by the Commissioner shall serve as the prospectus for an offering registered under this regulation.

(c) Eligibility of Issuer. To be eligible to register securities under this regulation, the issuer must satisfy the following conditions:

(1) The issuer is a corporation or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing;

(2) The issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§78m, 78o(d);

(3) The issuer is not an investment company registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 to 80a-52;

(4) The issuer is not engaged in and does not

propose to be engaged in petroleum exploration and production, mining, or other extractive industries;

(5) The issuer is not a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and

(6) The issuer is not disqualified under subsection (i) of this regulation.

(d) Minimum price. The offering price for common stock or common ownership interests (hereinafter, collectively referred to as common stock), the exercise price for options, warrants, or rights to common stock, or the conversion price for securities convertible into common stock, must be greater or equal to \$5.00 per share or unit of interest. The issuer must agree with the administrator that it will not split its common stock, or declare a stock dividend for two years after the effective date of the registration if such action has the effect of lowering the price below \$5.00.

(e) Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering in the state are only paid to persons who, if required to be registered or licensed, the issuer believes, and has reason to believe, are appropriately registered or licensed in the state.

(f) Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:

(1) the company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;

(2) the company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

(3) the aggregate amount of all previous sales of securities by the company (exclusive of debt financing

with banks and similar commercial lenders) shall not exceed \$1,000,000.00; and

(4) the amount of the present offering does not exceed \$1,000,000.00.

(g) The offering shall be made in compliance with Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933.

(h) Filing Requirements and Fees. The issuer shall file an executed Form U-1, Form U-2, Form U-2A, Form U-7 with exhibits, and shall include the fee required by Rule 404. In addition, if the offering is made pursuant to Rule 504 of Regulation D, the issuer shall file a copy of its Form D as part of its SCOR application; if the offering is made pursuant to Regulation A, the issuer shall file a copy of its Form 1-A as part of its SCOR application. That filing shall be made with the Commissioner at the same time it is filed with the SEC.

(i) Disqualification. Unless the Commissioner determines that it is not necessary under the circumstances that the disqualification under this section be applied, application for registrations under this regulation shall be denied if the issuer, any of its officers, directors, ten percent or greater stockholders, promoters, or selling agents, or, any officer, director or partner of any selling agent:

(1) has filed an application for registration which is subject to a currently effective stop order entered pursuant to any state or provincial securities laws within ten years prior to the filing of the registration statement;

(2) has been convicted, within ten years prior to the filing of the current application for registration, of any felony or misdemeanor in connection with the offer, purchase, or sale of securities, or of any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) is currently subject to any state or provincial administrative enforcement order or judgment entered by that state's or province's securities administrator within ten years prior to the filing of the current application for registration;

(4) is subject to any state or provincial administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found, and the order or judgment was entered within ten years prior to the filing of the current application for registration;

(5) is subject to any state or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(6) is currently subject to any order, judgment, or

decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state, entered within ten years prior to the filing of the current application for registration; or

(7) has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past ten years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

(j) Waiver of disqualifications. Any of the disqualifications listed in subsection (i) of this Rule may be waived if the Commissioner in the exercise of his discretion should find good cause for such waiver.

§403 Notice Filings for Offerings of Investment Company Securities

(a) Except as provided in subsection (b) hereof, no investment company that is registered under the Investment Company Act of 1940 or that has currently filed a registration statement under the Securities Act of 1933 is required to file with the Commissioner, either prior to the initial offer or after the initial offer in this state of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the SEC or is part of an amendment to such federal registration statement; provided, however, that such an investment company shall, prior to the initial offer of such a covered security, file with the Commissioner a Form NF for such security, together with a consent to service of process signed by the issuer and a filing fee equal to one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware in the initial offering, but not less than \$200.00 or more than \$1,000.00.

(b) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the Commissioner and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment of such federal registration statement.

(c) An investment company offering in Delaware will be treated as a separate security where the offering involves a fund with a share price, asset value, class of shareholders, or set of assets that differs from those of other securities for which other notice filings have been made. Generally, this means that separate investment company "series" or "portfolios" will be treated as separate securities for purposes of notice filings under this section.

(d) The initial filing of a Form NF by an investment company pursuant to subsection (a) hereof is effective for one year. The investment company must renew its notice filing (or notice filings, where multiple filings were made for multiple series or portfolios) annually by filing with the Commissioner a Form NF and a filing fee in accordance with subsection (a) hereof.

§404 Fees

(a) Fees for registering securities by coordination or by qualification shall be one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware during the initial registration period, but not less than \$200.00 or more than \$1,000.00.

(b) The amount of securities to be registered in Delaware shall be specifically stated in the Form U-1. However, if the applicant pays the maximum filing fee of \$1,000.00, the amount to be registered in Delaware may be stated in the Form U-1 as "indefinite" or "unlimited."

(c) All filing fees are due at the time of the initial application. No application fee is refundable even though an application may be withdrawn or denied.

§405 Quarterly Reports on Registered Securities

Quarterly reports shall be filed by a person who filed the registration statement as long as the registration is effective in order to keep reasonably current all information contained in the registration statement and to disclose the progress of the offering.

§406 Filing of Sales Literature

Any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser must be filed with the Securities Commissioner unless the security or transaction is exempted by Section 7309 of the Act or the security is a federal covered security under Section 7309A of the Act.

§407 Notice Filings for SEC Regulation D Filings

(a) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 shall file with the Commissioner a notice on SEC

Form D and a consent to service of process on a Form U-2, Uniform Consent to Service of Process, no later than 15 days after the first sale of such federal covered security in this state.

(b) For purposes of this section, "SEC Form D" is defined as the document adopted by the SEC and in effect on September 1, 1996 (and as may be amended by the SEC from time to time), entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption", including Part E and the Appendix.

Part E. Exemptions from Registration

§500 Exemptions for Federal Covered Securities

Federal covered securities, as defined in Section 7302(a)(17) of the Act, are exempt from registration under Section 7304 of the Act. Notice filings are required for registered investment company offerings under Rule 403; for limited offerings of securities under Rule 502; and for offers or sales of securities in Delaware pursuant to SEC Rule 506, 17 C.F.R. §230.506.

§501 Designated Exchange Exemptions

Any security listed or approved for listing upon notice of issuance on the Boston Stock Exchange or the Chicago Board Options Exchange is exempted from Sections 7304, 7309A and 7312 of the Act pursuant to Section 7309(a)(8) of the Act.

§502 Limited Offering Exemptions

(a) Any offer or sale of securities made in compliance with SEC Rule 505, 17 C.F.R. §230.505 (Exemption for Limited Offers and Sales of Securities Not Exceeding \$5,000,000) of Regulation D under the Securities Act of 1933 and the provisions of this Rule is exempt from registration under the Act.

(b) To qualify for the limited offering exemption, the following conditions and limitations must be met:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered under the Act. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered under the Act.

(2) The limited offering exemption is not available if the issuer, any of its directors, officers, general partners, trustees, beneficial owners of ten percent or more of a class of its equity interests, promoters currently connected with it in any capacity, or any person

(other than a broker-dealer currently registered under the Act) that has been or will be paid or given, directly or indirectly, a commission or similar remuneration for the solicitation of a prospective purchaser or in connection with sales of securities under this exemption:

(i) within ten years before the first sale of securities in an offering under this exemption has filed a registration statement or application for exemption from registration that is currently subject to a stop order under any state's securities laws;

(ii) within ten years before the first sale of securities in an offering under this exemption has been convicted of or has pleaded *nolo contendere* to a felony or misdemeanor in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or with a state securities administrator, or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;

(iii) is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years before the first sale of securities in an offering under this exemption permanently restraining or enjoining, that person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or a state securities administrator;

(iv) is the subject of any order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(v) is subject to a state administrative order entered by a state securities administrator in which fraud or deceit was found, if the final order was entered within ten years before the first sale of securities in an offering under this exemption.

(3) Not later than 15 days after the first sale of securities under this regulation, the issuer shall file with the Commissioner a manually signed notice on a completed SEC Form D (Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption), as filed with the SEC and as that form may be amended from time to time. That filing shall constitute an affirmation by the issuer that it has complied with SEC Rule 505 and that upon written request the issuer shall furnish to the Commissioner any and all information furnished by the issuer or its agents to the offerees.

(4) In all sales to nonaccredited investors in Delaware, one of the following conditions must be

satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs.

(ii) The purchaser either alone or with his or her purchaser representative(s) has such knowledge and experience in financial and business matters that he or she is or they are capable of evaluating the merits and risks of the prospective investment.

(c) Neither this regulation nor the Act provide an exemption from the provisions of Section 7303 of the Act.

(d) The burden of proving an exemption under this regulation is on the person claiming the exemption.

(e) The Commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

§503 Accredited Investor Exemption

Any offer or sale of a security by an issuer in a transaction that meets the following requirements of this rule is exempted from the securities registration requirements of the Act.

(a) Sales of securities shall be made only to persons who are or the issuer reasonably believes are "accredited investors" as that term is defined in SEC Rule 501(a) of Regulation D.

(b) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the securities registration requirements of the Act or to an accredited investor pursuant to another applicable exemption under the Act.

(d) Disqualification.

(1) This exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner,

director or officer of such underwriter:

(i) within the last ten years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

(ii) within the last ten years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last ten years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(e) General Announcement.

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in 25 words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

1. sales will only be made to accredited investors;

2. no money or other consideration is being solicited or will be accepted by way of this general announcement; and

3. the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

(f) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (f), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(g) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably

believes that the prospective purchaser to be solicited is an accredited investor.

(h) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(i) The issuer must file or cause to be filed with the Commissioner a notice of exemption in the form prescribed by the Commissioner and a copy of any general announcement, within 15 days after the first sale in this state.

§504 World Class Foreign Issuer Exemptions

Any security that meets all of the following conditions shall be exempt from the securities registration requirements of the Act:

(a) (1) Equity securities, except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

(2) Units consisting of equity securities permitted under subparagraph (1) and warrants to purchase the same equity security being offered in the unit;

(3) Non-convertible debt securities rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services of Canadian Bond Rating Services or such other rating organization the Commissioner by rule or order may designate. For purpose of this subparagraph (2), the term "non-convertible debt securities" means securities that cannot be converted for at least one year from the date of issuance and then, only into equity shares of the issuer or its parent; or

(4) American Depository Receipts representing securities described in subparagraphs (1) and (2) above;

(b) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico;

(c) The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this rule, has been a going concern engaged in continuous business operations for the immediate past five years and during that period has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this paragraph, the operating history of any predecessor that represented more than 50 percent of the value of the assets of the issuer that otherwise would have met the conditions of this rule may be used toward the five year requirement;

(d) The issuer, at the time an offer or sale is made

in reliance on the securities exemption embodied in this rule, has a public float of US \$1 billion or more. For purposes of this paragraph:

(1) The term "public float" means the market value of all outstanding equity shares owned by non-affiliates;

(2) The term "equity shares" means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

(3) An "affiliate" is anyone who owns beneficially, directly or indirectly, or exercises control or direction over, more than ten percent of the outstanding equity shares of such person;

(e) The market value of the issuer's equity shares, at the time an offer or sale is made in reliance on the securities exemption embodied in this rule, is US \$3 billion or more. For purposes of this paragraph, the term "equity shares" means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

(f) The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this rule, has a class of equity securities listed for trading on or through the facilities of a foreign securities market included in SEC Rule 902(a)(1) or designated by the SEC under SEC Rule 902(a)(2).

§505 Offers of Securities Through the Internet

(a) A communication that is placed on the Internet by or on behalf of an issuer that is designed to raise capital and/or to distribute information on available products or services and that is directed generally to anyone having access to the Internet, whether through postings on "Bulletin Boards," displays on "Home Pages," or otherwise (an "Internet Communication") shall not constitute an offer within the meaning of Section 7302(11)(a) of the Act, and shall therefore constitute an exempt transaction under the Act, provided that :

(1) The Internet Communication indicates by a prominent legend at the beginning of the Internet Communication that the securities are not being offered to any person in Delaware;

(2) An offer of the issuer's securities is not otherwise directed to any person in Delaware by, or on behalf of, the issuer; and

(3) Unless otherwise exempt under the Act, no sale of the issuer's securities is made in Delaware, as a result of the Internet Communication.

(b) Reliance on the exemption provided by this rule does not preclude an issuer from relying on other available exemptions for offers provided under the Act.

(c) The term "Internet" for the purposes of this rule includes the Internet, the World Wide Web and similar

proprietary and common carrier electronic systems.

§506 Claim of Exemption by Persons Organized and Operated Not for Private Profit but Exclusively for Religious Purposes

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Act provided as follows:

(a) The issuer is (1) a religious organization affiliated with, associated with, or authorized by a religious denomination or denominations; or (2) a religious organization that consists of or acts on behalf of individual or local churches or local or regional church organizations.

(b) The issuer is an organization that qualifies and operates under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(c) The issuer, alone or through its predecessor organization:

(1) Has been in existence for over ten years;

(2) Has received audited financial statements with an unqualified opinion from a certified public accountant for its most recent three fiscal years; and

(3) Has experienced no defaults on any outstanding obligations to investors for the period that it has issued securities.

(d) The issuer's:

(1) Cash, cash equivalents and readily marketable assets have had a market value of at least five percent of the principal balance of its total outstanding debt securities for the last three fiscal years or 36 months prior to the issue; or

(2) Net worth, as that term is used in Generally Accepted Accounting Principles, has been at least equal to three percent of its total assets for the last three fiscal years or 36 months prior to the issue.

(e) Prior to any sale of the securities, the issuer provides an investor with a disclosure document reflecting financial and other information concerning the issuer and relevant risks involved in the investment.

(f) The issuer makes loans to or otherwise utilizes the net proceeds of the offering in support of:

(1) Local churches, or other religious organizations affiliated or associated with such churches; or

(2) Related religious organizations.

(g) The issuer:

(1) Has a net worth, as that term is used in Generally Accepted Accounting Principles, of \$5,000,000.00 or more which includes all church owned property; or

(2) Makes loans, secured by either real property

or by a pledge of readily marketable securities, at all times, having equal or greater value than the loan amount, to finance the purchase, construction or improvement of church related property, buildings, related capital expenditures, or to refinance existing debt to be secured by such property, or for other operating expenses of the entities described in (f) above, provided the obligation is secured by such property.

§507 Claim of Exemption for Nine-Month Commercial Paper

Section 7309(a)(10) of the Act exempts from registration any commercial paper which arises out of a current transaction (or the proceeds of which have been or are to be used for current transactions), and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal. This exemption is a narrow and specialized one. It applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper issued to facilitate well recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve Banks. The exemption is not available for the unregistered public offering of promissory or collateral trust notes or similar evidences of debt of any issuer directly to public investors through solicitation or otherwise. Pursuant to Section 7304 of the Act, any such offering must be registered or exempt from registration under an exemption other than that provided by Section 7309(a)(10) of the Act.

§508 Recognized Securities Manuals

(a) Each of the following manuals shall be deemed a "Recognized Securities Manual" for the purposes of 6 Del. C. §7309(b)(2):

- (1) Moody's Industrial Manual
- (2) Moody's Transportation Manual
- (3) Moody's Public Utility Manual
- (4) Moody's Bank and Finance Manual
- (5) Standard & Poor's Standard Corporation Descriptions
- (6) Fitch's Individual Stock Bulletin
- (7) Moody's OTC Industrial Manual

(b) The term "manual" for purposes of this rule includes all commonly recognized formats of publications, including CD-ROM and electronic dissemination over the Internet.

§509 Unsolicited Sales

Acknowledgment by letter from a customer that a sale was unsolicited is a prerequisite to the application of the exemption set forth at 6 Del. C. §7309(b)(3).

§510 Transactional Exemption for Certain Institutional Buyers

(a) Pursuant to Section 7309(b)(8) of the Act, offers or sales to institutional buyers are exempted from Sections 7304, 7309A and 7312 of the Act. For purposes of this exemption, "institutional buyers" include the following:

(1) an "accredited investor" as defined in SEC Rule 501(a)(1)-(4), (7) and (8), 17 C.F.R. §230.501(a)(1)-(4), (7), (8), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(5)-(6);

(2) any "qualified institutional buyer" as that term is defined in SEC Rule 144A(a)(1), 17 C.F.R. §230.144A(a)(1); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having a net worth of not less than \$5 million or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(b) For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

(c) The offer or sale of securities is not exempt under Section 7309(b)(8) or this rule if the institutional buyer is in fact acting only as an agent for another purchaser that is not an institutional buyer or financial institution listed in Section 7309(b)(8).

§511 Confirmation of Availability of Exemption

No oral communication with the Securities Division may be relied upon as proving the availability of any exemption or any exclusion from a definition. Such confirmation may only be obtained by a written opinion from the Securities Division. A written opinion may be obtained by submitting the fee set forth in Rule 102(h) along with a full description of the subject matter, copies of any relevant documents and the identity of the section or sections of the Delaware Securities Act on which the exemption or exclusion is based.

Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

§600 Registration of Broker-Dealers

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer

Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) Any applicant for a broker-dealer license must also file a Form U-2 (Uniform Consent to Service of Process) with the Commissioner.

(e) A broker-dealer registered with the Commissioner shall register at least one agent with the Commissioner.

(f) Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

§601 Registration of Broker-Dealer Agents

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) Any applicant for a broker-dealer agent license must also file a Form U-2 (Uniform Consent to Service of Process) with the Commissioner and successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon

good cause shown.

(e) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

§602 Registration of Issuer Agents

(a) A person applying for a license as an issuer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an issuer agent shall file his or her application and the fee required by Section 7314 of the Act with the Commissioner, together with such further information as the Commissioner may reasonably require.

(c) Any applicant for an issuer agent license must also file a Form U-2 (Uniform Consent to Service of Process) with the Commissioner and successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

§603 Continuing Obligation of Registrants to Keep Information Current

(a) Persons registering as broker-dealers, broker-dealer agents or issuer agents are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their application for registration.

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

§604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers

(a) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 C.F.R. §240.15c3-1), 15c3-2 (17 C.F.R. §240.15c3-2), and 15c3-3 (17 C.F.R. §240.15c3-3).

(b) Each broker-dealer registered or to be registered under the Delaware Securities Act shall comply with SEC Rule 17a-11 (17 C.F.R. §240.17a-11) and shall file with the Commissioner, upon request, copies of notices and

reports required under SEC Rules 17a-5(17 C.F.R. §240.17a-5), 17a-10 (17 C.F.R. §240.17a-10), and 17a-11 (17 C.F.R. §240.17a-11).

(c) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§605 Bonding Requirements of Intrastate Broker-Dealers

Every broker-dealer registered or required to be registered under the Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange, and who is not registered under Section 15 of the Securities Exchange Act of 1934 shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

§606 Recordkeeping Requirements of Broker-Dealers

(a) Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain, and preserve books and records in compliance with SEC Rules 17a-3 (17 C.F.R. §240.17a-3), 17a-4 (17 C.F.R. §240.17a-4), 15c2-6 (17 C.F.R. §240.15c2-6) and 15c2-11 (17 C.F.R. §240.15c2-11).

(b) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§607 Use of the Internet for General Dissemination of Information on Products and Services

(a) Broker-dealers and broker-dealer agents who use the Internet to distribute information on available products and services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) the broker-dealer or agent in question may only transact business in Delaware if first registered, excluded or exempted from state broker-dealer or agent

registration requirements, as the case may be; and

(ii) follow-up, individual responses to persons in Delaware by such broker-dealer, or agent that involve either the effecting or attempting to effect transactions in securities, will not be made absent compliance with state broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitations, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Delaware, said broker-dealer or agent is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer or agent from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities in Delaware over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of an agent:

(i) the affiliation with the broker-dealer is prominently disclosed within the Internet Communication;

(ii) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

(iii) the broker-dealer or investment adviser with whom the agent is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the agent acts within the scope of the authority granted by the broker-dealer;

(b) The position expressed in this rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any broker-dealer and agent engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

§608 Registration Exemption for Certain Canadian Broker-Dealers

(a) A Canadian broker-dealer which meets the conditions of this rule as set

forth below shall be exempt from the registration requirement of Section 7313 of the Act.

(b) To be eligible for this exemption, the broker-

dealer must be resident in Canada, have no office or other physical presence in Delaware, and comply with the following conditions:

(1) Only effects or attempts to effect transactions in securities with, or for, one or more of the following;

(i) A person from Canada who is temporarily present in Delaware, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered Delaware;

(ii) A person from Canada who is present in Delaware, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; or

(iii) A "U.S. institutional investor" or a "major U.S. institutional investor" to the extent permitted by SEC Reg. §240.15a-6 (17 CFR §240.15a-6); and

(2) Is registered in its home province or territory, and a member in good standing of a self-regulatory organization or stock exchange in Canada;

(3) Files with the Securities Commissioner a notice in the form of the current application required by the jurisdiction in which its head office is located;

(4) Files with the Securities Commissioner a consent to service of process in a form which complies with the requirements of Section 7327 of the Act.

(5) Discloses to its clients in Delaware that it is not subject to the full regulatory requirements of the Act; and

(6) Is not in violation of Sections 7303 or 7316 of the Act or any rules promulgated thereunder.

(c) Exempt transactions. Offers or sales of any security effected by a broker-dealer who is exempt from registration under this Regulation are exempt from the registration requirements of Section 7304 of the Act.

§609 Prohibited Practices

(a) Each broker-dealer and broker-dealer agent registered in Delaware is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices described below in this rule, among others, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by the Act.

(b) Broker-Dealers. For the purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer shall include, but not be limited to, the following conduct:

(1) Engaging in an unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or failing to notify customers of their right to receive possession of any certificate of ownership

to which they are entitled;

(2) Inducing trading in a customer's account that is excessive in size or frequency in view of the customer's investment objective, level of sophistication in investments, and financial situation and needs;

(3) Recommending a transaction without reasonable grounds to believe that such transaction is suitable for the customer in light of the customer's investment objective, level of sophistication in investments, financial situation and needs, and any other information material to the investment;

(4) Executing a transaction on behalf of a customer without prior authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate and identify customer's free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by SEC regulations;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit (commissions or profits equal to 10% or more of the price of a security are presumed to be unreasonable);

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which, together with the preliminary prospectus, includes all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Charging any fee for which no notice is given to the customer, and consent obtained, prior to the event incurring the fee;

(13) Offering to buy from or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of

such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative or deceptive device, practice, plan, program, design or contrivance, that may include but not be limited to:

(i) Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(iii) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona-fide bid for, or offer of, such security;

(18) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on

conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, and, if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, including:

(i) with respect to a security recommended by the broker-dealer, material information that is reasonably available; and

(ii) a written response to any written request or complaint;

(22) Making a recommendation that one customer buy a particular security and that another customer sell that security, where the broker-dealer acts as a principal and such recommendations are made within a reasonably contemporaneous time period, unless individual suitability considerations or preferences justify the different recommendations;

(23) Where the broker-dealer holds itself out as a market maker in a particular security, or publicly quotes bid prices in a particular security, failing to buy that security from a customer promptly upon the customer's request to sell;

(24) Recommending a security to its customers without conducting a reasonable inquiry into the risks of that investment or communicating those risks to its agents and its customers in a reasonably detailed manner and with such emphasis as is necessary to make the disclosure meaningful;

(25) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(26) Falsifying any record or document or failing to create or maintain any required record or documents;

(27) Violating any ethical standard in the

conduct rules promulgated by the National Association of Securities Dealers; or

(28) Aiding or abetting any of the conduct listed above.

(c) **Broker-Dealer Agents and Issuer Agents.** For the purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer agent or an issuer agent shall include, but not be limited to, the following conduct:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

(6) Where a recommendation is made that an unsophisticated customer purchase an over-the-counter security that (A) trades sporadically or in small volume, and (B) is not traded on any United States securities exchange (excluding the Spokane Exchange) or on the NASDAQ National Market System, failing to inform the customer that he may not be able to find a buyer if the customer would subsequently want to sell the security;

(7) Where a recommendation is made to purchase an over-the-counter security in which the asked price is greater than the bid by 25 percent or more, failing to inform the customer of the bid and the asked prices and of the significance of the spread between them should the customer wish to resell the security;

(8) Using excessively aggressive or high pressure sales tactics, such as repeatedly telephoning and offering securities to individuals who have expressed disinterest and have requested that the calls cease, or using profane or abusive language, or calling prospective customers at home at an unreasonable hour at night or in the morning;

(9) Conducting or facilitating securities transactions outside the scope of the agent's relationship with his broker-dealer employer unless he has provided prompt written notice to his employer;

(10) Acting or registering as an agent of more than one broker-dealer without giving written notification to and receiving written permission from all such broker-dealers; or

(11) Holding himself out as an objective investment adviser or financial consultant without fully disclosing his financial interest in a recommended securities transaction at the time the recommendation is made;

(12) Engaging in any of the conduct specified in subparagraph (b) above; or

(13) Aiding or abetting any of the conduct listed above.

(d) **Prohibited practices in connection with investment company shares.** For purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer, broker-dealer agent or issuer agent shall include, but not be limited to, the following conduct:

(1) In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares a front-end loan, a contingent deferred sales load, a SEC Rule 12B-1 fee or a service fee which exceeds .25 percent of average net fund assets per year, or in the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses;

(3) In connection with the offer or sale of investment company shares, failing to disclose to a customer any available sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint or the availability of a letter of intent feature which will reduce the sales charges to the customer;

(4) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;

(5) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different

investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;

(6) In connection with the offer or sale of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;

(7) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(8) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

(9) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;

(10) In connection with the offer or sale of

investment company shares, stating or implying to a customer, either orally or in writing, (i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or (ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(11) In connection with the offer or sale of investment company shares, making representations to a customer, either orally or in writing, that the broker-dealer or agent knows or has reason to know are based in whole or in part on information contained in dealer-use-only material which has not been approved for public distribution; or

(12) Aiding or abetting any of the conduct listed above.

(13) In connection with the offer or sale of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subparagraphs of this rule.

(e) The conduct set forth above is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration.

Part G. Investment Advisers and Investment Adviser Representatives

§700 Registration of Investment Advisors

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a form U-2 (Uniform Consent to Service of Process); (v) a list of all investment adviser representatives employed by the investment adviser; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives

employed by the investment adviser.

(d) At least one investment adviser representative must be registered with any investment adviser to obtain or to maintain its license as an investment adviser.

§701 Registration of Investment Adviser Representatives

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii) a certification that the applicant has successfully completed the Uniform Investment Adviser Law Examination (Series 65 or 66) administered by the NASD; (iv) a Form U-2 (Uniform Consent to Service of Process); and (v) such other information as the Commissioner may reasonably require. The Commissioner may waive the exam requirement upon good cause shown.

(c) Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act.

§702 Notice Filing Requirements for Federal Covered Advisers

(a) The notice filing for a federal covered adviser pursuant to 6 Del. C. §7314 shall be filed with the Commissioner on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. §279)) and shall include: (i) the consent to service of process required by 6 Del. C. §7327, and (ii) the fee required by Section 7314 of the Act.

(b) The renewal of the notice filing for a federal covered adviser pursuant to Section 7314(b) of the Act shall be filed upon Form ADV-S (or Schedule 1, if adopted by the SEC) and shall contain the fee required by Section 7314(c) of the Act.

§703 Continuing Obligation of Registrants to Keep Information Correct

(a) Persons registering as investment advisers or investment adviser representatives are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their applications for registration.

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the

application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

§704 Minimum Financial Requirements for Investment Advisers

(a) All investment advisers registered or required to be registered under the Act shall maintain at all times, regardless of any bond permitted under this Rule, a minimum net worth of \$1.00. The amount of required minimum net worth for certain investment advisers shall be increased subject to subparagraphs (1) and (2) below. "Assets under management" for purposes of this rule shall mean the assets under management as disclosed on the adviser's current Form ADV or any schedule or supplement thereto filed with the Commissioner.

(1) An investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.00 or one percent of such adviser's assets under management, whichever is greater. Such investment adviser who is registered or required to be registered under the Act and has custody of client funds or securities and fails to meet the foregoing minimum net worth standard shall supplement the bond required in Rule 705 by increasing the bond value by the amount of net worth deficiency, rounded up to the nearest \$5,000.00.

(2) An investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.00 or one-fifth of one percent of such adviser's assets under management, whichever is greater, unless such adviser posts a bond pursuant to Rule 705.

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall, by the close of business on the next business day, notify the Commissioner if such investment adviser's total net worth falls below the minimum required. After transmitting such notice, each investment adviser shall, by the close of business on the next business day, file a report with the Commissioner of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds, securities or assets which are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth"

shall mean the excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, any asset of intangible nature, home, home furnishings, automobile(s), any personal item not readily marketable (in the case of an individual), advances or loans to stockholders and officers (in the case of a corporation), and advances or loans to partners (in the case of a partnership). For purposes of this Rule, the term "net capital" in Section 222(c) of the Investment Advisers Act of 1940 shall have the same meaning as "net worth" as defined in this subsection.

(d) The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

§705 Bonding Requirements of Certain Investment Advisers

(a) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the Commissioner and shall be subject to the claims of all clients of the investment adviser regardless of the clients' state of residence. "Assets under management" for purposes of this rule shall mean the assets under management as disclosed on the adviser's current Form ADV or any schedule or supplement thereto filed with the Commissioner.

(1) Every investment adviser registered or required to be registered under the Act having custody of client funds or securities shall be bonded in an amount equal to one percent of such adviser's assets under management, rounded up to the nearest \$5000.00, up to a maximum bond of \$100,000.00, exclusive of any supplemental bond required by Rule 704(d)(1)(a)(1). If an investment adviser having custody of client funds or securities fails to meet the minimum net worth requirement of Rule 704(a)(1), the adviser shall supplement the required bond pursuant to Rule 704(a)(1).

(2) Every investment adviser registered or required to be registered under the Act having discretionary authority over client funds or securities but not having custody of client funds or securities that fails to

meet the net worth requirements of Rule 704(a)(2) shall be bonded in an amount equal to the adviser's required net worth as determined under 704(a)(2), rounded up to the nearest \$5000.00.

(b) An investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of subsection (a) of this section, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

§706 Recordkeeping Requirements of Investment Advisers

(a) Every investment adviser registered or required to be registered under this Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) Those books and records required to be maintained and preserved in compliance with Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)), notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(2) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 202(d)-1.

(3) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.

(4) A copy in writing of each agreement entered into by the investment adviser with any client.

(5) A file containing a copy of each record required by Rule 204-2(11) of the Investment Advisers Act of 1940 including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser).

(6) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 706(b)(1) and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(7) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940, notwithstanding the

fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(8) All records required by Rule 204-2(16) of the Investment Advisers Act of 1940 including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser).

(9) A file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.

(10) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(11) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(12) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(b) (1) Books and records required to be made under the provisions of paragraph (a)(1) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(2) Books and records required to be made under the provisions of paragraphs (a)(2)-(12), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(3) Each investment adviser representative who is registered or required to be registered in this state and who has a business location in this state shall maintain at such business location (A) the records or copies required under the provisions of paragraphs(a)(3), (a)(7)-(10), (a)(14)-(15), (b), and (c), inclusive, of Rule 204-2 of the Investment Advisers Act of 1940; (B) the records or copies required under the provisions of paragraphs (a)(2)-(11), inclusive, of this Rule related to customers or clients

for whom the investment adviser representative provides or has provided investment advisory services; and (C) the records or copies required under the provision of paragraph (a)(11) and (a)(16) of Rule 204-2 of the Investment Advisers Act of 1940 which records or related records identify the name of the investment adviser representative or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsections (d) and (e) of Rule 204-2 of the Investment Advisers Act of 1940. The investment adviser shall be responsible for ensuring compliance with the provisions of this subsection.

(c) To the extent that the SEC promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Commissioner for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements.

§707 Use of the Internet for General Dissemination of Information on Products and Services

(a) Investment advisers and investment adviser representatives who use the Internet to distribute information on available products and services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The investment adviser or representative in question may only transact business in this state if first registered, excluded or exempted from state investment adviser or representative registration requirement, as the case may be; and

(ii) follow-up individualized responses to persons in Delaware by such investment adviser or representative that involve the rendering of personalized investment advice for compensation will not be made absent compliance with state investment adviser or representative registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a

mechanism, including and without limitation, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said investment adviser or representative is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered investment adviser or representative from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve the rendering of personalized advice for compensation in Delaware over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a representative:

(i) the affiliation with the investment adviser is prominently disclosed within the Internet Communication;

(ii) the investment adviser with whom the representative is associated retains responsibility for reviewing and approving the content of any Internet Communication by the representative;

(iii) the investment adviser with whom the representative is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the representative acts within the scope of the authority granted by the investment adviser;

(b) The position expressed in this rule extends to state investment adviser and representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any investment adviser and representative engaged in business in Delaware that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended.

§708 Custody of Client Funds or Securities

It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

(a) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody;

(b) The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place reasonably free from risk of

destruction or other loss;

(c) All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients’ funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client’s beneficial interest in the account;

(d) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

(e) At least once every 3 months, the investment adviser sends to each client an itemized statement showing the client’s funds and securities in the investment adviser’s custody at the end of the period, and all debits, credits and transactions in the client’s account during that period; and

(f) At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the Commissioner within 30 days after each examination.

§709 Prohibited Practices

(a) A person who is an investment adviser, a federal covered adviser, or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the client. While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, no investment adviser, federal covered adviser or representative shall engage in any unethical business practice including but not limited to the following:

(1) Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable

inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security that shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the client's financial resources and investment objectives and the character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(6) Borrowing money or securities from a client, unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client, unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing the fact; provided, however, that this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:

(i) Compensation arrangements connected

with advisory services which are in addition to compensation from such clients for such services; and

(ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice to be rendered.

(13) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client, unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940

(18) Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Delaware Securities Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

(19) To include in an advisory contract any condition, stipulation, or provision binding any person to waive compliance with any provision of the Delaware Securities Act, any rule promulgated thereunder, the Investment Advisers Act of 1940, or any rule promulgated thereunder, or to engage in any other practice that would violate Section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of

business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

(21) Engaging in any conduct, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Delaware Securities Act or any rule thereunder.

(22) Aiding or abetting any of the conduct listed above.

(b) The conduct set forth in subparagraph (a) of this Rule is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration. The federal statutory and regulatory provisions referenced herein shall apply to all investment adviser representatives and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

		601, 602
14(a)(A) Registration of investment advisers	Revised	New Rules 700, 701
14(a)(2) Current information	Revised	New Rule 603
14(B) Examination	Repealed	New Rules 601, 602, 701
14(d) Net capital and aggregate indebtedness	Repealed	New Rule 604
14(e) Surety bonds	Repealed	New Rule 605.
14(f) Registration under Section 7314(f)	Repealed	
14(f)(A) Registration of applicants for Membership in NYSE, ASE or in NASD	Repealed	
15(a)(A) Records of broker-dealers	Repealed	New Rule 606
15(a)(B) Records of broker-dealers	Repealed	New Rule 606
15(b) Financial reports required of broker-dealers	Repealed	New Rule 605
18(a) Meaning of regulations under Section 7318(a)	Repealed	
21 Escrow requirements	Repealed	
25(c) Publication of rules	Repealed	New Rule 102(g)
26(a) Central Registration Depository System - Broker-dealer and agent applicants	Repealed	New Rules 600, 601, 602
26(b) Administrative files	Repealed	New Rule 102(g)
73(l)(1) Hearing practices and procedures	Repealed	New Rules 200-272

CROSS-REFERENCE TO EXISTING REGULATIONS

Cross-Reference to Existing Rules and Regulations

Existing Rule	Proposed
5 Registration by Coordination	Repealed New Rule 400
5(a) Registration of Regulation A offerings	Repealed New Rule 402
5(c)(2) Time for Filing	Repealed New Rule 400
5(c)(2)(A) Filing date	Repealed
6 Registration by Qualification	Repealed New Rule 401
6(A) Prospectus	Repealed New Rule 401
6(b)(17) Additional information	Repealed New Rule 401
6(e) Fees for registration by qualification	Revised New Rule 404
6(e)(A) Requests for rulings	Revised New Rule 102(h)
7(c) Omissions	Repealed
7(e) Reports during effectiveness	Repealed
7(f) Investment companies' filings	Repealed New Rule 403
7(g) Post-registration reports	Repealed New Rule 405
8 Stop orders	Repealed New Rules 260, 264, 265
9(a)(8) Exchange - Listing	Revised New Rule 501
9(a)(13) NASDAQ listings	Repealed
9(a)(13)(A) NASDAQ/National Market System exemption	Repealed New Rule 500
9(b)(2)(i) Recognized securities manuals	Revised New Rule 508
9(b)(2)(ii) Removal of exemptions	Repealed
9(b)(3) Unsolicited sales	Renumbered New Rule 509
9(b)(9)(I) Private offering exemptions	Repealed New Rule 502
9(b)(9)(II) Regulation D offerings	Repealed New Rule 500
9(d) Exemption confirmation	Revised New Rule 51012
Sales literature	Repealed New Rule 406
14(a) Application for registration as A broker-dealer or an agent	Revised New Rules 600,

DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT & TRAINING GOVERNOR'S ADVISORY COUNCIL ON APPRENTICESHIP AND TRAINING

Statutory Authority: 19 Delaware Code,
Section 202 (a) (19 Del.C. §202(a))

Notice of Proposed Rule Changes:

Summary:

The Governor's Council on Apprenticeship and Training proposes to recommend rule changes at its regular meeting on March 10, 1998 at Buena Vista Conference Center 661 South Dupont Highway, New Castle, DE 19720. Changes are proposed to certain definitions in Sec. 106.2 including Administrator, Apprentice, Full time, Apprenticeship Standards, Council, Delaware resident contractor, On-site visit, Registrant or sponsor, and Registration Supervisory inspection. In addition, changes are proposed to Sec. 106.3, 106.5, 106.6, 106.7

Comments:

Copies of the proposed rules are published in the Delaware Register of Regulation and are on file at the Department of Labor, Division of Employment and

Training, 4425 N. Market Street, Wilmington, DE 19802 for inspection during regular business hours. Copies are available upon request without charge. Interested persons may submit comments in writing to the Governor's Advisory Council on Apprenticeship and Training c/o Walt Purzycki at the Department of Labor, Division of Employment and Training.

Public Hearing:

A public hearing on the changes will be held during the regular meeting of the Council at 10:00 a.m. on March 10, 1998 at Buena Vista Conference Center, 661 South Dupont Highway, New Castle, DE where interested persons can present their views.

APPRENTICESHIP PROGRAMS
REGULATIONS AND STANDARDS
OF DELAWARE DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT AND TRAINING
OFFICE OF APPRENTICESHIP AND TRAINING
In cooperation with:
U.S. Department of Labor
Bureau of Apprenticeship & Training

INDEX

SECTION NUMBER	SECTION	PAGE
106.1	Purpose and Scope	1
	Declaration of Policy	2
106.2	Definitions	3
106.3	Eligibility and Procedure for State Registration	8
106.4	Criteria For Apprenticeable Occupations	12
106.5	Standards of Apprenticeship	13
106.6	Apprenticeship Agreement	23
106.7	Deregistration of State Registered Program	25
106.8	Complaints	30
106.9	Hearing	30
106.10	Reinstatement of Program Registration	32
106.11	Program Registration Denial	33
106.12	Amendment to the Regulations In This Part	

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

PURPOSE AND SCOPE

(A) Section 204, Chapter 2, Title 19, Delaware Code authorizes and directs the Department of Labor to

formulate regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

(B) The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

(C) These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor
Office of Labor Law Enforcement
4425 North Market Street
Wilmington, DE 19802
(302) 761-8200

DECLARATION OF POLICY

It is declared to be the policy of this State to:

(A) encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State agencies and in cooperation with other states and the federal government;

(B) provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

(C) aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

(D) contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

SEC. 106.2 DEFINITIONS

As used in this part:

(A) "ADMINISTRATOR" refers to the Administrator of the Apprenticeship and Training Section for the State Department of Labor.

"ADMINISTRATOR" refers to the Administrator of the Office of Apprenticeship and Training for the State Department of Labor.

(B) "AGREEMENT" refers to a written agreement between an Apprentice and either his/her employer or an Apprenticeship Committee acting as agent for the

PROPOSED REGULATIONS

Employer which contains the terms and conditions of the employment and training of the Apprentice.

(C) "APPRENTICE" refers to a person at least sixteen years of age who is engaged "FULL TIME" in learning a recognized skilled trade through actual work experience under the supervision of Journeypersons. This person must have entered into a written Apprenticeship Agreement with a registered apprenticeship Sponsor. The training must be supplemented with properly coordinated studies of related technical instruction.

"FULL TIME" refers to a position which is employed a minimum of forty (40) hours per week, eight (8) hours per day in the classifications as stated in the Apprenticeship Agreement under which the Apprentice is Registered. At no time shall the Apprentice be employed at a job classification other than those to which the Apprentice is Registered.

(D) "APPRENTICESHIP STANDARDS" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, are set forth in their company's policies.

(E) "BAT" refers to the U.S. Department of Labor, Bureau of Apprenticeship and Training.

(F) "CANCELLATION" refers to the deregistration of a Program or the Termination of an Agreement.

(G) "COMMITTEE" refers to those persons designated by the Sponsor to act on its behalf in the administration of the Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

(H) "COUNCIL" refers to the State's *Governor's* Advisory Council On Apprenticeship and Training.

(I) "DELAWARE RESIDENT CONTRACTOR" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, Delaware Code, "Resident Contractor".

(J) "DIRECTOR" refers to the Director of the Division of Employment and Training.

(K) "DIVISION" refers to the Division of Employment and Training, Department of Labor, state of Delaware.

(L) "EMPLOYER" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

(M) "JOURNEYPERSON" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

(N) "ON-SITE VISIT" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Employment and Training to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

(O) "PROGRAM" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

(P) "REGISTRANT OR SPONSOR" refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware Resident Contractor" or hold and maintain a "Delaware Resident Business License". The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts. To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

(Q) "REGISTRATION" refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship & Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written ~~indicia~~ documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship & Training as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

(R) "RELATED INSTRUCTION" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

(S) "SECRETARY" refers to the Secretary of Labor.

(T) "STATE" refers to the state of Delaware

(U) "SUPERVISORY INSPECTION" shall mean the same as "ON SITE VISIT".

SEC. 106.3 ELIGIBILITY AND PROCEDURE FOR STATE REGISTRATION

(A) No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in SEC. 106.4 herein.

(B) Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Employment and Training. Such Registration shall be effected by filing copies of each Agreement with the State. Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

(C) The State must be properly notified through the proper office Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

(D) Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

(E) Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as an amendment to such standards.

(F) The request for registration and all documents and data required by this chapter shall be submitted in triplicate. Individual Agreements shall be submitted to the State Apprenticeship and Training Office for Registration no later than thirty (30) calendar days after the trainee has started work in the registered Program. Agreements submitted after said time shall be considered a violation of the rules and regulations and will not be honored.

(G) Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any

way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

(H) Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

(I) A Program may be Registered Sponsor may register Programs in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on the job, and related study must begin within twelve (12) months for in each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

(J) Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period, or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

(K) Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

(L) Each Sponsor shall be so routinely examined , by the Office of Apprenticeship and Training, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

(M) The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar days of such occurrence.

(N) The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

(O) It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/or Related Training.

SEC.106.4 CRITERIA FOR APPRENTICEABLE OCCUPATIONS

An APPRENTICEABLE occupation is a skilled trade which possesses all of the following characteristics:

(A) It is customarily learned in a practical way through training and work on the job.

(B) It is clearly identified and commonly recognized throughout the industry, or recognized with a positive view towards changing technology or approved by the Delaware Department of Labor, Office of Apprenticeship & Training.

(C) It involves manual, technical or mechanical skills and knowledge which require a minimum of two thousand (2,000) hours of on-the-job training, not including the time spent in Related Instruction.

(D) It customarily requires Related Instruction to supplement the on-the-job training.

(E) It involves the development of skills sufficiently broad enough to be applicable in similar occupations throughout the industry, rather than a restricted application to the products or services of any one company.

SEC. 106.5 STANDARDS OF APPRENTICESHIP

The following standards are prescribed for a Program.

(A) The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

(B) The standards must contain provisions concerning the following:

(1) The employment and training of the Apprentice in a skilled occupation;

(2) an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

(3) the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;

(4) an outline of the work processes in which the Apprentice will receive supervised work experience and

on-the-job training, and the allocation of the approximate time to be spent in each major process;

(5) provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor; Office of Apprenticeship & Training

(6) a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyman's hourly wage;

(7) Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

1) 1 to 7 year programs

2) starting pay must be at least minimum wage

3) final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%

2nd 1,000 hours: 85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%

2nd 1,000 hours: 51%

3rd 1,000 hours: 63%

4th 1,000 hours: 85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%

2nd 1,000 hours: 48%

3rd 1,000 hours: 57%

4th 1,000 hours: 65%

5th 1,000 hours: 74%

6th 1,000 hours: 85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%

2nd 1,000 hours: 46%

3rd 1,000 hours: 53%

4th 1,000 hours: 59%

5th 1,000 hours: 65%

6th 1,000 hours: 71%

7th 1,000 hours: 78%

8th 1,000 hours: 85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%

2nd 1,000 hours: 45%

3rd 1,000 hours: 50%

4th 1,000 hours: 55%

- 5th 1,000 hours: 60%
- 6th 1,000 hours: 65%
- 7TH 1,000 hours: 70%
- 8th 1,000 hours: 74%
- 9th 1,000 hours: 79%
- 10th 1,000 hours: 85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 44%
- 3rd 1,000 hours: 48%
- 4th 1,000 hours: 52%
- 5th 1,000 hours: 56%
- 6th 1,000 hours: 60%
- 7TH 1,000 hours: 64%
- 8th 1,000 hours: 68%
- 9th 1,000 hours: 72%
- 10th 1,000 hours: 76%
- 11th 1,000 hours: 81%
- 12th 1,000 hours: 85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 43%
- 3rd 1,000 hours: 47%
- 4th 1,000 hours: 50%
- 5th 1,000 hours: 54%
- 6th 1,000 hours: 57%
- 7TH 1,000 hours: 61%
- 8th 1,000 hours: 64%
- 9th 1,000 hours: 68%
- 10th 1,000 hours: 71%
- 11th 1,000 hours: 74%
- 12th 1,000 hours: 78%
- 13th 1,000 hours: 81%
- 14th 1,000 hours: 85%

(8) that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

(9) That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.

In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment

without the written consent of the Administrator;

(10) That the established Journeyman's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeymen shall be receiving wages at least in the amount set for Journeymen in their individual program standards, or are qualified to perform as Journey persons and must be paid at least the minimum journeyman rate;

(11) that the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyman wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

(C) The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

(D) The ratio of Apprentices to Journeymen should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements. The ratio of Apprentices to Journeymen shall be one Apprentice to each five (5) Journeymen employed by the prospective Sponsor. More restrictive ratios will be granted upon request. More liberal ratios may be granted only after the requesting Sponsor has demonstrated that the number of Apprentices to be trained shall be in relation to:

- (1) the needs of the plant and/or trade in the community with consideration for growth and expansion;
- (2) the facilities and personnel available for training are adequate; and
- (3) a reasonable opportunity that employment of skilled workers on completion exists.

The following ratios will be recognized as standard for the trades of:

	Apprentice up to	Journeyman
Carpenter	1	5
Plumber/Pipefitter	1	5
Sheet Metal Worker	1	4
Insulation Worker	1	4
Electrician	1	3

If a "collective bargaining agreement" exists and stipulates a ratio of Apprentices to Journey persons, it shall prevail. Provided the Bargaining Ratio is not lower than the State standard.

(E) At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs

with fewer than five (5) Apprentices shall not be required to comply with this part.

(F) A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

(G) Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

(H) The required minimum qualifications for persons entering an Apprentice Program as defined in Section 106.2(C) must be met.

(I) Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

(J) Advance standing or credit up to ~~one quarter~~ 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in an approved State or Federally Registered Program.

(K) Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.

(L) These Standards shall contain a statement of assurance of qualified training personnel.

(M) There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

(N) These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

(O) There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

(P) There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements as causes therefore.

(Q) There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

(R) There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action, ~~unless other acceptable procedures are provided for in a collective bargaining agreement.~~

(S) There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

(T) There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

(U) There will be provisions for a participating Employer's Agreement.

(V) There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

(W) All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

(X) Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by individual state and the state of Delaware.

SEC. 106.6 APPRENTICESHIP AGREEMENT

The Apprenticeship Agreement shall contain:

(A) the names and signatures of the contracting parties (Apprentice and the program Sponsor or Employer), and the signature of a parent or guardian if the Apprentice is a minor;

(B) the date of birth of the Apprentice;

(C) the name and address of the program Sponsor and the Registrant;

(D) the Apprentice's social security number;

(E) a statement of the trade or craft which the Apprentice is to be taught, and the beginning date and term (duration) of apprenticeship;

(F) the number of hours to be spent by the Apprentice in work on the job;

(G) the number of hours to be spent in Related and Supplemental Instruction is recommended to be not less than one hundred forty-four (144) hours per year;

(H) provisions relating to a specific period of probation during which the Apprenticeship Agreement

may be terminated by either party to the Agreement upon written notice to the Registrant;

(I) provisions that, after the probationary period, the Agreement may be suspended, canceled or terminated for ~~good~~ cause, with due notice to the Apprentice and a reasonable opportunity for corrective action, and with written notice to the Apprentice and the Registrant of the final action taken;

(J) a reference incorporating, as part of the Agreement, the standards of the Apprenticeship Program as it exists on the date of the Agreement or as it may be amended during the period of the Agreement;

(K) a statement that the Apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination based on race, color, religion, national origin, marital status, or sex, or disability;

(L) a statement that, if an Employer is unable to fulfill his obligation under his Agreement, the Agreement may, with consent of the Apprentice and Committee, if one exists, be transferred to another Employer under a Registered Program with written notice of the transfer to the Registrant, and with full credit to the Apprentice for satisfactory time and training earned;

(M) the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions;

(N) a statement setting forth a schedule of work processes in the trade or industry in which the Apprentice is to be trained and the approximate time to be spent at each process;

(O) a statement of the graduated scale of wages to be paid the Apprentice and whether or not the required school time shall be compensated;

(P) a statement that in the event the Registration of the Program has been Canceled or revoked, the Apprentice will be notified within fifteen (15) days of the event.

SEC. 106.7 DEREGISTRATION BY STATE

(A) Deregistration proceedings ~~may~~ shall be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;

(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;

(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);

(D) It is declared to be the policy of this State to:

(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and

(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and regulations;

(3) deregister a Program either upon the voluntary action of the Registrant by a request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;

(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:

(a) the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.

(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation and the effective date that such Cancellation automatically deprives the Apprentice of his/her individual Registration.

(E) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three ~~or more~~ violations in any given twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council.

The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., that the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.

(F) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating the deficiencies found and the remedy required and shall state that the Program will be deregistered for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an

additional thirty (30) day period.

(G) If the required action is not taken within the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:

- (1) this notice is sent pursuant to this subsection;
- (2) that certain deficiencies were called to the Registrant's attention and remedial action requested;
- (3) based upon the stated cause and failure of remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;

(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.

(H) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual Registration.

(I) Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

(1) A registered Apprentice who misses seven (7) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

(2) An absence will result when an Apprentice either arrives late or leaves early three (3) times. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

(3) Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

(4) If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

(5) Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value will require the Apprentice to produce a document detailing satisfactory participation and completion.

SEC.106.8 COMPLAINTS

(A) Any controversy or difference arising under an Agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be

submitted by an Apprentice or his/her authorized representative to the State Registration Agency for review. Matters covered by a collective bargaining agreement, however, shall be submitted and processed in accordance with the procedures therein provided.

(B) The complaint shall be in writing, signed by the complainant, and submitted by the Apprentice or his/her authorized representative within sixty (60) days of receipt of local decision. The complaint shall set forth the specific problem, including all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

SEC.106.9 HEARINGS ON DEREGISTRATIONS

(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her ~~assignee~~ designee, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:

- (1) the time and place of the hearing;
- (2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;
- (3) a statement of the cause for which the Program was deregistered and the purpose of the hearing.

(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.

(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record ~~before him~~ and an investigation, if necessary. The Administrator shall notify, in writing, all parties of his decision. If any party is dissatisfied or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and ~~said~~ Council shall make a determination on the basis of the records and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.

SEC. 106.10 REINSTATEMENT OF PROGRAM REGISTRATION

A Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appropriate. After such presentation, the Council

shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

SEC. 106.11 PROGRAM REGISTRATION DENIAL

Any proposed Sponsor may, within fifteen (15) working days, request a hearing before the Apprenticeship and Training Council. If the proposed Sponsor requests a hearing, the Administrator shall advise the chairman of the Council, who shall convene the Council, for a hearing for the purpose of making a determination on the basis of the record and proposed findings of the Office of Apprenticeship & Training. This determination shall be subject to review and approval by the Secretary, whose decision shall be final and binding.

SEC. 106.12 AMENDMENT TO THE REGULATIONS IN THIS PART

The Secretary may, at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

1994. However, Delaware's regulation was not adopted at that time. Delaware's Transportation Conformity Regulation is modeled after the federal guidelines and the federal guidelines have changed numerous times since it was first proposed. Now that the federal rules are final, we are proceeding with the development of Delaware's regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:
N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C. Chapter 60 Section 6010
Clean Air Act Amendments of 1990

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

6. NOTICE OF PUBLIC COMMENT: Public hearing to be held February 17, 1998 - DNREC Auditorium, 89 Kings Highway, Dover DE, beginning at 5:00 p.m. For further information, please contact Phil Wheeler at 739-4791

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**

DIVISION OF AIR & WASTE MANAGEMENT

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

1. TITLE OF THE REGULATIONS: Transportation Conformity - Regulation 32

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES: Transportation Conformity - Regulation 32. In keeping with the provisions of the Clean Air Act, this regulation ensures that the State of Delaware's transportation plans, programs and projects that get Federal money or approval conform to the goals of the State Implementation Plan (SIP) to reduce auto emissions. The proposed regulation requires that every time the State plans a project that impacts air quality, an analysis must be done to determine if that project will increase pollution over the amount predicted in the State Implementation Plan, mentioned above.

Delaware's original proposed transportation conformity regulation was presented for public hearing in November

Transportation Conformity Regulation
Regulation No. 32
Proposed SIP Revision

TABLE OF CONTENTS

Section 1 - Purpose	1
Section 2 - Definitions	1
Section 3 - Applicability	6
Section 4 - Priority	8
Section 5 - Frequency of conformity determinations	8
Section 6 - Consultation	10
Section 7 - Content of transportation plans	21
Section 8 - Relationship of transportation plan and TIP conformity with the NEPA process	23
Section 9 - Fiscal constraints for transportation plans and TIPs	23
Section 10 - Criteria and procedures for determining conformity of transportation plans, programs, and projects: General	23
Section 11 - Criteria and procedures: Latest planning assumptions	30
Section 12 - Criteria and procedures: Latest emissions model	31
Section 13 - Criteria and procedures: Consultation	32

Section 14 - Criteria and procedures: Timely implementation of TCMs	32	forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to this applicable implementation plan developed and applicable pursuant to §110 and Part D of the CAA.
Section 15 - Criteria and procedures: Currently conforming transportation plan and TIP	33	
Section 16 - Criteria and procedures: Projects from a plan and TIP	33	This regulation, consistent with 40 CFR Part 51, codifies and perhaps simplifies a pre-existing spirit of cooperation, and is not intended to undermine, duplicate or eliminate efforts already being undertaken within the various Federal, State and local entities involved in this process.
Section 17 - Criteria and procedures: Localized CO and PM10 violations (hot spots)	34	
Section 18 - Criteria and procedures: Compliance with PM10 control measures	35	
Section 19 - Criteria and procedures: Motor vehicle emissions budget	35	Hereinafter, the short title for this regulation is the Transportation Conformity Regulation.
Section 20 - Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets	39 39	Section 2 - Definitions.
Section 21 - Consequences of control strategy implementation plan failures	42	Terms used but not defined in this regulation shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.
Section 22 - Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C or the Federal Transit Laws	43	
Section 23 - Procedures for determining regional transportation-related emissions	44	Adopt or approve of a regionally significant project, for the purposes of Sections 6 and 30, means the first time any action necessary to authorize a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.
Section 24 - Procedures for determining localized CO and PM10 concentrations (hot-spot analysis)	48	
Section 25 - Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).	51	
Section 25 - Enforceability of design concept and scope and project-level mitigation and control measures	52	
Section 27 - Exempt projects.	52	
Section 28 - Projects exempt from regional emissions analyses	54	Applicable implementation plan is defined in §302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under §110, or promulgated under §110(c), or promulgated or approved pursuant to regulations promulgated under §301(d) and which implements the relevant requirements of the CAA.
Section 29 - Traffic signal synchronization projects	55	CAA means the Clean Air Act, as amended.

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

Section 1 - Purpose.

The purpose of this regulation is to implement §176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR Part 51 subpart T, with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This regulation sets

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new

violation of a standard in such area.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide).

DelDOT means the Delaware Department of Transportation

Department means the Delaware Department of Natural Resources and Environmental Control

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

Dover/Kent County MPO is the regional metropolitan planning organization for coordinating transportation planning in the Dover Urbanized area and the balance of Kent County. Members of the MPO Council include the Delaware Department of Transportation, the Delaware Transit Corporation, a representative of the Governor of Delaware, the City of Dover, Kent County municipalities and Kent County Levy Court. Membership in the MPO is established by the MPO agreement and is subject to change.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this regulation, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to Section 7 of this regulation.

Hot-spot analysis is an estimation of likely future localized CO and PM10 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Intermodal means the connection or interface between transportation modes such as auto, train or bus

Lapse means that the conformity determination for a

transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under §175A of the CAA, as amended.

Maintenance plan means an implementation plan under §175A of the CAA, as amended.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in §182(g)(1) and §189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

Multimodal means a transportation planning system containing multiple transportation modes.

National ambient air quality standards (NAAQS) are those standards established pursuant to §109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq).

NEPA process completion, for the purposes of this regulation, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under §107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Project means a highway project or transit project.

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

Standard means a national ambient air quality standard.

Statewide transportation improvement program (STIP) means a staged, multi-year, intermodal program of transportation projects covering the State, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR part 450.

Statewide transportation plan means the official intermodal statewide transportation plan that is developed through the statewide planning process for the State, developed pursuant to 23 CFR part 450.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this regulation.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

U.S.C. means the United States Code

WILMAPCO, the Wilmington Area Planning Council, as designated by the Governors of Delaware and Maryland,

is the MPO for New Castle County, Delaware and Cecil County, Maryland. Within the framework of Federal law and regulation, it serves as the transportation planning coordinating agency for the two-county WILMAPCO region, and its policies are established by the WILMAPCO Council, whose members are a representative of the Governors of Delaware and Maryland; the Delaware Secretary of Transportation, the Director of the Delaware Transit Corporation, the Mayor of Wilmington, the County Executive of New Castle County, New Castle and Cecil Counties Municipalities' representatives, and Cecil County President Commissioner.

Written commitment for the purposes of this regulation means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

Section 3 - Applicability.

(a) Action applicability.

(1) Except as provided for in paragraph (c) of this section, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this regulation for individual projects which are not FHWA/FTA projects. However, Section 22 applies to such projects if they are regionally significant.

(3) Conformity determinations for Cecil County, Maryland shall be conducted in accordance with conformity procedures established in the Code of Maryland regulations (COMAR) and in the Maryland State Implementation Plan.

(b) Geographic Applicability. The provisions of this regulation shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(1) The provisions of this regulation apply with

respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(2) The provisions of this regulation apply with respect to emissions of the following

precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

(ii) NO_x in NO₂ areas; and

(iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this regulation apply to maintenance areas for 20 years from the date EPA approves the area's request under §107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this regulation shall apply for more than 20 years.

(c) Limitations.

(1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

(d) Grace period for new nonattainment areas. For areas or portions of areas which have been designated attainment for either ozone, CO, PM₁₀ or NO₂ since 1990 and are subsequently redesignated to nonattainment for any of these pollutants, the provisions of this regulation shall not apply for 12 months following the date of final

designation to nonattainment for such pollutant.

(e) Should any county become nonattainment for the pollutants described in Sections 17, 18, and 24, these applicable sections shall become effective twelve (12) months after notification of such nonattainment status from EPA to the State.

Section 4 - Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

Section 5 - Frequency of Conformity Determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) Frequency of conformity determinations for transportation plans.

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in Sections 27 or 28. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before t h e

amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in Sections 27 or 28.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in Sections 27 or 28. Otherwise, the existing conformity determination for the TIP will lapse.

(d) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

(e) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPs must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

Section 6 - Consultation

(a) General.

This regulation provides procedures for interagency consultation (Federal, State, and local) and resolution of

conflicts. Such consultation procedures shall be undertaken by WILMAPCO, DelDOT and DOT with the Department and EPA before making conformity determinations, and by the Department and EPA with WILMAPCO, the Dover/Kent County MPO, DelDOT, and DOT in developing applicable implementation plans.

(b) Interagency consultation procedures: General factors.

(1) Agency representation, roles and responsibilities.

(i) Representatives of WILMAPCO, the Dover/Kent County MPO, the Department and DelDOT shall undertake an interagency consultation process in accordance with this section and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this regulation.

(ii) The Department shall be the lead agency responsible for assuring the adequacy of the interagency consultation process with respect to the development of applicable implementation plans and control strategy implementation plan revisions and the credits associated with the list of TCMs in the applicable implementation plan. In their respective areas, WILMAPCO or the Dover/Kent County MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. In the case of non-metropolitan areas, DelDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide transportation plan, the STIP, and any amendments or revisions thereto. The Dover/Kent County MPO and WILMAPCO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this regulation for which the MPO is responsible.

(iii) In addition to the lead agencies identified in subparagraph (ii), other agencies entitled to participate in any interagency consultation process under this regulation include DelDOT, the Department of Public Safety, WILMAPCO and the Dover/Kent County MPO, the Federal Highway Administration regional office and State division office, the Federal Transit Administration regional office, the US Environmental Protection Agency,

the Maryland Department of the Environment, the Maryland Department of Transportation, the Department, and any local transportation agency or local government.

(iv) It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraph (ii), to confer with all other agencies identified under subparagraph (iii) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of Section 6 (b), where required, assure policy-level contact with those agencies, and, (except for actions subject to Section 6 (b)(7) or (c)(1)(vii)) prior to taking any action, consider the views of each such agency and respond to those views submitted in a timely, substantive written manner prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (C), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and provide written comments on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (such as planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

(v) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

(A) The Department shall be responsible for developing:

- (I) emissions inventories,
- (II) emissions budgets,
- (III) air quality modeling,
- (IV) attainment demonstrations,
- (V) control strategy implementation plan

revisions,

- (VI) updated motor vehicle emissions

factors, and

- (VII) involving the WILMAPCO, the

Dover/Kent County MPO or DelDOT continuously in the process;

(B) The Dover/Kent County MPO and/or WILMAPCO shall be responsible, for:

(I) developing transportation plans, UPWPs and TIPs,

(II) evaluating TCM impacts based on technical support provided by DelDOT,

(III) approving transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to the Department and DelDOT for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects,

(IV) monitoring implementation of regionally significant projects as identified in the TIP;

(V) approving TCMs,

(VI) providing input to policy decisions on emissions budgets assuring the proper and timely completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

(C) DelDOT shall be responsible for:

(I) developing Statewide transportation plans and STIPs,

(II) providing technical comments on motor vehicle emissions inputs,

(III) distributing draft and final air quality documents to other agencies,

(IV) convening air quality technical review meetings on specific projects when requested by other agencies or as necessitated by changes in schedule or scope,

(V) provide timely demand forecasting and on-road mobile source emission inventories, and

(VI) involve WILMAPCO, the Dover/Kent County MPO and the Department continuously in the Consultation Process as described in this section;

(D) The Department of Public Safety, Division of Motor Vehicles shall be responsible for providing data such as motor vehicle registration data for use in the on-road mobile source emissions model;

(E) FHWA and FTA shall be responsible for:

(I) assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and 40 CFR § 51.402, and

(II) provide guidance on conformity and the transportation planning process to agencies in interagency consultation; and

(F) EPA shall be responsible for:

(I) reviewing and approving updated motor vehicle emissions factors, and

(II) providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(2) CONSULTATION PROCESS WORK GROUP - procedures

(i) As described herein, various agencies have the primary responsibility as lead agency for the preparation, development, and/or performance of the various tasks required as part of the conformity and attainment processes. These agencies shall form a CONSULTATION PROCESS WORK GROUP (Work Group). As part of the consultation process described herein, it shall be the affirmative obligation of each such lead agency having the responsibility for preparation of a final document as set forth in this section to initiate the consultation process by notifying other participants and convening a PRODUCT DEVELOPMENT TASK FORCE (Task Force) composed of the other members of the Work Group. Such Task Force shall be chaired by the representative of the lead agency, unless the group, by consensus, selects another chair. Each such Task Force will begin consultation meetings early in the process of developing the final document, and shall prepare all drafts and final documents and major supporting documents, or appoint the representatives or agencies that will prepare such documents. The Work Group and each Task Force shall be made up of policy level representatives or their designees and shall be assisted by such technical committees or technical engineering, planning, public works, air quality and administrative staff of member agencies as the Work Group deems appropriate. The chair of each Task Force shall appoint the conveners of technical meetings and shall be responsible for the ongoing and continuous process described herein. The lead agency shall assure that all relevant documents and information are supplied to all participants in the informal and formal consultation process in a timely manner.

In the event that an agency member of the Work Group or Task Force other than the lead agency would like to convene the Work Group or Task Force, either in a formal or informal session to discuss any matter concerning or related to this regulation, said agency shall notify the lead agency of its specific request and the lead agency shall, within seven (7) days, convene a session of the Work Group or Task Force.

(ii) Regular consultation on major activities such as the development of an implementation plan revision, the development of a transportation plan, the development of a TIP, or any determination of conformity of transportation plans or TIPs, shall include meetings of the Work Group on a regular scheduled basis as shall be determined by the consensus of the work group, but no less than on a semi-annual basis, until an attainment demonstration is approved by EPA.

(iii) At each meeting of the Work Group, the following shall be reviewed and approved:

- (A) The schedule for all formal meetings;
- (B) The status and schedule for delivery of

all documents, materials or products required to be developed by these regulations;

(C) The status and schedule of all Standing Committee and/or Sub-Committee activities;

(D) All Public Meetings, Hearings and/or other public involvement.

(iv) The Work Group may establish Standing Sub-Committees or Sub-Committees of limited duration when the Work Group determines that such are necessary to accomplish specific objectives or tasks.

(v) As described in this section, various agencies have the primary obligation for the preparation, development, performance and/or the responsibility (legal or otherwise) to be the lead agency for the various tasks required as part of the conformity-attainment process. It shall be the affirmative responsibility of each such lead agency to involve each of the other agencies, on an informal basis and in an ongoing, continuous manner in the said preparation, development, performance, etc., as frequently as possible without detracting from said agency's ability to complete the task.

(3) Each lead agency for any Task Force or Sub-Committee, as part of the interagency consultation process under this section (including any Federal agency) shall provide each final document that is the product of such consultation process (including applicable implementation plans or implementation plan revisions, transportation plans, TIPs, and determinations of conformity), together with all supporting information, to each other agency that has participated in the consultation process within 30 calendar days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

(4) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.

(c) Interagency consultation procedures: Specific processes

(1) An interagency consultation process in accordance with paragraph (b) shall be undertaken for the following:

(i) Evaluating and choosing each model (or models) and associated methods and

(ii) Determining and providing written notification to the affected agencies (i.e., by letter from the Chairman to be included in the documentation) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or

fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this regulation (see Sections 27 and 28) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section;

(iv) Making a determination, as required by Section 14(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Making a determination, as required by Section 22(b), whether a project should be included in the regional emissions analysis supporting the TIP's conformity determination, even if the project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section.

(vi) Identifying, as required by Section 24(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2);

(vii) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in Section 27, to be initiated by WILMAPCO, the Dover/Kent County MPO, or DeIDOT in their respective areas, and conducted in accordance with paragraph (b)(2) of this section, other than the requirement that such notice be provided prior to final action;

(viii) Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section;

(ix) Determining what constitutes "reasonable professional practice" for the purposes of Sections 23 and 24(b), within the context thereof, to be initiated by DeIDOT and conducted in accordance with paragraph (b)(2) of this section.

(x) Determining whether the project sponsor or MPO has demonstrated that the requirements of Sections 19, 24 and 25 are satisfied without a particular mitigation or control measure, as provided in Section 26(d), to be initiated by the Department and conducted in accordance with paragraph (b)(2) of this section;

(xi) Any decision made under paragraph (c)(1) of this section shall be conveyed in writing to all member agencies.

(2) An interagency consultation process in accordance with paragraph (b) of this section shall be undertaken for the following:

(i) Evaluating events which will require new conformity determinations in addition to those triggering events established in Section 5, to be initiated by WILMAPCO, the Dover/Kent County MPO, or DeIDOT in their respective areas, and conducted in accordance with paragraph (b)(2) of this section;

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs, or nonattainment areas, to be initiated by WILMAPCO, the Dover/Kent County MPO, or DeIDOT in their respective areas, and conducted in accordance with paragraph (b)(2) of this section.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with paragraph (b) of this section involving the MPO and the State Department of Transportation shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by WILMAPCO and/or the Dover/Kent County MPO in their respective areas, and conducted in accordance with paragraph (b)(2) of this section.

(4) Regionally significant project - policy and procedures

(i) An interagency consultation process in accordance with paragraph (b) and including recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are

not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act are disclosed to the MPO on a regular basis, and are included in the TIP.

(ii) The sponsor of any such regionally significant project, and any agency that is responsible for taking action(s) on any such project (or otherwise) shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the MPO annually, not later than June 1 for the TIP currently being developed each year, each project for which alternatives have been identified through the NEPA process, and in particular, any preferred alternative that may be a regionally significant project.

(iii) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall not be considered to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of Section 22.

(5) An interagency consultation process in accordance with paragraph (b) of this section involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of Section 23, to be initiated by DelDOT and conducted in accordance with paragraph (b)(2) of this section.

(6) An interagency consultation process in accordance with paragraph (b) of this section shall be undertaken for

the design, schedule, and funding of research and data collection efforts related to regional transportation model development (such as household/ travel transportation surveys), to be initiated by DelDOT and conducted in accordance with paragraph (b)(2) of this section.

(d) Submittal process for determinations and amendments

Conformity is an affirmative responsibility of the Federal agency supporting the action. This final determination will be based on information developed by WILMAPCO, the Dover/Kent County MPO, or DelDOT in their respective areas, but FHWA/FTA will make an independent determination.

To accomplish this determination, the following procedures must be followed:

(1) The completed air quality conformity determination, necessary supporting documentation and the TIP will be submitted to the FHWA Division Office and the FTA Regional Office. The FHWA Division Office will forward a copy of the conformity determination and TIP (including both highway and transit projects) to the EPA Regional Office for review and comment. EPA will respond in writing, to the FTA Regional Office and FHWA Division Office, as soon as possible but not later than 30 days from the date of the FHWA transmittal.

(2) EPA comments will be resolved by FHWA and FTA, in concert with EPA, with WILMAPCO, the Dover/Kent County MPO, or DelDOT in their respective areas, as necessary.

(3) FHWA and FTA will jointly prepare correspondence to make the conformity finding. Joint conformity findings will be addressed to WILMAPCO (with a copy to DelDOT), to the Dover/Kent County MPO (with a copy to DelDOT), or to DelDOT in their respective areas, with copies to EPA and FTA. The findings of FTA and FHWA together constitute the DOT conformity findings.

(4) The FHWA Division Office will send a copy of the signed conformity determination and the TIPs to the Regional Office.

(5) In the event that WILMAPCO, the Dover/Kent County MPO, or DelDOT in their respective areas, wishes to amend the TIP to add projects that are exempt from the conformity analysis requirement, FHWA or FTA or both, if necessary, will concur in the amendment and re-affirm the original DOT conformity finding by letter. This re-affirmation letter will reference the date(s) of the original FHWA and FTA findings. In cases where the amendment involves projects that are not exempt, a new conformity analysis and determination will be required from WILMAPCO, the Dover/Kent County MPO, or DelDOT

in their respective areas, and will, in turn, require a new DOT conformity finding.

(6) TIP amendments from non-attainment areas that require a new or revised conformity determination (i.e., addition of new exempt projects or scope changes to existing exempt projects in the TIP) require an FHWA/FTA conformity determination prior to being added to the TIP and STIP.

(7) For TIP actions which do not involve transit projects, the FTA will prepare a letter of acknowledgment and concurrence on the draft conformity finding, indicating that the TIP action in question does not contain any projects in FTA's area of responsibility. Similarly for TIP actions which do not involve highway projects, the FHWA will prepare a letter of acknowledgment and concurrence on the draft conformity finding, indicating that the TIP action in question does not contain any projects in FHWA's area of responsibility. In either event, the issuance of the signed version of the draft conformity finding letter will constitute the DOT conformity finding for the TIP action in question.

(e) Department concurrence.

(1) It is the responsibility of the Department to evaluate any final conformity determination made by WILMAPCO, the Dover/Kent County MPO or DelDOT in their respective areas. The Department must concur with this determination within 14 days of the date after the agency initiates public notice in any such final determination of conformity. A determination of non-concurrence must be in accordance with Sections 10 - 19. If the Department does not take action within 14 days of such notice of public notice, WILMAPCO, the Dover/Kent County MPO or DelDOT, in their respective areas, may proceed with the final determination.

(2) Any conflict among State agencies or between State agencies and either WILMAPCO or the Dover/Kent County MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies within 30 days of the Department finding of non-concurrence. In the first instance, such agencies shall make every effort to resolve any difference, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(3) The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the Department, DelDOT, a State transportation commission or board, any agency that has responsibility for only one of these functions, WILMAPCO or the Dover/Kent County MPO.

(f) Public consultation procedures.

Agencies making conformity determinations (MPOs, DelDOT, etc. as appropriate) on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs consistent with the requirements of 23 CFR part 450, including §§ 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this regulation. In addition, any such agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (such as NEPA). The opportunity for public involvement provided under this subsection shall include reasonable access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP, or Project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450.

Section 7 - Content of Transportation Plans

(a) Transportation plans adopted after January 1, 1995, in New Castle and Kent Counties.

The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan, after consultation in accordance with Section 6, may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts (whether separate or incorporated into other factors), in accordance with implementation plan provisions and Section 6;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of paragraph

(a) of this section within two years from the date of reclassification.

(c) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of Sections 10 through 20.

(d) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

Section 8 - Relationship of Transportation Plan and TIP Conformity with the NEPA Process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in Sections 10 through 20 for projects not from a TIP before NEPA process completion.

Section 9 - Fiscal Constraints for Transportation Plans and Tips

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

Section 10 - Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General

(a) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this regulation are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(b) The following table indicates the criteria and procedures in Sections 10 through 20 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas.

Table 1. Conformity Criteria

ALL ACTIONS AT ALL TIMES

Section 11 Latest planning assumptions

Section 12 Latest emissions model

Section 13 Consultation

TRANSPORTATION PLAN

Section 14(b) TCMs

Sections 19 or 20 Emissions budget OR Emission reduction

TIP

Section 14(c) TCMs
 Sections 19 or 20 Emissions budget OR Emission reduction

PROJECT (FROM A CONFORMING PLAN AND TIP)

Section 15 Currently conforming plan and TIP
 Section 16 Project from a conforming plan and TIP
 Section 17 CO and PM₁₀ hot spots
 Section 18 PM₁₀ control measures

PROJECT (NOT FROM A CONFORMING PLAN AND TIP)

Section 14(d) TCMs
 Section 15 Currently conforming plan and TIP
 Section 16 CO and PM₁₀ hot spots
 Section 18 PM₁₀ control measures
 Sections 19 or 20 Emissions budget OR Emission reduction

(c) Ozone nonattainment and maintenance areas. In addition to the criteria listed in table 1 that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by Section 19 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by Section 20 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity

purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by Section 20, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:

(i) The emission reduction tests required by Section 20; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by Section 19 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

(i) The emission reduction tests as required by Section 20;

(ii) The budget test as required by Section 19, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by Section 19, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(d) CO nonattainment and maintenance areas. In

addition to the criteria listed in Table 1 that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by Section 17(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by Section 17(b).

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by Section 19 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (4) below, in CO nonattainment areas the emission reduction tests must be satisfied as required by Section 20 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(i) The emission reduction tests required by Section 20; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by Section 19 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).

(e) PM₁₀ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by Section 17 (a).

(2) In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by Section 19 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by Section 20 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(iii) If the submitted implementation plan revision is a demonstration of impracticability under CAA § 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) NO₂ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by Section 19 for conformity determinations made:

(i) 45 days after a control strategy

implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by Section 20 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(g) Isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of Sections 11, 12, 13, 14(d), 17 and 18. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Section 17(b).

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c)-(f) of this section, with the following modifications:

(i) When the requirements of Section 19 and 20 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(ii) In isolated rural nonattainment and maintenance areas that are subject to Section 19, FHWA/FTA projects must be consistent with motor vehicle

emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(A) Section 19;

(B) Section 20 (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Section 20 (d)(2)); or

(C) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in Section 6 (c)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in Section 6 (d), which applies for any State air agency comments on a conformity determination.

Section 11 - Criteria and Procedures: Latest Planning Assumptions.

(a) The conformity determination, with respect to all other applicable criteria in Sections 12 through 20, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future

background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by Section 6.

Section 12 - Criteria and Procedures: Latest Emissions Model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the

analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

Section 13 - Criteria and Procedures: Consultation.

THIS SECTION IS NOT APPLICABLE TO OR REQUIRED BY THE STATE OF DELAWARE AND WILL NOT BE INCLUDED IN THE ADOPTED VERSION OF THIS REGULATION.

For the Reader's information: Conformity must be determined according to the consultation procedures in this regulation and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by 40 CFR §51.390 is fully approved by EPA, the conformity determination must be made according to Section 6 (a)(2) and (e) and the requirements of 23 CFR part 450.

Section 14 - Criteria and Procedures: Timely Implementation of TCMs.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of

the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

Section 15 - Criteria and Procedures: Currently Conforming Transportation Plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in Section 5.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this regulation are satisfied.

Section 16 - Criteria and Procedures: Projects From a Plan and TIP.

(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is

considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy Section 7, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by Section 26 (a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(d) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

Section 17 - Criteria And Procedures: Localized CO and PM₁₀ Violations (Hot Spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and

PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of Section 6 (c)(1)(i) and the methodology requirements of Section 24.

(b) This paragraph applies for CO nonattainment areas as described in Section 10 (d)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of Section 6 (c)(1)(i) and the methodology requirements of Section 24.

Section 18 - Criteria And Procedures: Compliance with PM₁₀ Control Measures.

The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

Section 19 - Criteria and Procedures: Motor Vehicle Emissions Budget.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Section 10 (c)-(g). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s),

for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by Section 6 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in Section 3 (b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions

budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of Sections 23 and 6 (c)(1)(i).

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(e) Motor Vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by Section 20 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by

DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy Sections 15 and 16, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see Section 2 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are

established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

Section 20 - Criteria and Procedures: Emission Reductions in Areas without Motor Vehicle Emissions Budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in Section 10 (c) - (g). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of Clean Air Act § 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of Section 23 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

(c) This criterion may be met in PM₁₀ and NO₂ nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of Clean Air Act § 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of Section 23 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline"

scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR §51.390 defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(d) Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NOx in ozone areas, unless the EPA Administrator determines that additional reductions of NOx would not contribute to attainment;

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and

(6) NOx in NO₂ areas.

(e) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(f) "Baseline" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in Section 27 and projects exempt from regional emissions analysis as listed in Section 28 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under

construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(g) "Action" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in Section 27 and projects exempt from regional emissions analysis as listed in Section 28 need not be explicitly considered):

(1) All facilities, services, and activities in the "Baseline" scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(h) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c) of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

Section 21 - Consequences of Control Strategy Implementation Plan Failures.

(a) Disapprovals.

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under § 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to Section 10.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as

reasonable further progress or attainment.

(b) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under Clean Air Act § 179 or § 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under § 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

Section 22 - Requirements for Adoption or Approval of Projects by Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws.

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

(1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of Sections 19 and/or Section 20 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to Section 10 (g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the

requirements of one of the following paragraphs are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of Sections 19 and/or 20 for projects not from a conforming transportation plan and TIP).

Section 23 - Procedures for Determining Regional Transportation-Related Emissions.

(a) General requirements.

(1) The regional emissions analysis required by Sections 19 and 20 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by Section 6. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(i) The regulatory action is already adopted by the enforcing jurisdiction;

(ii) The project, program, or activity is included in the applicable implementation plan;

(iii) The control strategy implementation plan

submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of Section 19 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(ii) The conformity implementation plan revision required in CFR 40 §51.390 of this chapter must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of Section 20 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to Section 6 (c)(1)(i) to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by Section 6 (c)(1)(i). Network-based travel models must at a minimum satisfy the following requirements:

(i) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;

(ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(iii) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(iv) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(v) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and

(vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway Performance Monitoring System

(HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of Section 6 (c)(1)(i).

(c) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) PM_{10} from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(e) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of Sections 19 or 20 without new regional emissions analysis if the regional emissions analysis

already performed for the plan also applies to the TIP. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of Sections 19 or 20 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(i) not regionally significant; or

(ii) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

Section 24 - Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-Spot Analysis).

(a) CO hot-spot analysis.

(1) The demonstrations required by Section 17 must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in Section 6 and approved by the EPA Regional Administrator are used:

(i) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible

violation;

(ii) For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

(iii) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

(iv) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan.

(2) In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by Section 17 may be based on either:

(i) Quantitative methods that represent reasonable and common professional practice; or

(ii) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of Section 17 are met.

(b) PM₁₀ hot-spot analysis.

(1) The hot-spot demonstration required by Section 17 must be based on quantitative analysis methods for the following types of projects:

(i) Projects which are located at sites at which violations have been verified by monitoring;

(ii) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(iii) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(2) Where quantitative analysis methods are not required, the demonstration required by Section 17 may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (b)(1)(i) and (ii) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in Section 6. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(4) The requirements for quantitative analysis contained in paragraph (b) of this section will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(c) General requirements.

(1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(3) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(4) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by Section 26 (a).

(5) CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

Section 25 - Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the

total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

Section 25 - Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting

facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by Sections 19 and 20 or used in the project-level hot-spot analysis required by Section 17.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in 40 CFR §51.390 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of Section 17, emission budget requirements of Section 19, and emission reduction requirements of Section 20 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under Section 6. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of Sections 19 and/or 20, and that the project still satisfies the requirements of Section 17, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in Section 6 (e) for conformity determinations for projects.

Section 27 - Exempt Projects.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 2 are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see Section 6 (c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must

ensure that exempt projects do not interfere with TCM implementation.

Table 2. - Exempt Projects

SAFETY

Railroad/highway crossing.
 Hazard elimination program.
 Safer non-Federal-aid system roads.
 Shoulder improvements.
 Increasing sight distance.
 Safety improvement program.
 Traffic control devices and operating assistance other than signalization projects.
 Railroad/highway crossing warning devices.
 Guardrails, median barriers, crash cushions.
 Pavement resurfacing and/or rehabilitation.
 Pavement marking demonstration.
 Emergency relief (23 U.S.C. 125).
 Fencing.
 Skid treatments.
 Safety roadside rest areas.
 Adding medians.
 Truck climbing lanes outside the urbanized area.
 Lighting improvements.
 Widening narrow pavements or reconstructing bridges (no additional travel lanes).
 Emergency truck pullovers.

MASS TRANSIT

Operating assistance to transit agencies.
 Purchase of support vehicles.
 Rehabilitation of transit vehicles¹.
 Purchase of office, shop, and operating equipment for existing facilities.
 Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
 Construction or renovation of power, signal, and communications systems.
 Construction of small passenger shelters and information kiosks.
 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹.
 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion

activities at current levels.
 Bicycle and pedestrian facilities.

OTHER

Specific activities which do not involve or lead directly to construction, such as:

Planning and technical studies.
 Grants for training and research programs.
 Planning activities conducted pursuant to titles 23 and 49 U.S.C.
 Federal-aid systems revisions.
 Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
 Noise attenuation.
 Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).
 Acquisition of scenic easements.
 Plantings, landscaping, etc.
 Sign removal.
 Directional and informational signs.
 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
 Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.
¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

Section 28 - Projects Exempt from Regional Emissions Analyses.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Section 6 (c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. - Projects Exempt from Regional Emissions Analyses

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

Section 29 - Traffic Signal Synchronization Projects.

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this regulation. However, all subsequent regional emissions analyses required by Section 19 and 20 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

INDUSTRIAL ACCIDENT BOARD

Statutory Authority: 19 Delaware Code,
Section 2121 (19 Del.C. § 2121)

Summary:

The Industrial Accident Board proposes to adopt or amend Rule nos. 8, 9, 30, and 31 at its regular meeting on March 10, 1997 at 11:00 at the Hearing Room of the Board, First Federal Plaza, 710 King Street, Wilmington, DE.

The change in Board Rule 8 will require a party to submit an opinion to the Board when relying on said opinion at the time of a hearing. The change in Board Rule 9 is intended to improve the pretrial process to insure timely filing of the pretrial memorandum identifying and narrowing issues. It will also bring the pretrial process into conformance with the Workers' Compensation Statute as amended by Senate Bill 147. Proposed Rule 30 will prohibit interrogatories except in unusual circumstances: Proposed Rule 31 will require employers to state the reason(s) for requesting certain medical procedures prior to the payment of compensation benefits.

Comments:

Copies of the proposed rules are published in the Delaware Register of Regulations and are on file at the Department of Labor, Division of Industrial Affairs, 4425 North Market Street, Wilmington, DE 19802 for inspection during regular hours. Copies are available upon request. Interested persons may submit comments in writing before March 2, 1998 to the Industrial Accident Board, c/o the Division of Industrial Affairs.

Public hearing:

A public hearing on the changes will be held during the regular meeting of the Industrial Accident Board at 11:00 a.m. on March 10, 1998 at the Hearing Room of the Board, First Federal Plaza, 710 King Street, Wilmington DE where interested persons can present their views.

Proposed Rule No. 8. Motions Concerning Legal Issues

(A) Except for motions contemplated by Rule No. 10 and 11, where a motion is filed with the Department which make a legal argument, a supporting brief containing citations shall be filed with such motion. A motion may not be filed without proof that a copy of said motion has been served upon the non-moving party.

(B) An answering brief shall be filed with the Department by the non-moving party within 15 days of receipt of the supporting brief. An answering brief may not be filed without proof that a copy of said answering brief has been served upon the moving party.

(C) A reply brief may be filed with the Department by the moving party in the discretion of the moving party, but in no event will a reply brief be accepted by the Department after 7 days from the receipt by the moving party of the non-moving party's answering brief. A reply brief may not be filed without proof that a copy of said reply brief has been served upon the non-moving party.

(D) After the briefs have been filed with the Department, an oral argument may be scheduled by the Department in the Board's discretion.

(E) Motions of a procedural nature need not be accompanied by supporting briefs. No order involving a procedural matter requested by the moving party shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue.

(F) Anytime after the employer's first report of injury has been filed with the Department, the Department's scheduling officer may be notified either by oral, telephonic or written communication of the request by a party or party's legal counsel for a legal hearing. The Department's scheduling officer will have the discretion of requiring a written argument from the parties or the parties' legal counsel on the legal issue. Should one or both of the parties fail to accept the scheduling officer's decision, the parties must reduce their respective positions to written memorandums. The memorandums will be submitted to the Department by the parties on a date chosen by the scheduling officer. The Board will review the memorandums and issue a written decision.

(G) Parties may submit a proposed stipulation order for cooperation with reasonable vocational rehabilitation to the Board for approval without a legal hearing.

(H) If an unreported or memorandum opinion,

whether of the Board or of any court, is cited or relied upon by any party, whether in a written submission or during any oral presentation, a copy thereof shall be provided to the Board and the opposing party. If, during an oral presentation, the party relying on the unreported case does not have a copy of such case immediately available, copies will be provided promptly after the hearing but in no case later than the end of the next business day following the hearing.

PROPOSED Rule 9. Formulation of Issues - Pretrial Procedure

(A) ~~In any action, the Board may in its discretion direct the attorneys' for the parties or the claimants, if unrepresented, to appear before it for a conference to consider:~~

(A) In any action, The Department of Labor shall conduct a pretrial conference. The Pretrial Scheduling Officers shall be responsible for noticing and conducting such pretrial conferences. Such conference shall be held telephonically, unless either party is unrepresented by counsel in which case, the conference may be held at the Department of Labor offices servicing the county where the accident occurred. The Scheduling Officer shall set a date and time for the hearing on the issues which are the subject of the petition convenient to all parties and counsel and subject to the provisions of 19 Del.C. 2348 (c). Hearings as to all other Petitions will be scheduled at the convenience of all parties and counsel to the extent possible. At such conference, the parties may consider:

- (1) The simplification of Means and methods to simplify the issues(s);
- (2) The necessity or desirability of amendments to the papers filed or for additional papers to be filed;
- (3) The possibility of obtaining stipulations; admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) Such matters as may aid in the disposition or expedition of the action.

(B) The Board may make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or on their behalf as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the action unless modified to prevent manifest injustice.

(C) ~~The Board~~ Department shall designate ~~a Board staff member~~ as the pretrial officer to arrange for and preside over pretrial hearings. The pretrial officer will have discretionary power to see that the pretrials are conducted in an effective manner.

~~(D) The attorney for the petitioner, or the petitioner, will be assigned a pretrial hearing date by the Board. The Board assumes petitioners are prepared to go forward with their petitions on the date of filing except in cases involving a Statute of Limitations problem. At the time of the noticed pretrial the attorneys for the parties or the claimant, if unrepresented, must be prepared with the following information: At the time of the noticed pretrial, the following information or documentation must be provided:~~

~~(1) Names and addresses of prospective medical and lay witnesses. will be supplied:~~

~~(2) The pretrial memorandum shall contain the names of all witnesses known to each party at the time of the pretrial conference and expected to be called at the time of the hearing. Witnesses can be added following the pretrial with written notice to the opposing party and the pretrial officer not later than thirty (30) days before the hearing day.~~ (3) A Complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses, either by petition or when raised as an issue in the pretrial conference on employer's petition, copies of the bills shall be provided to counsel included with the pPetition, or provided to the carrier or counsel at least 30 days before the hearing. The requirement can be waived by a Pretrial Officer.

~~(4) Complete statement of defenses to be used by the opposing party.~~

~~(5) If the petitioner seeks an award under 19 Del.C. Section 2326, the petitioner must provide to the opposing party at the pretrial the medical reports upon which the petition is based. A copy of the medical report upon which a petition for benefits under 19 Del.C. 2326 is based shall be provided to opposing counsel.~~

~~(6) A clear statement of why a petitioner seeks to terminate a claimant's Workers' Compensation benefits must be provided at the pretrial. A clear statement of the basis for a petition under 19 Del.C. 2347.~~

~~(7) A party wishing to use a movie, video or still pictures must advise the opposing party thirty (30) days prior to the hearing.~~

~~(8) In the absence of unusual circumstances, the pretrial memorandum shall be exchanged by mail in accordance with the procedures established by the Board's secretary and submitted to the opposing party and the Board no later than three (3) working days prior to the scheduled pretrial.~~

(6) Notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed.

(E) Either party may modify a pretrial memorandum until 30 days prior to a hearing. Thereafter, modification of a pretrial memorandum can only be done by permission of the pretrial officer or the Board.

Either party may modify a pretrial memorandum at any time prior to thirty (30) days before the hearing. If the thirtieth day prior to a hearing falls on a weekend or holiday, the last day to amend the pretrial shall be the last business day which is at least thirty days prior to the hearing date. Should a party wish to amend the pretrial to list additional witnesses, the party shall provide the names and addresses of such witnesses. Notice of any modification to the pretrial shall be sent to the opposing counsel or to a party directly if the party is unrepresented in a fashion insuring timely receipt of the same. The thirty day notice requirement regarding amendments to a pretrial memorandum may be waived by consent of the parties upon written stipulation or by the Pretrial Scheduling Officer or the Board upon written application. However, only the party who filed the petition which forms the subject of the pretrial memorandum may amend the petition subject to the provisions of Board Rule 26.

(F) Subject to the pretrial officer's discretion, a hearing date for a petition may be scheduled at the pretrial even if one or both parties fail to attend the pretrial. Only the pretrial scheduling officer can grant a continuance of a pretrial hearing.

(G) Responsibility does attach to the requesting party to arrange to have medical witness(es) present for the Board's scheduled hearing date. Such arrangements must be coordinated with and approved by the ~~Board's Scheduling Officer~~ pretrial scheduling officer. Unless specifically asked for, no ~~Board~~ subpoena will be issued to expert witnesses since parties make their own arrangements for expert appearance.

(H) The pretrial officers, at their discretion, may schedule an additional pretrial hearing upon request of either party or the Board.

(I) In the absence of unusual circumstances, the party filing a petition shall file with said petition a pretrial memorandum with the petitioner's portion completed. The pretrial memorandum shall be sent to the opposing party's counsel by the Department of Labor upon the filing of an entry of appearance. In the event that the opposing party is represented, the petitioning party may send the pretrial directly to opposing counsel with notice to the Board that the same has been done.

(J) The pretrial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pretrial conference regarding the petition at issue. In the event that the pretrial memorandum has not yet been filed with the Department of Labor, the Board shall issue an Order compelling the submission of the same by a date certain, not to exceed fifteen (15) days.

Proposed Board Rule No. 30

(A) Interrogatories shall not be permitted as a matter of course.

(B) In the event of unusual and exceptional circumstances, a party may petition the Board to permit limited interrogatories. The party shall state the specific interrogatories proposed and the unusual and exceptional circumstances supporting the petition. If, after hearing upon adequate notice, the Board finds that unusual and exceptional circumstances do not exist and denies the petition, the Board shall award expenses, including an attorney's fee, to the party opposing the petition.

Proposed Board Rule No. 31

(A) No employee examined under 19 Del.C. §2343 shall be required to undergo medical tests or techniques which are unnecessary, unduly invasive, impose risk, or otherwise inappropriate to an informed diagnosis. The party requesting the medical examination shall at the time of the request, advise the employee of any medical tests or techniques to be performed that may be invasive or impose risk.

(B) Any employee who believes that medical tests or techniques are or may be unnecessary, unduly invasive, impose risk, or otherwise inappropriate to an informed diagnosis may petition the Board for an immediate hearing for the taking of testimony. If the Board grants relief to the employee, the Board shall require the opposing party to pay the costs of the proceeding, including medical witness fees and an attorney's fee.

INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,
Sections 314, 1726 (18 Del.C. §§ 314, 1726)

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a **PUBLIC HEARING** will be held on Monday, February 23, 1998 at 10:00 a.m. in the second floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, Delaware 19904.

The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public on Insurance Department Regulation No. 47 regarding education for insurance agents, brokers, surplus lines brokers, and consultants.

The hearing will be conducted in accordance with the

Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, February 13, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, Delaware 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 171 or 800-282-8611 no later than Friday, February 13, 1998.

REGULATION No. 47

EDUCATION FOR INSURANCE AGENTS,
BROKERS, SURPLUS LINES BROKERS AND
CONSULTANTS

Effective March 1, 1985
Amended June 6, 1986. Section 4
Amended March 24, 1987 and
Effective after 30 days.
Amended and effective
March 1, 1998.

SECTION

1. Authority
2. Purpose
3. Definitions
4. Entity Sponsors
5. Entity Sponsors Instructors
6. Commissioner's action upon Entity Sponsors
7. Appeals
8. Required Forms
9. Licensee's Responsibility
10. Penalty for Noncompliance
11. Continuing Education Advisory Council
12. Separability
13. Effective Date

Section 1. Authority.

This Regulation is established and promulgated pursuant to 18 Del. C. Sections 314, 1726, and 29 Del. C. Chapter 101.

Section 2. Purpose.

The purpose of this Regulation is to establish requirements for insurance education and ethics for insurance adjusters, agents, brokers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the

benefit of Delaware consumers.

Section 3. Definitions.

The following words and terms, when used in this regulation, have the following meanings, unless the context clearly indicates otherwise:

(1) "Administrative record" - means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

(2) "Audit" - means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines and self-study programs based on current guidelines.

(3) "Completion" - when used in the context of:

a. Self-Study, means a passing grade of 70% or better examination.

b. Class, means attendance for the full amount of time approved for each course.

c. Seminar, means attendance for the full amount of time assigned for each workshop or break-out session selected.

(4) "Compliance date" - means the 28th day of February of the continuing education reporting period for which resident licensee continuing education or non-resident renewal is required. Each license biennium shall commence on March 1st and end February 28th of the odd year period for non-residents and the even year for residents. Example: Non-resident deadline is February 28th of 1999, 2001, 2003 etc. Resident deadline is February 28th of 2000, 2002, 2004 etc.

(5) "Contact person" - means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or corporate officer, and who designates the school official to represent the entity.

(6) "Continuously licensed" - means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

(7) "Course" - shall mean any class, self-study or seminar for insurance representatives, or adjuster licensees which has been approved by the Department for the purpose of complying with continuing education requirements.

(8) "Credit hour" (CEUs) - means 1 unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

(9) "Department" - means the Delaware Department of Insurance.

(10) "Disciplinary action" - means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer.

(11) "Entity sponsor" - means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

(12) "Ethics credits" - mean the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another and conflicts of interest.

(13) "Hour" - means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

(14) "Initially Licensed" - means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

(15) "Recognized association" - means an insurance industry association established for at least 5 years.

(16) "School official" - means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

(17) "Syllabus" - means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

Section 4. Course Providers.

(a) Provider Approval. A provider who sponsors a continuing education course must be approved by the Commissioner and shall be operated by, including but not limited to, an authorized insurance company, a

recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on forms prescribed by Department. In assessing a provider's application for approval, the Commissioner may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

(b) General Requirements and Responsibilities.

(1) Providers shall maintain the records of each individual completing a course for 4 years from the date of completion and shall upon request of the Commissioner submit a course roster list of course attendees which includes all information available on Form CE-4.

(2) Providers shall notify the Agent and Agency Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

(3) Course providers will provide each licensee successfully completing their program a Certificate of Completion/Course report form CE-4 in accordance with Section 8(a)(4). It must contain, at a minimum:

- a. Licensee's name
- b. Social Security Number
- c. Title of the educational activity
- d. Delaware course number
- e. Delaware sponsor number
- f. Number of CEUs earned
- g. Authorized signature of school official

(4) Course providers shall obtain the Commissioner's approval for each course offered. A Course Report Form CE-4 shall be completed and distributed to the licensee only after completion of the entire course. Entity Sponsors are required to distribute course report forms to each licensee successfully completing the educational activity within fifteen (15) calendar days.

(5) No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Commissioner upon request.

(6) Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

(7) One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

(8) Course Providers are responsible for the

actions of their school officials, instructors, speakers and monitors.

(9) Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

(10) Educational activities are approved for a term of 3 years unless requested by the Commissioner to be resubmitted for approval.

(11) No activity may be advertised as having been approved until the sponsor receives written notification from the Department. The use of "approval pending" is acceptable advertising.

Section 5. Instructors.

The instructor shall possess one or more of the following qualifications:

(1) A minimum of 3 years working experience in the subject matter being taught.

(2) An approved professional designation in accordance with Section 9(c)(1) from a recognized association.

(3) A degree from an accredited school in the subject matter being taught.

(4) Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

(5) An instructor who is a licensee shall receive 2 times the number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

(6) Instructors will have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course providers policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors. Course submissions must include a narrative biography of each instructor.

Section 6. Commissioner's action upon violation or non-conformity by course provider or instructor.

If the Commissioner determines that a course provider or instructor has violated any provisions of this regulation, the Commissioner may withdraw approval of the entity sponsor or instructor or may order a refund of

course fees to licensees who attended the course, or both. The Commissioner may also refuse to approve courses conducted by specific sponsors or instructors if the Commissioner determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Commissioner or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

Section 7. Appeals

(a) Appeals shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C., Chapter 101 and Delaware Insurance Code.

(b) Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

(1) A synopsis of the issue,

(2) The basis for the appeal,

(3) The name, address, and telephone number of a contact person,

(4) A copy of the original course submission and supporting documents, and

(5) A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

Section 8. Required Forms.

Course Providers shall apply for registration, course submission, repeat course submission and licensee certificate of completion (Delaware Course Report Form) on forms prescribed and approved by the Commissioner. The following forms apply unless or until revised by the Commissioner:

(1) Request for entity sponsor approval shall be made on Department Form CE-1 (Attachment 1).

(2) Request for entity sponsor course approval shall be made on Department Form CE-2 (Attachment 2).

(3) Course providers shall submit a Form CE-3 to the Department not less than 7 days prior to the offering of any course that was previously approved by the Department for an unspecified date or is to be repeated. (Form CE-3 Attachment 3)

(4) Form CE-4 Course Report Form. Form CE-4 contents may be submitted in an alternative format so long as prior approval is obtained.

(5) Continuing Education Course Evaluation Form CE-5. The Department may request licensees to complete course evaluation forms as a means of auditing a course and entity sponsor.

Section 9. Licensee's Responsibility.

(a) Each licensee shall retain each original course completion/course report form(s) CE-4 for a period of 3 years. The Form CE-4 may be required in the event of a discrepancy between the licensee's records and the Department's. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Pursuant to Section 8(5), the Department may require a licensee to complete a course evaluation form.

(b) General Requirements. All resident licensees not otherwise exempted shall earn, at a minimum, the number of education credits described below.

(1) All resident licensees required to fulfill continuing education requirements shall complete twenty (20) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

(2) Limited Representatives and Adjusters shall be required to fulfill ten (10) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

(3) All resident licensees subject to this regulation shall file with the Department a copy of their completed course report forms. Course report form CE-4(s) must be received on or before March 20th following the preceding biennium compliance date. Failure to timely file will result in notice of suspension and fines under Section 10 of this regulation.

(4) All resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium and the licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline (February 28th of even years) and include a copy of the course report form CE-4.

(5) The maximum number of carryover credits shall not exceed 5 credits. Carryover shall not apply to ethics credit requirements. Ethics credits in excess of the mandatory requirement may apply to non-ethics credit requirements.

(6) Fulfillment of continuing education requirements includes completion of approved subject matter and ethics requirements during the biennium.

(7) No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed. A total of 5 credits in excess of 20 credits earned may apply to carryover during the newly licensed biennium period.

(c) Automatic credit. For experience an individual continuously licensed for twenty-five (25) years or longer

prior to the start of a biennium reporting period and/or for holding a professional designation shall receive an automatic credit of ten (10) credits in each biennium. Approved professional designations are the AAI, CEBS, CLU, CPCU, ChFC, FLMI, CFP, FSPA, CIC and RHU. Automatic credits may not be applied to satisfy ethics credit requirements.

(d) License reinstatement after suspension or revocation. All resident and nonresident licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del. C. Section 1721 including the retaking of all exams for the lines of authority under which the individual proposes to transact insurance.

(e) Extension of time. For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the biennium period.

(f) Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Commissioner for good cause shown. "Good cause" includes long-term illness or incapacity, serving full-time in the armed forces of the United States of America on active duty outside of the state of Delaware, and any other emergency situations deemed appropriate by the Commissioner. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Commissioner no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

(g) Exemptions to continuing education requirements:

(1) Agents licensed for the lines of title insurance or public carrier insurance.

(2) Fraternal Agents.

(3) Interim Agents.

(h) Nonresident responsibilities.

(1) All nonresident licensees shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd

years with a deadline date of February 28th every odd year beginning in year 1999.

(2) The Department will send renewal notices to all nonresident licensees at least ninety (90) days before the end of the biennium. Nonresidents may request a thirty (30) day extension to file for renewal provided it is in writing to the Commissioner at least thirty (30) days prior to the biennium deadline and shall provide evidence of seeking a home state letter of certification.

(3) All nonresidents who fail to provide certification from home state under this regulation shall be subjected to the same penalties as a resident agent under this regulation pursuant to Section 10.

Section 10. Penalty for noncompliance.

(a) Pursuant to 18 Del. C. Sections 334, 1732, and 1734, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under Section 9(e)(1) of this regulation, shall be subject to an administrative penalty up to and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

(b) Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments are reinstated unless or until the insurer notifies the Commissioner and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subjected to complying with 18 Del. C. Section 1721 including the retaking of all examinations for line(s) of authority that the individual proposes to transact insurance.

(c) The Commissioner may by Order require any individual licensed under 18 Del. C. Chapter 17 based upon reasonable belief that a violation of Title 18 occurred, to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

Section 11. Continuing Education Advisory Council

The Council shall consist of ten (10) licensees drawn from the professional organizations in the State, 5 from the life and health field and 5 from the property and casualty field.

(1) One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Commissioner regarding acceptance/ rejection and the number of CEUs to be granted if accepted.

(2) The Council shall also advise the Commissioner on matters of concern as they arise and provide liaison between the Department and the professional organizations.

(3) Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

(4) All previously approved continuing education courses at the time this regulation becomes effective shall resubmit for approval within twelve months of the effective date of this regulation. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this regulation.

(5) The final decision on each Entity Sponsor submission shall be the Commissioner's.

Section 12. Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

Section 13. Effective Date

This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 47 as last amended in 1987 shall remain in effect.

INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,
Sections 314, 1726 (18 **Del.C.** §§ 314, 1726)

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a **PUBLIC HEARING** will be held on **Thursday, February 26th, 1998** at 10:00 a.m. in the 2nd Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public on the agent community's request to strike the cap on agent commissions from Insurance Department Regulation 63,

Section 24 relating to long term care insurance policies, which reads as follows:

“Section 24. Permitted compensation arrangements

A. An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate which shall not exceed twenty-five percent (25%) of the total premium paid for that policy year.

B. No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.

C. For purposes of this section, “compensation” includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.”

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Thursday, February 19, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 171 or 800.282.8611 no later than Thursday, February 19, 1998.

VIOLENT CRIMES

COMPENSATION BOARD

**Statutory Authority: 11 Delaware Code,
Section 9004(4) (11 Del.C. 9004(4))**

NOTICE IS HEREBY GIVEN THAT THE VIOLENT CRIMES COMPENSATION BOARD (VCCB) WILL HOLD A PUBLIC HEARING ON WEDNESDAY, FEBRUARY 25, 1998 AT DEL TECH COMMUNITY COLLEGE, TERRY CAMPUS, DOWNES LECTURE HALL AT 7:00 P.M. TO ADOPT A NEW REGULATION EN-

TITLED “MENTAL HEALTH PRACTITIONERS, QUALIFICATIONS, LICENSURE” AND TO MAKE NON-SUBSTANTIVE CHANGES TO EXISTING REGULATIONS.

SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT THE OFFICE AT 995-8383.

Existing Rules and Regulations:

INDEX

Rule No. I	Definitions	2
Rule No. II	Address of the Board; Office Hours	4
Rule No. III	Statement of Goals	5
Rule No. IV	The Secretary; Filing of Papers	6
Rule No. V	Filing of Claims	7
Rule No. VI	Burden of Proof	8
Rule No. VII	Exhibits	9
Rule No. VIII	Investigation of Claims	10
Rule No. IX	Rules of Evidence	11
Rule No. X	Hearings	12
Rule No. XI	Attorneys	14
Rule No. XII	Attorney Fees	15
Rule No. XIII	Forms	16
Rule No. XIV	Subpoenas, Etc	17
Rule No. XV	Emergency Awards	18
Rule No. XVI	Dependency	19
Rule No. XVII	Appeal	20
Rule No. XVIII	Denial of Claim; Reduction	21
Rule No. XIX	Publication of Claims	22
Rule No. XX	Availability of Rules	23
Rule No. XXI	Construction of Rules	24
Rule No. XXII	Amendments of Rules	25
Rule No. XXIII	Quorum	26
Rule No. XXIV	Meetings	27
Rule No. XXV	Seal	28
Rule No. XXVI	Mental Suffering Award	29
Rule No. XXVII	Burial Awards	30
Rule No. XXVIII	Mental Health Counseling Award	31

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

January 12, 1993

STATE OF DELAWARE
DELAWARE’S VIOLENT CRIMES COMPENSATION
BOARD
RULES AND REGULATIONS

WHEREAS it is expedient to revise and recodify the rules and regulations of the Violent Crimes Compensation

Board of the State of Delaware,

NOW, THEREFORE, be it ordered as follows:

1. The rules as hereinafter set forth take effect and be in force in the State of Delaware on and after June 1, 1978,

2. All rules existing prior to the date of this publication are hereby repealed.

3. The laws of the State of Delaware shall be controlling in the event of any conflict arising or existing between the law and the rules as set forth in this publication and the Laws of the State of Delaware and amendments thereto.

4. The use of the word Board as it appears in the rules of this publication or as it may appear in any future amendments thereto shall mean the Violent Crimes Compensation Board.

Ann L. DelNegro
Executive Director

Leah W. Betts, Chairwoman
Thomas W. Castaldi, Vice Chairman
Saxton C. Lambertson, Board Member
Stephen L. Manista, Board Member
Dennis P. Williams, Board Member

July 1, 1994

RULE 1 - DEFINITIONS

The definitions set forth in Title 11, Chapter 90 of the Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows:

Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(A) 'Board' shall mean the Violent Crimes Compensation Board as established by this Act;

(B) 'Child, shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(C) 'Crime' for purposes of this Chapter shall mean:

(1) any specific offense set forth in Chapter 5 of the Delaware Criminal Code as the same appears in Chapter 497, Volume 58, Laws of Delaware, if the offense was committed after the effective date of said Criminal Code and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration

or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, or unlawful use of firearms.

(2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to the effective date of the Delaware Criminal Code, as set forth in Chapter 497, Volume 58, Laws of Delaware, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.

(3) Any specific offense occurring in another state possession or territory of the United States whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 Del. Laws, c. 269, Section 11.)

(4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms.

(D) 'Dependent' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

(E) 'Guardian' shall mean a person who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

(F) 'Incompetent' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

(G) 'Personal Injury' shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

(H) 'Pecuniary Loss' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. 'Pecuniary Loss' in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

(I) 'Victim' shall mean a person who is injured or

killed by the act of any other person during the commission of a crime as defined in this Chapter.

RULE II - ADDRESS OF THE BOARD; OFFICE HOURS

(A) All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.

(B) The office of the Board will be open from 8:00 a.m. until 4:00 p.m. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order.

RULE III - STATEMENT OF GOALS

The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose, and is of benefit to the victims of violent crimes committed within the State of Delaware, and in States that do not have a funded Victim Compensation Program and it is the purpose of the Violent Crimes Compensation Board to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and dependents of those victims.

RULE IV - THE SECRETARY; FILING OF PAPERS

(A) The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

(B) All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.

(C) All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and similarly all requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Secretary of the Board.

(D) Communications addressed to the Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in the office kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

RULE V - FILING OF CLAIMS

In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, located at 1500 E. Newport Pike, Suite 10, Wilmington, Delaware, 19804 within one year of the date of the crime.

RULE VI - BURDEN OF PROOF

In compensation cases, the burden of proof shall be upon the petitioner, it is also the victim's burden to prove that he was an innocent victim of a violent crime, and that he cooperated in the apprehension and/or conviction of the perpetrator of the crime.

RULE VII - EXHIBITS

Exhibits submitted at the Violent Crimes Compensation Board's hearings are to be kept until passage for time of appeal. When time for appeal has passed, the exhibits may be returned to their proper owner or destroyed. This does not include medical reports which have been submitted into evidence which shall remain as part of the case record.

RULE VIII - INVESTIGATION OF CLAIMS

All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event that cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

RULE IX - RULES OF EVIDENCE

The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

RULE X - HEARINGS

(A) Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board seven days prior to the scheduled hearing dates. special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

(B) The Board may receive as evidence, any statements, documents, information or material, that they find is relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or

attending physician at the hearing.

(C) Subsequent to the claim being presented to the Board and a decision has been rendered, the claimant, should they be dissatisfied with the decision, may request a hearing before the Board. This request must be in writing and within 15 days of the decision stating the reason for the disagreement.

(D) The Board may arrange for a medical or mental examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.

(E) All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.

(F) Hearings shall be open to the public. However, the Board may hold private hearings under the following circumstances:

(1) In a sexual offense where the welfare and interest of the victim or dependents may be adversely affected.

(2) In the interest of public morality.

(3) Prosecution against the alleged perpetrator of the crime is pending and no trial has been held.

(4) On written request by the claimant or counsel within five days before the hearing for good cause.

(G) A claim under \$5,000.00 may be heard by one Board Member

(H) A claim request to reopen and retain for additional medical that may be needed as a result of the original crime may be heard by a quorum of the Board. Adopted May 7, 1992

(I) A claim over 1 year in filing may be reviewed by one member to accept for processing or deny.

(J) Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.

RULE XI - ATTORNEYS

Claimants have the right to be represented before the Board by an attorney at law, licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.

Service upon the claimant's attorney shall be deemed as service on the party he represents.

XII - ATTORNEY FEES

(A) The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.

(B) The Attorney's fees shall not exceed \$1,000.00.

(C) Attorney's fees shall be awarded at the discretion of the Board.

(D) Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed \$1000.00; or a fee based on the number of hours spent in representing the claimant. Hourly fee rate to be determined by the Board.

(E) No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.

(F) Upon application to the Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.

RULE XIII - FORMS

The Board shall prepare and furnish claim forms.

RULE XIV - SUBPOENAS, ETC.

Any Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, -and records relevant to any investigation or hearing authorized by Chapter 90, Section 9015, Title 11, of the Delaware Code.

The Board or any staff member may take, or request, affidavits and dispositions of witnesses residing within or without of the State.

RULE XV - EMERGENCY AWARDS

The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report is acquired.

RULE XVI - DEPENDENCY

All questions relating to dependency shall be determined in accordance with Chapter 90 Section 9002, Title 11, of the Delaware Code which reads as follows:

Section 9002(d) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

RULE XVII - APPEAL

All questions relating to an appeal shall be determined in accordance with Chapter 90, Section 9005, Title 11, of the Delaware Code which reads as follows:

Section 9005(c) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.

Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo."

RULE XVIII - DENIAL OF CLAIM; REDUCTION

All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section 9006, of the Delaware Code which reads as follows:

"The Board shall deny payment of a claim for the following reasons:

(A) Where the claimant was the perpetrator of the crime on which the claim is based, or was the principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred.

(B) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.

(C) Where the claimant refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.

(D) Where the claim has not been filed within one year after the personal injury on which the claim is based, unless an extension is granted by the Board.

(E) Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable as stated in the Del. Code Section 9006(5) Title 11.

(F) Where the victim is the end result of a suicide.

(G) Where the victim has sustained injuries during a drugrelated crime in which he or she was a participant.

In determining whether or not to make an award under the provisions of this Chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly

contributed to his injury or death; unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident, giving rise to the injury.

RULE XIX - PUBLICATION OF CLAIMS

The Board may make public the official record of claims and reports.

RULE XX - AVAILABILITY OF RULES

The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board. A copy of these rules and regulations shall be, on file with all the County law libraries.

RULE XXI - CONSTRUCTION OF RULES

These rules shall be liberally construed to accomplish the purpose of Chapter 90, Title 11, of the Del. Code.

RULE XXII - AMENDMENTS OF RULES

New rules may be adopted and any rule may be amended or rescinded by the Board at a regular or special meeting.

New rules, amendments, or revisions shall become effective the date approved by the Board according to Chapter 90, Title 11, Section 9004(d), of the Del. Code, which reads as follows:

"The Board shall have the following functions, powers, and duties:

Section 9004(d) 'to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter'."

RULE XXIII - QUORUM

Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation and in that instance a quorum of the Board shall be one (1) member. Where an opinion is divided, the majority shall prevail.

RULE XXIV - MEETINGS

Meetings shall be held upon notice by the Chairman or the Executive Director at such time and place directed.

(a) The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims, the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda. In the event that the Board's running agenda numbers three or more items, a meeting solely for the purpose of addressing Board business shall be held within 30 days.

Adopted October 17, 1991. Revised January 7, 1993.

RULE XXV - SEAL

The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.

RULE XXVI - MENTAL SUFFERING AWARD

Maximum award for mental suffering is set at \$2,500.00. Clarification of this motion is that over the past two years there has been a substantial increase in claims. The Board feels it is necessary to cap mental suffering awards at \$2,500.00 to insure an equitable distribution of funds for all victims, and to initiate a uniformity and consistency in awarding mental suffering claims with emphasis on counseling and rehabilitation.

This rule shall apply to crimes that occurred before February 11, 1992. Revised October 17, 1991.

Rule XXVI removed by statute February 11, 1992.

RULE XXVII - BURIAL AWARDS

Funeral Expense awards are not to exceed \$4500.00 including opening and closing of the grave. A maximum award of \$1,000.00 for the cemetery plot and \$500.00 maximum award for the grave marker and installation. Adopted March 14, 1992.

Cost of flowers not to exceed \$150.00 and is to be included in the maximum amount of \$4500.00 for funeral expenses. Adopted May 7, 1992.

RULE XXVIII - MENTAL HEALTH COUNSELING AWARD

(A) In the event of a claim for costs associated with mental health counseling, the Board may, following initial review of the claim, award counseling not to exceed three (3) months in duration and a total cost of \$1,250.00.

(B) In the event that additional counseling will be

required beyond the period provided for in Section (A), the claimant must submit a request to the Board prior to the expiration of the initial award. Failure to submit such request in a timely fashion may, at the Board's discretion, result in the denial of such request and refusal to make payment for treatment in excess of the initial award. Any request for a mental health counseling award shall be accompanied by an evaluation and treatment plan including, but not limited to:

(1) A determination that the need for counseling resulted directly from the crime in question rather than a previously existing condition; and

(2) A statement or certification that the treatment will address only crime-related injuries.

(C) The Board, at its discretion, may require production of any documents it deems necessary to its determination of a request for a mental health counseling award.

Leah W. Betts, Chairwoman
Thomas W. Castaldi, Vice Chairman
Saxton C. Lambertson, Member
Stephen L. Manista, Member
Dennis P. Williams, Member

March 23, 1995

PROPOSED RULES:**INDEX**

Rule No. I Definitions	2
Rule No. II Address of the Board; Office Hours	4
Rule No. III Statement of Goals	5
Rule No. IV The Secretary; Filing of Papers	6
Rule No. V Filing of Claims	7
Rule No. VI Burden of Proof	8
Rule No. VII Exhibits	9
Rule No. VIII Investigation of Claims	10
Rule No. IX Rules of Evidence	11
Rule No. X Hearings	12
Rule No. XI Attorneys	14
Rule No. XII Attorney Fees	15
Rule No. XIII Forms	16
Rule No. XIV Subpoenas, Etc.	17
Rule No. XV Emergency Awards	18
Rule No. XVI Dependency	19
Rule No. XVII Appeal	20
Rule No. XVIII Denial of Claim; Reduction	21
Rule No. XIX Publication of Claims	22
Rule No. XX Availability of Rules	23
Rule No. XXI Construction of Rules	24
Rule No. XXII Amendments of Rules	25

PROPOSED REGULATIONS

1167

Rule No. XXIII Quorum	26
Rule No. XXIV Meetings	27
Rule No. XXV Seal	28
Rule No. XXVI Mental Suffering Award	29
Rule No. XXVII Burial Awards	30
Rule No. XXVIII Mental Health Counseling Award	31
<u>Rule No. XXIX Mental Health Practitioner Qualifications/Licensure</u>	

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

STATE OF DELAWARE
DELAWARE'S VIOLENT CRIMES COMPENSATION
BOARD
RULES AND REGULATIONS

WHEREAS it is expedient to revise and recodify the rules and regulations of the Violent Crimes Compensation Board of the State of Delaware,

NOW, THEREFORE, be it ordered as follows:

1. The rules as hereinafter set forth take effect and be in force in the State of Delaware on and after June 1, 1978.

2. All rules existing prior to the date of this publication are hereby repealed.

3. The laws of the State of Delaware shall be controlling in the event of any conflict arising or existing between the law and the rules as set forth in this publication and the Laws of the State of Delaware and amendments thereto.

4. The use of the word Board as it appears in the rules of this publication or as it may appear in any future amendments thereto shall mean the Violent Crimes Compensation Board.

5. Rules of Regulations of the Violent Crimes Compensation Board shall be adopted according to the requirements of the Administrative Procedure Act, 29 Del. Laws, c. 101, Subchapter I & II.

Ann L. DelNegro
Executive Director

Thomas W. Castaldi, Chairman
Saxton C. Lambertson, Vice Chairman
Leah W. Betts, Board Member
V. Lynn Gregory, Board Member
Stephen L. Manista, Board Member

RULE 1 - DEFINITIONS

The definitions set forth in Title 11, Chapter 90 of the

Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows:

Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

9002. Definitions.

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

(1) "Board" shall mean the Violent Crimes Compensation Board as established by this chapter.

(2) "Child" shall mean an unmarried person who is under 18 years of age, and shall include the stepchild or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(3) "Crime" for purposes of this chapter shall mean:

a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnaping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms;

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnaping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

c. Any specific offense occurring in another state, possession or territory of the United States in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape, manslaughter, assault, kidnaping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title;

d. Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnaping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms; or

e. An act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States against a resident of this State. (Effective date of amendment 4/8/97.)

(4) "Dependent" shall mean a person wholly or substantially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim.

(5) "Guardian" shall mean a person who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent.

(6) "Incompetent" shall mean a person who is incapable of managing the person's own affairs, as determined by the Board or by a court of competent jurisdiction.

(7) "Personal injury" shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

(8) "Pecuniary loss" in instances of personal injury shall include medical expenses, including psychiatric care and mental health counseling of the victim or secondary victims; nonmedical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. "Pecuniary loss" in instances of death of the victim shall include funeral and burial expenses, loss of support to the dependents of the victim and mental health counseling to secondary victims. "Pecuniary loss" includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

(9) "Victim" shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter.

(10) "Secondary victims" shall mean any parent, son, daughter, spouse, brother or sister of the victim.

RULE II - ADDRESS OF THE BOARD; OFFICE HOURS

(A) All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.

(B) The office of the Board will be open from 8:00 a.m. until 4:00 p.m. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order.

RULE III - STATEMENT OF GOALS

The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose and is of benefit to:

1. individuals who are victimized within the State of

Delaware;

2. Delaware residents who are victimized without the State of Delaware in possessions or territories of the United States not having eligible crime victim compensation programs;

3. Delaware residents who are victimized during acts of terrorism committed outside the United States.

The Violent Crimes Compensation Board shall promote the welfare of victims of crime by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the family and dependents of those victims.

RULE IV - THE SECRETARY; FILING OF PAPERS

(A) The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, and records of the Board including its verbal and written findings, determinations, reports, opinions, orders, rules and regulations, and approved forms.

(B) All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.

(C) All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and, similarly,

(D) Crime victims case files and records maintained by the Violent Crimes Compensation Board shall fall under the open records provision of the Freedom of Information Act, 29 Del. Laws, c. 100.

(E) Communications addressed to the Board, and all petitions and other pleadings; all reports; exhibits; dispositions; transcripts; orders; and other papers or documents, received or filed in the office and kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

RULE V - FILING OF CLAIMS

In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, located at 1500 E. Newport Pike, Suite 10, Wilmington, Delaware, 19804 within one year of the date of the crime.

RULE VI - BURDEN OF PROOF

In compensation cases, the burden of proof shall be upon the petitioner. It is the victim's burden to prove that he/she was an innocent victim of a violent crime, and that

he/she cooperated in the apprehension and/or conviction of the perpetrator of the crime.

RULE VII - EXHIBITS

Exhibits and case file documents submitted prior to or after the Violent Crimes Compensation Board's hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

RULE VIII - INVESTIGATION OF CLAIMS

All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

RULE IX - RULES OF EVIDENCE

The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

RULE X - HEARINGS

(A) Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board at least seven days prior to the scheduled hearing date. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

(B) The Board may receive as evidence, any statements, documents, information, or material it finds relevant and of such nature as to afford the claimant a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc. as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

(C) Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the Violent Crimes Compensation Board within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.

(D) The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.

(E) All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all

witnesses.

(F) Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:

(1) When the claim to be considered derives from any sexual offense;

(2) When the claim to be considered derives from any offense by a child unless such child has been deemed amenable to the jurisdiction of a criminal court;

(3) When the claim to be considered derives from any matter not yet adjudicated.

(G) A claim under \$5,000.00 may be heard by one Board Member

(H) A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than \$5,000.00. If the reopen request for compensation is more than \$5,000.00, the request to reopen shall be heard by a quorum of the Board.

(I) If a claim is filed more than one (1) year after the crime occurrence, the claim may be reviewed by one member to accept or deny for processing.

(J) Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.

RULE XI - ATTORNEYS

All claimants have the right to be represented before the Board by an attorney, who is licensed to practice law in the State of Delaware. The attorney shall file a notice of appearance.

Service upon the claimant's attorney shall be deemed as service on the party he/she represents.

XII - ATTORNEY FEES

(A) The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.

(B) The attorney's fee shall not exceed \$1,000.00.

(C) Attorney fees shall be awarded at the discretion of the Board.

(D) Attorney fees may be 15% of the total amount awarded to the victim, but shall not exceed \$1000.00; or may be a fee based on the number of hours spent in representing the claimant. Hourly fee rates shall be determined by the Board.

(E) No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.

(F) Upon application to the Board for attorney fees, the service rendered the injured victim, as well as the time

spent and uniqueness of the case, will be considered in determining the allowance of attorney fees.

RULE XIII - FORMS

The Board shall prepare and furnish claim forms and brochures.

RULE XIV - SUBPOENAS, ETC.

Any Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 Del. Laws, C. 90, Section 9015.

The Board or any staff member may take, or request, affidavits and dispositions of witnesses residing within or without of the State.

RULE XV - EMERGENCY AWARDS

The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his/her claim form and show just cause as to why such an award should be considered. No such award will be made until the police report is acquired.

RULE XVI - DEPENDENCY

All questions relating to dependency shall be determined in accordance with 11 Del. Laws, C. 90, Section 9002 of the Delaware Code which reads as follows:

Section 9002(d) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

RULE XVII - APPEAL

All questions relating to an appeal shall be determined in accordance with 11 Del. Laws, C 90, Section 9005 of the Delaware Code which reads as follows:

Section 9005(c) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable. Any claimant who is aggrieved by the Board's decision concerning

compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo."

RULE XVIII - DENIAL OF CLAIM; REDUCTION

All questions relating to the denial of a claim shall be determined in accordance with 11 Del. Laws, c. 90, Section 9006, of the Delaware Code which reads as follows:

(a) The Board shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;

(2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime;

(3) Where the claimant refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim is based, unless an extension is granted by the Board;

(5) Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board, in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable.

(6) Where the victim is injured as a result of their own suicide or attempted suicide;

(7) Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant.

(8) Where the victim is delinquent in the payment of any penalty assessment levied pursuant to Section 9012 of this title, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Board may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Board may, for hardship or other good cause, waive the provisions of this paragraph in their entirety.

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

RULE XIX - PUBLICATION OF CLAIMS

The Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 Del. Laws, c. 100.

RULE XX - AVAILABILITY OF RULES

The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board. A copy of these rules and regulations shall be on file with all the County and State law libraries.

RULE XXI - CONSTRUCTION OF RULES

These rules shall be liberally construed to accomplish the purpose of 11 Del. code, C. 90.

RULE XXII - AMENDMENTS OF RULES

In accordance with 11 Del. Laws, C. 90, Section 9004(d):

“The Board shall have the following functions, powers, and duties:

Section 9004(d) to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter.”

New rules may be adopted and any rules may be amended or rescinded by the Board at a regular or special meeting following compliance with the Administrative Procedures Act, 29 Del. Laws, C. 101, Subchapter I & II.

RULE XXIII - QUORUM

Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation, and in that instance a quorum of the Board shall be one (1) member.

Where an opinion is divided, majority rule shall prevail.

RULE XXIV - MEETINGS

Meetings shall be held upon proper notice by the Chairman or the Executive Director at such time and place directed.

(a) The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.

(b) A meeting solely for the purpose of addressing Board business shall be held within 30 days to address any three or more new business topics. Adopted October 17, 1991. Revised January 7, 1993.

RULE XXV - SEAL

The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words - VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.

RULE XXVI - MENTAL SUFFERING AWARD

Maximum award for mental suffering is set at \$2,500.00. Clarification of this motion is that over the past two years there has been a substantial increase in claims. The Board feels it is necessary to cap mental suffering awards at \$2,500.00 to insure an equitable distribution of funds for all victims, and to initiate a uniformity and consistency in awarding mental suffering claims with emphasis on counseling and rehabilitation.

This rule shall apply to crimes that occurred before February 11, 1992. Revised October 17, 1991.

Rule XXVI removed by statute February 11, 1992.

RULE XXVII - BURIAL AWARDS

The aggregate award for funeral and burial shall not exceed \$6,000.00 including:

A.) Funeral expenses, including opening and closing of the grave at \$4,500.00 maximum;

B.) Cemetery plot at \$1,000.00 maximum;

C.) Grave marker including installation at \$500.00 maximum. Adopted March 14, 1992.

Cost of flowers not to exceed \$150.00 and is to be included in the maximum amount of \$4500.00 for funeral expenses. Adopted May 7, 1992.

**RULE XXVIII - MENTAL HEALTH COUNSELING
AWARD**

(A) In the event of a claim for costs associated with mental health counseling, the Board may, following initial review of the case, award counseling not to exceed three (3) months in duration and a total cost of \$1,250.00.

(B) In the event that additional counseling will be required beyond the period provided for in Section (A), the claimant must submit a request to the Board prior to the expiration of the initial award. Failure to submit such request in a timely fashion may, at the Board's discretion, result in the denial of such request and refusal to make payment for treatment in excess of the initial award. Any request for a mental health counseling award shall be accompanied by an evaluation and treatment plan including, but not limited to:

(1) A determination that the need for counseling resulted directly from the crime in question rather than a previously existing condition; and

(2) A statement or certification that the treatment will address only crime-related injuries.

(C) The Board, at its discretion, may require production of any documents it deems necessary to its determination of a request for a mental health counseling award.

**RULE XXIX - MENTAL HEALTH PRACTITIONER
QUALIFICATIONS/LICENSURE**

To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, treatment must be provided by a practitioner possessing an advanced degree in an applied mental health discipline. The advanced degree should be in Psychology, Social Work, Counseling, or Psychiatric Nursing.

To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, services must be provided by a licensed mental health practitioner. The four disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits are: Licensed Psychiatrist; Licensed Psychologist; Licensed Clinical Social Worker; Licensed Mental Health Counselor; and Licensed Clinical Nurse Specialist.

Payment for mental health treatment received outside the State of Delaware will be evaluated for licensure on a case-by-case basis by the Violent Crimes Compensation Board.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE COUNCIL ON REAL ESTATE
APPRAISERS**

Statutory Authority: 24 Delaware Code,
Section 2934(a) (24 Del.C. 2934(a))

**PROPOSED RULES AND REGULATIONS
DELAWARE COUNCIL ON REAL ESTATE
APPRAISERS****TABLE OF CONTENTS**

SECTION	PAGE
SECTION 1 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE	
1.01 Application	1
1.02 Filing and Fees	1
SECTION 2 - APPRAISER LICENSING AND CERTIFICATION	
2.01 Qualifications for Appraiser Licensure and Certification	2
2.02 License and Certificate Renewal	3
2.03 Continuing Education	3
2.04 Inactive Status	4
2.05 Expired License or Certificate	5
2.06 Payment of License and Certificate Fees	5
2.07 Duplicate License or Certificate Fee	5
2.08 Federal Appraiser Registry	6
SECTION 3 - EXAMINATION	
3.01 Examination	6
SECTION 4 - GENERAL APPRAISAL PRACTICE	
4.01 Appraisal Office Administration	7
4.02 Supervision of State Licensed Appraiser Trainees	9
4.03 Supervision of Licensed or Certified Residential Appraisers and Trainees	13
4.04 Use of Titles	14
4.05 Display of License and Certificates	15
4.06 Advertising	15
4.07 Change of Name or Address	16

4.08 Appraisal Reports 16

SECTION 5 - TEMPORARY PRACTICE & RECIPROCITY

5.01 Temporary Practice 17
5.02 Reciprocity 17

SECTION 6 - QUALIFYING MASS APPRAISAL EXPERIENCE

6.01 Qualifying Mass Appraisal Experience 18
6.02 Mass Appraisal Experience Log 22

SECTION 7 - STANDARDS OF APPRAISAL PRACTICE

7.01 Appraisal Standards 24

SECTION 8 - COMPLAINTS; HEARING PROCEDURES; FINAL DECISIONS

8.01 Complaints 25
8.02 Hearing Procedures 25
8.03 Transcripts 27
8.04 Return of Documentary Evidence 27
8.05 Final Decision 28

SECTION 9 - PUBLIC DISCLOSURE

9.01 Public Notice 28
9.02 Meeting Minutes 29
9.03 Council Records 29

SECTION 10 - CHANGE AND MODIFICATION TO RULES AND REGULATIONS

10.01 Changes/Modifications 30

SECTION 11 - SEVERABILITY

11.01 Severability 30

*** Please note that the above page numbers refer to the original document, not to pages in the Register.**

SECTION 1 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE

1.01 APPLICATION

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number,

places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.02 FILING AND FEES

A. Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

B. A fee set by the Division of Professional Regulation will be charged for the following:

1. Initial application and licensure for appraiser trainee license
2. Initial application and licensure for licensed real property appraiser license
3. Initial application and certification for certified residential real property appraiser certificate
4. Initial application and certification for certified general real property appraiser certificate
5. Renewal fee
6. Duplicate license and certificate fee
7. Inactive status fee
8. Roster fee
9. Printing fee
10. Federal Appraiser Registry fee
11. Letter of Good Standing
12. Copies of the Uniform Standards of Professional Appraisal Practice

C. Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 739-4522.

SECTION 2 - APPRAISER LICENSING AND CERTIFICATION

2.01 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION

A. Applicants for certification as a state certified general or residential real property appraiser and for licensed real property appraiser must satisfy the qualification requirements stated in Chapter 29, Title 24, Section 2934, Delaware Code, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto."

B. Applicants for licensure as a state licensed appraiser trainee shall have successfully completed a minimum of 45 classroom hours of education on real

estate matters satisfactory to the Council, of which fifteen (15) classroom hours shall be on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice.

2.02 LICENSE AND CERTIFICATE RENEWAL

A. In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensed and certified appraisers. Certificates and licenses will expire on October 31st of each odd numbered year.

B. As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.03 of this Section.

C. Any person who acts or professes to be a state licensed or state certified real property appraiser while their appraiser license or certificate has expired will be subject to disciplinary action and penalties as described in Chapter 29, Title 24, of the Delaware Code.

2.03 CONTINUING EDUCATION

A. As a prerequisite to renewal of a real property appraiser license or certificate, the licensee or certificate holder shall present evidence satisfactory to the Council of having completed during the immediately preceding two (2) years, the number of classroom hours of instruction, approved by the Council as set by the Appraiser Qualifications Board (AQB) as from time-to-time amended, as provided by 24 Del. C. Section 2934(c).

B. As a prerequisite to renewal of a license, certificate and trainee license, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council.

2.04 INACTIVE STATUS

A. A licensee or certificate holder may request to be placed on inactive status for a period not to exceed two (2) years. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council, a licensee or certificate holder shall be placed on inactive status for a period not to exceed two (2) years. The Council may grant extensions if the licensee or certificate holder shows due cause.

B. A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real property appraiser. However, in order to continue to hold an appraiser license or certificate, a licensee or certificate holder on inactive status must renew his/her license or certificate, including payment of

the prescribed renewal fee and completion of all continuing education.

C. A licensee or certificate holder on inactive status may request to be returned to active status at any time. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council and payment of all necessary fees, a licensee or certificate holder on inactive status shall be returned to active status.

2.05 EXPIRED LICENSE OR CERTIFICATE

A. Expired real property appraiser licenses and certificates may be reinstated within twelve (12) months after expiration upon proper application and payment of the renewal fee plus a late filing fee as set by the Division of Professional Regulation.

B. Licenses and certificates expired for more than twelve (12) months may be considered for reinstatement upon proper application, payment of the renewal fee plus late filing fee, provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed, and successful completion of the examination as required in Section 3 herein. Further, the reinstatement application must meet the current requirements of the AQB for education and experience.

2.06 PAYMENT OF LICENSE AND CERTIFICATE FEES

Checks in payment of real property appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.

2.07 DUPLICATE LICENSE OR CERTIFICATE FEE

By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.08 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid annually by the licensee or certificate holder to the State of Delaware.

SECTION 3 - EXAMINATION**3.01 EXAMINATION**

A. The Council shall review each application to determine whether the applicant is qualified to sit for the examination. Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.

B. Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the date of the application.

C. For the examination to be considered valid, the experience requirement must be satisfied within two (2) years of the date of successful completion of the examination. Should the experience requirement not be met within the two (2) year period, the examination will be considered invalid and it will be necessary to re-apply and pay the required fee as if no examination had been taken.

D. The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

SECTION 4 - GENERAL APPRAISAL PRACTICE DUTIES AND RESPONSIBILITIES OF STATE LICENSED APPRAISER TRAINEES; SUPERVISION OF STATE LICENSED APPRAISER TRAINEES; TRAINEE LICENSE RENEWALS**4.01 APPRAISAL OFFICE ADMINISTRATION**

A. A certified or licensed appraiser shall be designated as the supervisory appraiser by each appraisal firm, each combined real estate brokerage and appraisal firm, and each branch office of such firms for which real estate appraisals are performed by:

1. Two (2) or more state licensed or state certified real property appraisers who are employed by or associated with the firm; or

2. Licensed appraiser trainees who are employed by or associated with the firm and who assist a state licensed or state certified real property appraiser in the performance of real estate appraisals.

B. The certified or licensed appraiser so designated shall be responsible for:

1. The proper display of licenses and certificates of all state licensed and state certified real property appraisers employed by or associated with that office of the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule 2.02 of these Rules and Regulations;

2. The proper notification to the Council of any change of business address or trade name of that office of the firm and the registration of any assumed business name adopted by the firm for its use;

3. The proper conduct of advertising of appraisal services by or in the name of the firm;

4. The property retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;

5. The maintenance of a record for each of the firm's state licensed appraiser trainees that generally describes the nature and extent of assistance rendered in connection with each appraisal; and

6. The maintenance of a record for each of the firm's state licensed and state certified residential real property appraisers that generally describes the nature and extent of assistance rendered by the state licensed real property appraiser when assisting a state certified residential or general real property appraiser and any assistance rendered by the state certified residential real property appraiser when assisting a state certified general real property appraiser in performing an appraisal.

C. No licensee or certificate holder shall be so designated for more than one appraisal firm, combined real estate brokerage and appraisal firm, or branch office of such firms.

D. Each certified or licensed appraiser so designated shall notify the Council in writing of any change in his/her status of the certified or licensed appraiser so designated within ten (10) days following the change.

E. Each certified or licensed appraiser so designated shall be located at the office for which he/she is responsible for direct and personal supervision thereof.

4.02 SUPERVISION OF STATE LICENSED APPRAISER TRAINEES

A. A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the

appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report.

B. A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

1. Actively and personally supervises the state licensed appraiser trainee;
2. Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;
3. Complies with all provisions of Rule 4.08 of this Section regarding appraisal reports; and if applicable,
4. Prepares and furnishes to the certified or licensed appraiser designated under Paragraph 4.01, and to each state licensed appraiser trainee whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed appraiser trainee and places a copy of such report in the supporting file for the appraisal.

C. All appraiser trainees must be licensed as required under Chapter 29, Title 24, of the Delaware Code.

D. The holder of a real property appraiser trainee license issued pursuant to 24 Del. C. Section 2934(d) and Rule 2.01(B) shall have the following duties and responsibilities:

1. The trainee shall work under the direct supervision of a State licensed or state certified real property appraiser;
2. The trainee shall maintain an experience log on a form provided by the Council;
3. The trainee shall inspect the property and participate in the appraisal process in order to sign the report and to receive credit for the hours spent. The report shall be signed by the trainee as follows:

Assisted by:

_____, Trainee

Name

License Number: _____

4. The trainee shall ensure that the log is available at all times for inspection by the Council; and
5. When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

E. A supervising appraiser must be a State licensed or state certified real property appraiser, and shall have the following duties and responsibilities:

- (1) The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the trainee in accordance with the Uniform

Standards of Professional Appraisal Practice (USPAP). "Direct Supervision" means to:

- (a) personally inspect with the trainee the interior and exterior of each property appraised;
- (b) personally review each appraisal report prepared by the trainee;
- (c) accept full responsibility for the report;
- (d) assign work to the trainee only if the trainee is competent to perform such work; and
- (e) approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements.

(2) At least once a month, the supervisor shall sign the experience log required to be kept by the trainee and shall affix his/her license or certification number.

(3) The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council.

(4) After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.02(B)(1)(a), provided the trainee is competent to perform the inspection.

(5) The supervisor shall not supervise more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.02(E)(1)(a).

(6) The supervisor must sign an affidavit affirming that he/she is a state licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers.

(7) The supervisor shall comply with all provisions of Rule 3.06 regarding appraisal reports.

F. Pursuant to Rule 2.03 a Real Property Appraiser Trainee's licenses may be renewed only two (2) times.

G. When an appraiser trainee is discharged or terminates his/her employment with a licensed or certified real estate appraiser by such licensed or certified real estate appraiser shall immediately notify the Council in writing of such termination. At the time of the written notification to the Council, the licensed or certified appraiser shall address a communication to the last known address of such appraiser trainee, which communication shall advise the appraiser trainee that his/her employment has been terminated. A copy of the communication to the appraiser trainee shall accompany the notification to the

Council. No such appraiser trainee shall perform any of the acts contemplated by this Chapter or engage directly or indirectly in the business of an appraiser trainee until the Council shall issue a new license showing change of employment and business location.

4.03 SUPERVISION OF LICENSED OR CERTIFIED RESIDENTIAL APPRAISERS AND TRAINEES

A. When a state licensed real property appraiser assists a state certified residential or general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified real property appraiser, the state certified real property appraiser shall:

1. Actively and personally supervise the state licensed real property appraiser;
2. Review the appraisal report and supporting data used in connection with the appraisal;
3. Comply with all provisions of Rule 4.08 of this Section regarding appraisal reports; and if applicable,
4. Prepare and furnish to the certified or licensed appraiser designated under Paragraph 4.01, and to each state licensed real property appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed real property appraiser and place a copy of such report in the supporting file for the appraisal.

B. When a state certified residential real property appraiser assists a state certified general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified general real property appraiser, the state certified general real property appraiser shall perform those supervisory acts set forth in Subsection A of this Rule with regard to the activities of the state certified residential real property appraiser.

4.04 USE OF TITLES

A. Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

B. A state licensed real property appraiser shall utilize the term "state licensed real property appraiser"; a state certified residential real property appraiser shall utilize the term "state certified residential real property appraiser"; and a state certified general real property appraiser shall utilize the term "state certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A state licensed appraiser trainee shall use the term "state licensed appraiser trainee" and shall only co-sign appraisals along with a state licensed or state certified

real property appraiser. Approved abbreviations are as follows:

- DE Cert Gen followed by the certification number,
- DE Cert Res followed by the certification number,
- DE Lic Appr followed by the license number,
- DE Appr Trainee followed by the license number.

4.05 DISPLAY OF LICENSES AND CERTIFICATES

A. The real property appraiser license or certificate of a state licensed or state certified real property appraiser shall be prominently displayed at the appraiser's place of business. Pursuant to Rule 4.01 the license or certificate of the supervisory appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the supervisory appraiser shall be prominently displayed at such office.

B. The biennial license or certificate renewal pocket card issued by the Council to each state licensed or state certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.06 ADVERTISING

A. When advertising or otherwise holding himself/herself out as a real property appraiser, a state licensed real property appraiser shall identify himself/herself as a "state licensed real property appraiser." A state certified residential real property appraiser shall identify himself/herself as a "state certified residential real property appraiser". A state certified general real property appraiser shall identify himself/herself as a "state certified general real property appraiser."

B. A state licensed or state certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

4.07 CHANGE OF NAME OR ADDRESS

All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.08 APPRAISAL REPORTS

A. Each written appraisal report prepared by or under the direction of a state licensed or state certified real property appraiser shall bear the signature of the state licensed or state certified appraiser, the license or

certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation “state licensed appraiser trainee” (as co-signer only), “state licensed real property appraiser,” “state certified residential real property appraiser,” or the designation “state certified general real property appraiser,” or the approved abbreviations as specified in Section 4.01. Where applicable, each appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

B. When a state licensed or certified real property appraiser signs an appraisal report prepared by another person, including a subcontractor acting under the direction or supervision of the appraiser, such appraiser shall be fully responsible for the content of the report.

SECTION 5 - TEMPORARY PRACTICE & RECIPROCITY

5.01 TEMPORARY PRACTICE

The Council may grant temporary licensing or certification privileges in accordance with 24 Delaware Code, Section 2935 (a).

5.02 RECIPROCITY

The Council may grant a reciprocal license in accordance with 24 Delaware Code Section 2935 (b) to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent to the State of Delaware without being registered with and duly licensed or certified by the Council on Real Estate Appraisers.

SECTION 6 - GUIDELINES FOR QUALIFYING MASS APPRAISAL EXPERIENCE

6.01 QUALIFYING MASS APPRAISAL EXPERIENCE

The Delaware Council on Real Estate Appraisers (“Council”) has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification. The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor’s Application for Real Estate Appraiser License or Certificate. The State of Delaware under Chapter 24, Subchapter II. Regulation of Real Estate Appraisers, Subsection 2932, subparagraph (c), sets forth specifically:

“(c) The Council on Real Estate Appraisers is required to include in its regulations educational

experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73 [12 U.S.C. & 1833 a et seq.], and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)”

Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation “Interpretations/Clarifications” to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

“Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process.

Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

Mass appraisals shall be performed in accordance with USPAP Standard 6.” In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6.

Currently, a minimum of 2,000 hours over a two (2) - year period is required for all applicants for licensure or certification. A minimum of 1,000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.

As stated in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate, applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

A. Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

B. Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

1. Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

2. The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

3. If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

4. If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically

identified and their contribution to value detailed.

6.02 MASS APPRAISAL EXPERIENCE LOG

Applicants seeking mass appraisal experience credit must complete the attached Mass Appraisal Experience Log. Use the key on the Mass Appraisal Experience Log form for creditable experience. The information included in each column is as follows:

Date of Activity State the specific dates of the activity. If a range of dates is appropriate, be sure that the activity occurred continuously over that period. (Example: March 23-24, 1992)

Value Date Applicants applying for ad valorem, mass appraisal experience completed in Delaware must list the month and year of the valuation date.

Property Class Use the key on the form for identifying the property type.

1. Residential (less than 5 units)
2. Multi - Family (2 - 4 units)
3. Commercial
4. Industrial
5. Special purpose properties

City/Town Municipality where the mass appraisal work was used to generate appraisals.

Type of Activity Use the key on the form for identifying the property type. The creditable types of activity are listed as follows:

A. Highest and Best Use Analysis - Detail analysis used to determine highest and best use of a site both as if vacant and as developed.

B. Model Specification - Development of the valuation schedules. Such documentation should include the approach to value (cost, market or income), identification of how factors (property characteristics) were selected, the quantification of these factors (dollar or percentage adjustments) and how the relationship among the factors was determined.

C. Model Calibration - Adjusting the valuation schedules using the generally accepted techniques, such documentation should include any statistical analyses employed to set unit prices and percentage adjustments.

Hours Only the actual working hours on the associated activity are creditable. Only time specifically spent on the activity is creditable. Working full-time on a revaluation project does not automatically translate into 40 hours per week of creditable appraisal experience. The applicant must be precise in detailing the activities and when they took place. In evaluating the number of hours of credit requested, any unusual number of hours claimed for a particular activity may result in further review of the supporting documentation. **NOTE THAT DATA COLLECTION AND FIELD REVIEW ACTIVITIES BY THEMSELVES ARE NOT CREDITABLE EXPERIENCE.**

Position Title List your position at the time of activity.

Documentation Locations State the physical location of the documentation which details each activity for which experience credit is requested. It is advisable to secure copies of any documentation not in your possession prior to applying for experience credit. **THE APPLICANT IS RESPONSIBLE FOR THE PRODUCTION OF THIS DOCUMENTATION.** Therefore, it is important that the applicant claim credit only for the activities for which documentation can be immediately produced.

Upon request the applicant may be asked to submit sworn statements from witnesses who can verify his/her claimed experience.

SECTION 7 - STANDARDS OF APPRAISAL PRACTICE

7.01 APPRAISAL STANDARDS

A. In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

B. Copies of the "Uniform Standards of Professional

Appraisal Practice" are available upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time-to-time.

SECTION 8 - COMPLAINTS; HEARING PROCEDURES; FINAL DECISIONS

8.01 COMPLAINTS

The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in Section 8810 of Title 29 of the Delaware Code.

8.02 HEARING PROCEDURES

All hearings shall be in accordance with the Administrative Procedures Act, 29 Del. C. Sections 10121-10129.

A. At least 30 days before the date fixed for the hearing, the Council shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the accused real estate appraiser. In cases where the accused real estate appraiser cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation. The accused real estate appraiser shall also be advised of his/her rights, as follows:

1. That he/she has the right to appear personally and to be represented by counsel;
2. That he/she has the right to cross-examine any witness who may appear against him/her and produce witnesses and evidence in his/her own defense; and
3. That he/she is entitled to the subpoena power of the Council to ensure the attendance of any witnesses he or she intends to call. If the accused wishes to avail himself/herself of the Council's subpoena power, he/she must submit to the Council, in writing and no later than fifteen (15) days prior to the date of the hearing, the names and addresses of the witnesses whose attendance he/she wishes the Council to compel.

B. All hearings shall be informal and shall not be bound by the formal rules of evidence. All testimony shall be taken under oath. All testimony which the Council determines to be relevant, reliable, and probative and not unduly repetitious, shall be admissible. Objections to the admission or exclusion of evidence shall be brief and shall state the grounds for objection. Any offer of proof which is made in connection with the objection to the admission of evidence shall consist of a statement of that which the offeror contends would be abused by such evidence. Where the offered evidence concerns a document, a copy of the same shall be marked for identification.

C. All testimony shall be recorded either by a court

reporter or by means of an electronic recording device. In the event electronic means are used, the electronic record shall be preserved until after the time for appeal of the Council's decision has expired with no appeal being taken. The Council shall maintain a permanent written record of all hearings in the form of official minutes.

D. Hearings shall be conducted in the following manner:

1. The Council shall open the hearing with a brief statement of the purpose of the hearing.

2. The Council shall then receive the evidence which is offered to support the charges which have been proffered against the accused real estate appraiser.

3. The accused real estate appraiser shall be afforded an opportunity to cross-examine any witness who may testify against him/her.

4. After all of the evidence which supports the charges has been received, the accused real estate appraiser may present a brief statement of that which he/she intends to establish.

5. The accused real estate appraiser may then testify in his/her own behalf and present witnesses and evidence in his/her defense.

6. All witnesses who appear before the Council shall be subject to examination by the Council.

8.03 TRANSCRIPTS

Transcripts of the proceedings may be obtained by the accused real estate appraiser or any other person interested in the hearing upon written request and payment of the costs involved in preparing the same.

8.04 RETURN OF DOCUMENTARY EVIDENCE

Any documentary evidence which is submitted to the Council shall be returned to the owner thereof upon written request for the return of such documents within 120 days of the Council's final decision. Otherwise, the Council may dispose of such evidence at its discretion.

8.05 FINAL DECISION

A. If, on the basis of the evidence presented at the hearing, the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under Subchapter II, Chapter 29 of Title 24 as it deems necessary. The Council's decision shall be in writing and shall include:

1. A brief statement of the evidence presented,
2. The Council's findings of fact,
3. What record evidence these findings are based upon, and
4. The Council's conclusions of law.

B. A copy of the Council's decision shall be mailed immediately by certified mail, return receipt requested, to

the accused real estate appraiser. The Council's decision shall become effective on the 30th day after the date it is mailed or served on the accused real estate appraiser, unless there is a stay pending appeal by the accused real estate appraiser ordered by the Superior Court.

SECTION 9 - PUBLIC DISCLOSURE

9.01 PUBLIC NOTICE

Public notice of all meetings shall be given seven (7) days prior to all meetings.

A. The notice will be posted at the Division of Professional Regulation Office in Dover, Delaware, according to the Freedom of Information Act.

B. Said notice shall include the agenda, as well as the date, time, and location of each meeting.

9.02 MEETING MINUTES

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

A. Said minutes shall include a record of those present.

B. The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

C. It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

9.03 COUNCIL RECORDS

It shall be the responsibility of the Council's Administrative Assistant to safeguard the Council's records and to make them accessible to the general public.

A. No citizen of the State of Delaware shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

B. The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to the Freedom of Information Act.

SECTION 10 - CHANGE AND MODIFICATION TO RULES AND REGULATIONS

10.01 CHANGES/MODIFICATIONS

The Council may, change or modify these Rules and Regulations as dictated by the evolution of appraisal practice after providing for the Public Notice/Hearing as required, if any.

SECTION 11 - SEVERABILITY**11.01 SEVERABILITY**

If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code

Sections 10103 & 10128(m)(1)

(3 **Del.C.** 10103, 10128(m)(1))

BEFORE THE DELAWARE THOROUGHBRED RACING COMMISSION

IN RE: PROPOSED RULES AND REGULATIONS

ORDER

Pursuant to 29 Del. C. section 10118, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating the proposed amendment of Rule 15.02 of the Commission's Rules. Following notice and a request for written submissions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed deletion to Rule 15.02(e) in the Register of Regulations and in the News-Journal and Delaware State News.

The Commission received no written comments from the public concerning the proposed regulation.

FINDINGS OF FACT

2. The public was given notice and an opportunity to provide the Commission with comments in Writing on the proposed amendment to Rule 15.02(e). The Commission received no written comments on the proposed repeal of the rule.

3. The Commission finds that the proposed repeal of Rule 15.02(e) would permit two-year old horses to be eligible for the bleeder program. The Commission finds that the proposed rule is necessary to comply with the statutory authority of the Commission under 3 Del. C. section 10103 to regulate the conduct of participants in thoroughbred racing and for the effective enforcement of 3 Del. C. Chapter 101.

4. The Commission finds that Rule 15.02(e) should be repealed as proposed. The repeal of this rule will allow for two-year old horses to participate in the bleeder program. This is a practice which is consistent with the rules in other states and does appear to be in the best interests of the public and the sport of thoroughbred racing.

CONCLUSIONS

5. The proposed Rule 15.02(e) was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. section 10103.

6. The Commission deems this rule repeal necessary for the effective enforcement of 3 Del. C. Chapter 101 and for the full and efficient performance of its duties thereunder.

7. The Commission concludes that the repeal of Rule 15.02(e) would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of thoroughbred racing in the State of Delaware.

8. The Commission, therefore, repeals Rule 15.02(e) as revised and amended pursuant to 3 Del. C. section 10103 and 29 Del. C. section 10103.

9. This existing Rule 15.02(e) shall be repealed in its entirety.

10. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on February 1, 1998.

(Signed) Bernard Daney, Chairman

(Signed) Duncan Patterson, Commissioner

(Signed) Deborah Killeen, Commissioner

(Unsigned) Deborah Berry, Commissioner

The Commission proposes the repeal of Rule 15.02(e) pursuant to 3 Del. C. sections 10103 and 10128(m)(1), and 29 Del. C. section 10115. The proposed repeal of Rule 15.02(e) would allow for two year old horses to participate in the bleeder program. The proposed Rule will be considered by the Commission at its next regularly scheduled meeting on January 5, 1997 at 11:00 a.m. at the Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Copies of the proposed rule may be obtained from the Commission. Comments may be submitted in writing to the Commission Office on or before 4:00 p.m. on December 30, 1998. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

15.02 Bleeder Medication:

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

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Licensee's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the

horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Licensee's Veterinarian at the detention barn within one (1) hour of workout or race.)

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

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

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 1/2) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 1/2 hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

~~(e) No 2-year-old horse will be acceptable for the Bleeder Program.~~

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for sixty (60) calendar days. A horse which bleeds a third time will be barred from further racing in the State of Delaware. A positive endoscopic examination shall be classed as a first time bleeder.

REVISED: 6/19/92

DEPARTMENT OF EDUCATION

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

**BEFORE THE DEPARTMENT OF EDUCATION OF THE
STATE OF DELAWARE**

**REGULATORY IMPLEMENTING ORDER
THE DELAWARE ADMINISTRATOR STANDARDS****I. SUMMARY OF THE EVIDENCE AND INFORMATION
SUBMITTED**

The Delaware Administrator Standards are recommended for adoption as regulation. The Standards are the result of the work of a committee of twenty-one educators representing building administrators, central office administrators, Department of Education staff, teachers, school boards and higher education. The committee convened on January 13, 1997 to begin the task of articulating the standards. The work of the committee was made easier by the fact that an ad hoc committee made up of representatives of various professional groups had been working on the same task, albeit for a different purpose, for the past several years. In addition, the committee was fortunate to have a national leader in the development of administrator standards, Scott Thomson, recently retired Executive Director of the National Policy Board for Educational Administration, as their consultant.

The Administrator Standards are a clear and defining statement of what all school administrators should know and be able to do regardless of specific job responsibilities. These standards apply to all educational administrators requiring state licensure to practice. Key to building a cadre of school administrators possessing these attributes is an expectation that the profession of educational leadership will possess the characteristics of all other major professions. These characteristics include a common core of knowledge together with demonstrated performance, ethical standards and accountability to the public.

These Delaware Administrator Standards reflect a solid compatibility with the two national documents, Standards for School Leaders prepared by the Interstate School Leaders Licensure Consortium (ISLLC) and Curriculum Guidelines for Advanced Programs in Educational Leadership approved by the National Council for the Accreditation of Teacher Education (NCATE). There is also a high level of compatibility with the Delaware Teaching Standards. The standards address Systemic Leadership, Instructional Leadership, Community and Political Leadership, Organizational Leadership and Interpersonal and Ethical Leadership.

The Delaware Administrator Standards Regulations include the five Standards with Knowledge and Performance Indicators for each Standards.

Notice of the proposed regulations was published in the News Journal and the Delaware State News on December 15, 1997, in the form attached as Exhibit A. There were no comments received concerning the regulations from the

advertisement in the newspapers. However, there were some comments received through public forums. Three public forums were held, one in each county, with a total of 23 participants and ten districts represented. The major question expressed at each forum was how administrators will be assessed and held accountable for the Administrator Standards. Administrators in non-instructional positions wanted an assurance that they would be treated fairly in the new evaluation system, since many of the indicators are focused on instructional leadership.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that these regulations are necessary in order to further the intent of the accountability plan. These Administrator Standards along with the Teaching Standards are the next logical steps in standard setting following

the student Content Standards. These five standards are performance based and describe what administrators should know and be able to do regardless of specific job responsibilities. The key to building a cadre of school administrators possessing these attributes is an expectation that the profession of educational leadership will possess characteristics which include a common core of knowledge together with demonstrated performance, ethical standards and accountability to the public. These Administrator Standards will be the basis for State licensure, professional development and recertification, performance appraisal and accreditation of university programs which prepare educational administrators.

III. DECISION TO ADOPT REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that the proposed regulations are necessary to continue the standards based accountability plan. Therefore, pursuant to 14 Del. C., Section 122 the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendment hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Manual for the Certification of Professional School Personnel, in a new section 3 titled Professional Standards.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on January 15, 1998. The effective date of this Order shall be

ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of January, 1998.

Dr. Iris T. Metts
Secretary of Education

Consented to this 15th day of January, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

Delaware Administrator Standards

1. Systemic Leadership: An educational leader possesses the knowledge and skills to foster vision and purpose, to achieve common goals, to frame problems, to utilize information, to exercise leadership processes, and to promote teamwork to achieve the vision.

Knowledge

The educational leader has knowledge and understanding of:

- purposes of education.
- strategic planning and vision building.
- learning communities.
- organizational change processes.
- consensus building and negotiating.
- leadership and motivation.
- problem framing and problem resolution.
- data collection, analysis, and interpretation.
- social and political influences affecting schools.

Performance

The educational leader prepares for and acts to:

- create a shared vision of learning that promotes high levels of success for all students.
- develop a school community focusing on teaching and learning.
- facilitate collegiality and teamwork by creating conditions that motivate staff, students, and families to achieve the shared vision.
- utilize the change process to improve the organization.

- frame, analyze, and resolve issues using problem-solving techniques and decision-making skills.
- gather, analyze, and utilize data for strategic planning and decision-making using appropriate technologies.
- communicate the vision and core beliefs of the school to the school community.
- recognize potential opportunities and barriers to achieving the school community's vision, and initiate strategies to address them.
- monitor and revise the vision and mission regularly with the school community.

2. Instructional Leadership: An educational leader possesses the knowledge and skills to facilitate the design of appropriate standards-based curriculum, to develop a positive learning environment, to initiate with faculty a variety of instructional programs, to assess outcomes, and to plan professional development activities with staff.

Knowledge

The educational leader has knowledge and understanding of:

- student growth and development.
- applied learning theories.
- curriculum design, implementation, evaluation and refinement.
- instructional principles and strategies.
- instructional technologies.
- special needs of diverse student populations.
- supervision and performance appraisal strategies.
- measurement theory and assessment related issues.
- adult learning and professional development strategies.
- Delaware content standards.

Performance

The educational leader prepares for and acts to:

- model a strong commitment to teaching and learning.
- collaborate with staff to plan and implement curriculum based on student needs, research, informed practice, governmental policies, and the

recommendations of national groups.

- develop collaboratively a learning organization that focuses on improving instruction, incorporates best practice, and promotes student achievement.
- incorporate various staffing patterns, student grouping plans, scheduling patterns, and organizational structures to support teaching strategies appropriate to desired student outcomes.
- facilitate with teachers the selection of learning materials and experiences appropriate for various learning styles and specific student needs.
- promote learning responsive to gender, ethnicity, culture, socio-economic needs, and exceptionalities.
- support instruction that develops thinking skills, promotes problem solving, and applies learning.
- assure a variety of assessment strategies to measure desired student outcomes.
- collect and analyze student data to improve curriculum and instruction.
- incorporate technologies into the instructional system.
- integrate co-curricular and extra-curricular activities with the instructional program.
- facilitate the development of professional growth programs which promote continuous improvement.
- utilize supervisory and performance appraisal techniques consistent with state policy.

3. **Community and Political Leadership:** An educational leader possesses the knowledge and skills to act in accordance with legal provisions and statutory requirements, to influence public policy, to apply regulatory standards, to understand schools as political systems, to inform and involve parents and community groups, and to develop public relations and media relations programs.

Knowledge

The educational leader has knowledge and understanding of:

- federal and state constitutional, statutory and regulatory provisions, and judicial decisions governing education.
- common law and contractual requirements.
- political, social, cultural and economic issues and

forces affecting education.

- policy formulation, implementation and evaluation at the federal, state and local levels.
- public school governance and school board functions.
- family and community involvement in appropriate policy development, program planning and assessment procedures.
- conditions and dynamics of the diverse school community.
- school communities as political systems.
- public and media relations.

Performance

The educational leader prepares for and acts to:

- apply federal and state constitutional, statutory and regulatory provisions, judicial decisions, common law requirements, and contractual agreements to schools and school personnel.
- propose and influence policies that benefit students and schools.
- interact with the diverse school community to benefit students.
- develop relationships with families to strengthen educational commitment and opportunity.
- identify and influence key opinion leaders and organizations to generate support for school goals and programs.
- assure that ethical standards be applied to the development and implementation of policies.
- involve the school community, as appropriate, in planning and assessing school policies and programs.
- articulate the district and school educational vision and program initiatives.
- develop partnerships with public and private organizations to improve educational opportunities for all students.
- work with local governing boards.
- implement staff communications and public relations strategies for the benefit of students and schools.
- communicate with parents, the community, and school personnel, utilizing available technologies.

4. **Organizational Leadership:** An educational leader possesses the knowledge and skills to establish and improve organizational structure and processes, to design

and implement operational plans, to secure and manage resources, and to engage others in the decision making process.

Knowledge

The educational leader has knowledge and understanding of:

- organizational and management systems and technologies.
- operational procedures.
- budget planning and management processes.
- management techniques.
- facilities and support services management.

Performance

The educational leader prepares for and acts to:

- establish operational plans and procedures to accomplish goals.
- implement management processes and procedures which recognize the value of decentralized and centralized decisions.
- use collaborative processes to develop procedures and make decisions.
- prioritize individual and organizational time to accomplish educational goals.
- review organizational structures and management systems regularly.
- develop a budget planning process which reflects school and district priorities.
- perform budget management and reporting functions.
- apply technologies to management operations.
- utilize the change process for improving organizational structure and management.
- create a safe school environment.
- manage collective bargaining agreements.
- manage capital goods and support services.

5. Interpersonal and Ethical Leadership: An educational leader possesses the knowledge and interpersonal skills to facilitate teamwork and collegiality and the attributes to act ethically and with integrity.

Knowledge

The educational leader has knowledge and understanding of:

- professional codes of ethics.
- ethical frameworks and perspectives.
- communication processes and skills.
- consensus-building and negotiating strategies.
- interpersonal processes.
- conflict management.
- counseling and mentoring.
- values of the diverse school community.
- leadership by example.

Performance

The educational leader prepares for and acts to:

- demonstrate by example a high standard of professional and personal ethics.
- make decisions within an ethical framework.
- develop an organizational ethos to guide school policies and programs, and to encourage a positive school culture.
- create a culture of trust and open communication.
- exhibit sensitivity, respect, tact, and consistency in interpersonal relations.
- use effective written, verbal and non-verbal communication.
- foster continuous professional growth.
- develop leadership opportunities for staff.
- utilize the knowledge, skills, and experiences of the diverse school community.
- resolve conflicts and tensions.
- promote awareness of and sensitivity to ethnicity, gender, culture, and exceptionalities.
- utilize counseling and mentoring techniques.
- examine and consider the prevailing values of the community.
- promote integrity and ethical behavior of others within the school community.
- ~~• celebrate student and staff accomplishments.~~

DEPARTMENT OF EDUCATION

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

**BEFORE THE DEPARTMENT OF EDUCATION OF THE
STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER
THE DELAWARE TEACHING STANDARDS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Delaware Teaching Standards are recommended for adoption as regulation. The Standards are a result of the work of a special Task Force for Professional Teaching Standards comprised of forty one teachers, administrators, teacher educators and representatives of the public. These Standards are composed of a set of performance based standards describing what teachers should know and be able to do, regardless of specialty area. These Teaching Standards are part of the Delaware Professional Standards Council's Educational Plan for Certification and Career Development and reflect the new content standards for Delaware's students as well as to the standards for "accomplished teachers" which are the basis for certification by the National Board for Professional Teaching Standards. The Standards have had an extensive review process by both external experts and educators within the state. All educators in the state were sent a copy of the standards and asked to send their written responses to a questionnaire to the University of Delaware for analysis. Modifications were made to the standards based on the feedback from the questionnaire.

The Delaware Teaching Standards will be used in designing and evaluating teacher education programs, inducting, mentoring and assessing teachers and in organizing in-service and professional development activities. In other words the Teaching Standards will be the foundation for every segment of the professional careers of Delaware teachers, from pre-service through beginning practice and continuing professional growth. In practice these are not generic, one size fits all teaching behaviors. In order to meet the standards, a teacher must exhibit them in the context of his or her actual teaching responsibilities and at a proficiency appropriate to his or her career stage.

The Delaware Teaching Standards Regulations include the twelve Standards Statements, with Knowledge Components and Performance Indicators for each Standard and a Glossary of thirty definitions.

Notice of the proposed regulations was published in the News Journal and the Delaware State News on December 15, 1997, in the form attached as Exhibit A. There were no comments received concerning the regulations from the advertisement in the newspapers. However, there were some comments received through public forums. Three public forums were held, one in each county, with a total of 29 participants. New Castle County had both the largest attendance and the most dialog regarding the Standards. The major concern focused on the Technology Standard and the fact that sufficient professional development and hardware/software will be required in order to meet the

Standard. Both of those factors are out of the teachers' sphere of control and consequently worrisome. There was concern regarding a requirement within the standards which hold the teacher accountable for working closely with parents/guardians. Again the issue was that teachers can't "control" parent behavior and it is a fact that some parents/guardians simply refuse to cooperate or be involved in their child's education. Most of the other discussion was focused on areas of accountability rather than the Standards themselves. The consistent concern is "How will the Standards be used?", particularly with respect to the teacher evaluation system.

No additional issues surfaced in Kent and Sussex Counties. As in New Castle County, accountability was the pressing issue. One parent at the Sussex Forum did state that he felt the Standards document was well written and inclusive and should provide a vehicle to move forward in the teaching profession.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that these regulations are necessary in order to further the intent of the accountability plan. These Teaching Standards along with the Administrator Standards are the next logical steps in standard setting following the student content standards. These twelve standards are performance based and describe what teachers should know and be able to do as teachers. The appropriate distinctions between beginning and advanced practice are in the degree of sophistication teachers exhibit in the application of knowledge and in the breadth and depth of knowledge, rather than in the knowledge or practice required.

These teaching standards will be the basis for designing and evaluating teacher education programs, inducting, mentoring and assessing teachers and in organizing in-service and professional development activities.

III. DECISION TO ADOPT REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that the proposed regulations are necessary to continue the standards based accountability plan. Therefore, pursuant to 14 Del. C., Sec. 122 the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Manual for the Certification of Profes-

sional Public School Personnel, in a new Section 3 titled Professional Standards

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary with the consent of the State Board pursuant to 14 Del. C., Sec. 122 in open session at the State Board's regularly scheduled meeting on January 15, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of January, 1998.

Dr. Iris T. Metts
Secretary of Education

Consented to this 15th day of January, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Delaware Professional Teaching Standards

1. Content: The teacher understands the core concepts and structure(s) of the discipline(s) and creates learning experiences that make the content meaningful to students.

The teacher...

Knowledge Components

- understands major concepts, principles, and theories that are central to the discipline.
- understands the dynamic and complex nature of the content of the discipline.
- understands the processes of inquiry central to the discipline.
- understands the relationship of knowledge within the discipline to other content areas and to life applications.

Performance Indicators

- uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding.

- anticipates and adjusts for common misunderstandings that impede learning within the discipline.
- engages students in generating and testing knowledge according to the processes of inquiry of the discipline.
- creates learning experiences that make connections to other content areas and to life experiences.

2. Human Development and Learning: The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of the students.

The teacher...

Knowledge Components

- understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind.
- understands human development, including the ranges of individual variation within each domain.
- understands the interaction between student development and learning.

Performance Indicators

- chooses developmentally appropriate instructional strategies that promote student learning.
- develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development.

3. Diverse Learners: The teacher understands how students differ and adapts instruction for diverse learners.

The teacher...

Knowledge Components

- understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community.
- understands differences in approaches to learning and performance, including learning styles, multiple intelligences, and performance modes.

- understands cultural diversity and how to incorporate multi-cultural experiences into instruction.
- understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences.
- understands the process of second language acquisition and how to access strategies to support learning for students whose first language is not English.
- understands the needs of culturally and/or linguistically diverse students.
- understands when and how to access appropriate resources or services to meet special learning needs.

Performance Indicators

- accepts and values all students.
- treats all students equitably.
- respects students as individuals with differing experiences, skills, talents, and interests.
- uses cultural diversity and individual student experiences to enrich instruction.
- designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes.
- makes appropriate provisions for individual students who have particular learning differences or needs.

4. Communication: The teacher understands and uses effective communication.

The teacher...

Knowledge Components

- understands communication theory and its application.
- understands effective oral, written, non-verbal, and media communication techniques.
- understands the importance of audience and purpose when selecting ways to communicate ideas.
- understands how cultural and gender differences may affect communication in the classroom.

Performance Indicators

- uses a variety of communication techniques.
- communicates effectively with diverse populations.
- models accurate and grammatically correct language.
- creates opportunities for students to learn effective communication.

5. Learning Environment: The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self-motivation, and positive social interaction.

The teacher...

Knowledge Components

- understands principles of effective classroom management.
- understands factors that influence motivation and engagement and how to help students become self-motivated.
- understands individual behavior and how individuals behave in groups.
- understands group dynamics and how groups function within a community.
- understands how to help students learn to participate effectively in groups.

Performance Indicators

- establishes and maintains a classroom environment with clear expectations and standards of behavior.
- organizes, allocates, and manages time, materials, and physical space to support learning.
- establishes classroom practices that promote a safe environment.
- creates a learning community which respects individual differences.
- establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning.
- creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding.
- creates a learning community in which students work independently and collaboratively.
- encourages students to assume responsibility for

their own learning and behavior.

6. Planning for Instruction: The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

The teacher...

Knowledge Components

- understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning.
- understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation.
- understands how to develop short- and long-range plans consistent with curriculum goals, learner diversity, and learning theory.
- understands how to make connections between student experiences and education goals.

Performance Indicators

- evaluates teaching resources and materials for accuracy and usefulness.
- applies principles of scope and sequence when planning instruction.
- creates approaches to learning that are interdisciplinary and that integrate multiple content areas.
- creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals.
- uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students.
- incorporates authentic experiences into instructional planning.
- creates multiple learning activities that allow for student choice.
- establishes and communicates expectations for student learning.
- creates and adapts short- and long-range plans to achieve the expectations for student learning.
- incorporates assessment components into instructional planning.

7. Instructional Strategies: The teacher understands a variety of instructional approaches and uses them to

promote student thinking, understanding, and application of knowledge.

The teacher...

Knowledge Components

- understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning.
- understands the relationship between instructional approaches, assessment, and the types of learning promoted.
- understands how instructional materials and educational technologies enhance learning.

Performance Indicators

- uses a range of instructional approaches that allows students to explore concepts and develop an in-depth understanding of content.
- designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills.
- designs instructional activities that provide opportunities for students to apply knowledge.
- uses a variety of materials and educational technologies to enhance student thinking and further conceptual understanding.
- assumes different roles in the instructional process based on the content and purposes of instruction.
- uses a range of questioning techniques to promote different levels of understanding.
- emphasizes communication as a vehicle for learning, through the use of discussion, listening, collaboration, and responding to the ideas of others.
- links new concepts to student prior knowledge.
- promotes student awareness of their own thought processes and how to use reflection to build new understandings.
- incorporates assessment components into instructional delivery.

8. Assessment: The teacher understands multiple assessment strategies and uses them for the continuous development of students.

The teacher...

strategies for reflecting on practice.

Knowledge Components

- understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias).
- understands assessment as a means of collecting information about student progress.
- understands the purposes and characteristics of different kinds of assessments.
- understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning.
- understands how to use the results of assessment to reflect on and modify teaching.

Performance Indicators

- uses assessment to diagnose student learning needs as a basis for designing instruction.
- uses a variety of assessment modes and multiple measures to evaluate student learning.
- uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance.
- aligns assessment with instruction.
- maintains accurate records and communicates student progress.
- involves students in self-assessment to help them become aware of their strengths and needs.
- encourages students to establish personal goals for learning based on self-assessment and assessments results.
- modifies instruction based on assessment results.

9. Professional Growth: The teacher understands the importance of continuous learning and pursues opportunities to improve teaching.

The teacher...

Knowledge Components

- understands that reflection on teaching is an integral part of professional growth.
- understands the implications of educational research for teaching.
- understands methods of inquiry that provide for a variety of self-assessment and problem-solving

Performance Indicators

- engages in continuous learning.
- participates in professional discourse about educational issues.
- uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice.
- collaborates with other professionals as resources for problem solving, generating new ideas, sharing experiences, and seeking and giving feedback.

10. Professional Relationships: The teacher understands the role of the school in the community and collaborates with colleagues, parents/guardians, and other members of the community to support student learning and well-being.

The teacher...

Knowledge Components

- understands how school are organized and operate.
- understands schools as organizations within the larger community context.
- understands the importance of community-school interaction.
- understands the importance of collaboration in education.

Performance Indicators

- cooperates with colleagues to develop an effective learning climate within the school.
- collaborates with other professionals to solve problems and make decisions to promote student success.
- develops relationships with parents and guardians to acquire an understanding of the students' lives outside of the school.
- works effectively with parents/guardians and other members of the community to advocate for student need and to promote learning.
- identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career

opportunities.

11. Educational Technology: The teacher understands the role of educational technology in learning and uses educational technology as an instructional and management tool.

The teacher...

Knowledge Components

- understands how to use various educational technological tools to access and manage information.
- understands how to integrate educational technology into classroom instruction.
- understands how to review and evaluate educational technologies to determine instructional value.
- understands the uses of instructional technology to address student needs.

Performance Indicators

- designs instruction to promote student skills in the use of educational technologies to access and manage information.
- uses a wide range of instructional technologies to enhance student learning and problem solving.
- uses technological advances in communication to enrich discourse in the classroom.
- uses appropriate educational technology to create and maintain data bases for monitoring student progress.

12. Professional Conduct: The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

The teacher...

Knowledge Components

- understands school policies and procedures.
- understands legal issues in education.
- understands the codes of conduct of professional education organizations.

Performance Indicators

- acts in the best interests of students.

- follows school policies and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families.
- follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities.
- interacts with students, colleagues, parents, and others in a professional manner.
- follows codes of professional conduct adopted by the Delaware Professional Standards Council.*

*to be developed.

GLOSSARY

Alignment of Assessment

The ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and task are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.

Authentic Experiences

The use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

Culturally and/or Linguistically Diverse

Students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

Codes of Conduct

Many professional educational organizations have adopted codes of conduct that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject areas.

Communication Theory

An understanding of the principles of communication theory (e.g., productive and receptive communication,

cultural context of language, metacommunication) as they apply in practice in the classroom.

Community

The school community includes: teachers, administrators, students, and parents and/or guardians. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the broader society or community in which students will live.

Disciplines

Academic disciplines include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

Discourse

Discourse refers to both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss, agree and disagree, and explore the discipline.

Diverse Learners

Students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

Domains

The broad areas of human development - intellectual, social, emotional, and physical - that influence learning.

Educational Technology

The use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

Habits of Mind

Mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

Health

Health issues that can affect learning range from cerebral palsy, Down's Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

Instructional Technology

The use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

Learning Theory

An understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

Meaningful (to students)

Meaningful is intended to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

Measurement Theory

An understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

Media Communication

The use of technologies that document events (e.g., audio-tape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

Methods (Process) of Inquiry

Inquiry is the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

Multicultural

The term multicultural is usually used as an adjective to describe the diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

Multiple Assessments

Decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence.

Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

Multiple Intelligences

Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, interpersonal, intra-personal) that describe distinct aspects of "intelligent".

Non-verbal Communication

Communication through means other than the use of words (e.g., facial expressions, body position, action).

Pedagogical Knowledge

Pedagogical knowledge is the knowledge of how to teach - the knowledge of instructional methods.

Performance

Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

Performance Modes

The range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

Professional Growth

The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

Structures

The structures of disciplines provide the overall framework which both connect and transcend the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

Technology

The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

Theory

The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

DEPARTMENT OF EDUCATION

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

BEFORE THE DEPARTMENT OF EDUCATION OF THE
STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

VOCATIONAL TECHNICAL EDUCATION PROGRAMS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

It is recommended that The Requirements for Vocational Technical Programs, section V.A.3. of the Vocational Technical Education section of the Handbook for K-12 Education be amended. The amendment is necessary to clearly state the requirements that are regulatory. In order to achieve this end all of the requirements have been restated as "musts" some have been combined and items l. q., r., and s. have been eliminated. Item l. cannot be a requirement and items q., r., and s. are required by state or federal laws. The amended section will now become V.A.1. due to the repeal of other sections. The section will now provide a specific list of what must be in place for a Vocational Technical program to be approved by the State Department of Education. Notice of the proposed regulations was published in the News Journal and the Delaware State News on December 15, 1997, in the form hereto attached as Exhibit A. Comments were received about the regulation from Superintendent Dr. Patricia W. Carlson, Laurel School District, on items A.1.b. and A.2.K. Dr. Carlson was concerned about the reference to National Standards when some programs have no National Standards. The reference to National Standards was removed. She also questioned the reference in A.2.K. to "two consecutive periods" as that related to block scheduling. This concern was addressed by adding "or its equivalent." The Advisory Council on Career and Vocational Education commented by requesting the addition of A.2.N. which requires "program review and monitoring visits" which was added per their request.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that the amendments are necessary to clarify the regulatory intent of the original regulations. The changes have added

clarity and have eliminated items which do not need to be regulated.

III. DECISION TO AMEND REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that the proposed amendments are necessary to clarify the intent of the original regulations. Therefore, pursuant to 14 Del. C., Section 122 the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendment hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited as, Requirements for Vocational Technical Programs, section V., 1., in the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on January 15, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of January, 1998.

Dr. Iris T. Metts
Secretary of Education

Consented to this 15th day of January, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

AS AMENDED

V. VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

A. REQUIREMENTS FOR VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

1. All Vocational Technical Programs must:
a. meet the provisions of Delaware's State Plan for Vocational Education.

b. meet the provisions of the content standards approved by the Department of Education or if there are no approved state content standards meet ~~the national program standards.~~ **[local program standards approved by the Department of Education]**

2. All local school districts offering state approved vocational-technical education programs must:

a. have the approval of the Department of Education before implementing new programs. New programs of a similar nature may not be approved where enrollment may compete with already existing programs.

b. have adequate funding to support and sustain the instructional program.

c. employ teachers certified in vocational technical education program areas.

d. make provisions for meeting the unique needs of all students.

e. establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

f. use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing vocational-technical education programs.

g. survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

h. survey the student population to determine their occupational interests and needs.

i. organize and financially support vocational-technical student organizations as integral components of vocational-technical education programs in public schools that complement and enrich instruction. The following vocational student organizations are affiliated in Delaware:

Business Professionals of America (BPA)
Technology Student Association (TSA)
Distributive Education Clubs of America (DECA),
an association of marketing students
Future Homemakers of America (FHA/HERO)
The National FFA Organization
Vocational Industrial Clubs of America (VICA)

j. integrate related academic content into individual vocational-technical courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

k. schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day ~~and preferably three periods,~~ **[or the equivalent]** five days a week for two or more years. Trade and Industry programs are highly specialized and are

conducted in comprehensive vocational technical school districts. Any exception must be requested in writing showing just cause, and be approved by the Department of Education.

l. establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a vocational technical education program in a Vocational Technical School District.

m. use equipment and facilities comparable to that used by local business and industry for which the vocational technical program is preparing students.

[n. Schedule Department of Education and Delaware Advisory Council on Career and Vocational program review and monitoring visits upon request.]

3. VOCATIONAL-TECHNICAL EDUCATION PROGRAM REQUIREMENTS

Requirements for organizing and implementing vocational education programs include the following:

a. All programs must meet the provisions of Delaware's State Plan for Vocational Education.

b. All programs must meet the provisions of the content standards approved by the State Board of Education.

c. New programs and new courses being established must have the recommendation of the Department of Public Instruction and approval of the State Board of Education prior to implementation on the local level.

d. Funding must be provided to support and sustain the instructional program.

e. A staff member meeting certification requirements in the vocational-technical education program area must be provided to teach the course.

f. Funding provisions must be made for meeting the unique needs of all students.

g. An advisory committee which includes labor and management personnel must be organized to assist in the development and operation of the program.

h. Present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, should be used in determining the need for new and continuing vocational-technical education programs.

i. Local business and industry should be surveyed by local school districts to determine occupational needs, availability of placement and employment opportunities for program completers.

j. The student population should be surveyed by local school districts to determine occupational

interests and needs.

k. Equipment and facilities should be comparable to that used by business and industry.

l. Students enrolled in vocational-technical education programs should be able to benefit from the instructional process and have the potential of being employed by business and industry in the occupation for which they were trained.

m. Trade and industrial sequential programs of a highly specialized nature should be conducted at the vocational-technical schools. Programs other than trade and industrial programs which provide entry level skills meeting approved content standards may be conducted in the comprehensive K-12 school district. New programs of a similar nature will not be approved where enrollment may compete with programs at vocational-technical schools or regular high schools.

Trade and industrial education programs must be offered a minimum of two consecutive periods a day and preferably three periods, five days a week for two or more years. Any exception must be requested in writing showing just cause, and be approved by the State Department of Public Instruction.

n. All programs should reflect the National standards developed as quality indicators for Technology Education, Trade and Industrial Education, Home Economics, and Agriculture.

o. Vocational-technical student organizations shall be organized as integral components of vocational-technical education programs in public schools to complement and enrich instruction.

(1) "Local plans and any program proposals submitted for State Board approval and/or funding shall contain adequate provision for support of each vocational student organization affiliated with the vocational-technical education program(s) offered in each school." (State Board Approved June 1973)

(2) The following vocational student organizations are affiliated in Delaware:

- (a) Business Professionals of America (BPA)
- (b) Technology Student Association (TSA)
- (c) Distributive Education Clubs of America (DECA)
- (d) Future Homemakers of America (FHA/HERO)
- (e) Future Farmers of America (FFA)
- (f) Vocational Industrial Clubs of America (VICA)

p. Vocational programs of instruction are required to be taught in a manner that fully integrates

academic and vocational subject matter. Students should be guided through a sequential course selection process that reflects the necessary academic preparation required by the student's vocational course and career goals.

~~q. Inventory requirements for equipment purchased with state and federal funds require that equipment records must be maintained and a physical inventory must be taken once every two years. A control system must be in effect to insure against loss, damage, or theft. Adequate maintenance procedures must be implemented, and proper disposal procedures must be followed for unneeded property.~~

~~r. Vocational-technical education programs must be monitored by the Department of Public Instruction to assure compliance with the Office for Civil Rights Guidelines for Vocational Education Programs.~~

~~s. It is the policy of the Delaware State Board of Education that an effective safety education program be conducted through the school system with its prime objective being accident prevention.~~

~~t. Local school districts shall not establish policies, practices, rules or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity of learning about, enrolling in and completing a vocational education program in a Vocational-Technical School District. (State Board Approved March 1985, Revised June 1990)~~

DEPARTMENT OF EDUCATION

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

BEFORE THE DEPARTMENT OF EDUCATION OF THE
STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

REPEAL OF VOCATIONAL TECHNICAL EDUCATION SECTIONS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The repeal of the following ten parts from section V., Vocational Technical Education Programs in the Handbook for K-12 Education is recommended. The parts include, A.1., Purpose of Vocational Technical Education, A.2., Vocational Technical Program Areas, B.1., Applying for State Vocational Education Program Funding, C., Evaluation and Monitoring, D.1., Technical Preparation Programs, D.3., Work Study Programs, F.1., Regular Vocational Technical Education Students, F.2., Vocational Technical Education Unit, G.1., Federal Project Application Process and Procedure, and H., Vocational Assessments for Special Populations of Students, H.1., Requirements. The repeals are re-

quired because these parts either repeat federal or state laws or simply provide technical assistance on issues. Part A.3., Requirements for Vocational Education Program, is regulatory as amended and reflects the bulk of the Vocational Technical Program regulations in Section V. of the Handbook for K-12 Education. The two remaining parts D.2. a-g, Cooperative Education, and E.1. a and b., Credit for Vocational Technical Programs, will be brought back for extensive amendments in three or four months. For now, with all of the repealed parts eliminated, D.2. a-g., will become B.1. and 2.(a)(1)-(7) and E.1. a and b will become C.1. (a) and (b). Notice of the proposed repeal of regulations was published in the News Journal and the Delaware State News on December 15, 1997, in the form here to attached as Exhibit A. There were no comments received concerning the regulations.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to repeal these regulations because they either repeat state and federal laws or simply provide technical assistance on issues.

III. DECISION TO REPEAL REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that it is necessary to repeal these regulations. Therefore, pursuant to 14 Del. C., Section 122., the regulations attached hereto as Exhibit B are hereby repealed.

IV. TEXT AND CITATION

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the: Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on January 15, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of January, 1998.

Dr. Iris T. Metts
Secretary of Education

Consented to this 15th day of January, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.

Dr. Joseph A. Pika
 Dennis J. Savage
 Dr. Claibourne D. Smith

V. VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

A. VOCATIONAL-TECHNICAL EDUCATION

1. PURPOSE OF VOCATIONAL-TECHNICAL EDUCATION

a. To provide a total program of offerings which is in full partnership and equal standing with all components of the educational systems and is:

(1) capable of meeting the individual needs, interests, abilities, and aspirations of each student; and

(2) realistic in light of actual or anticipated opportunities for employment, advancement education, and practical life application.

b. Specific purposes of vocational-technical education are:

(1) to prepare individuals for entry-level employment and adaptability in later employment in recognized occupations, new occupations, and emerging occupations at various levels of competence;

(2) to prepare individuals for participation in advanced or highly skilled post-secondary vocational and technical education such as school-to-work transition programs;

(3) to provide individuals with laboratory experiences and activities for vocational skill development and assist them in making informed and meaningful occupational choices; and

(4) to provide individuals with laboratory experiences and activities which assist them 1) in the making of informed consumer decisions and 2) in the application of practical life skills including but not limited to civic consciousness, social and inter-personal relationships, leadership, responsibility, and an appreciation for their potential productivity and contribution in the world of work and to provide appropriate programs and supportive services for persons who have academic, socioeconomic, or other disadvantages or disabilities that would prevent them from succeeding in regular programs.

2. VOCATIONAL-TECHNICAL EDUCATION PROGRAM AREAS

- a. Agriscience
- b. Allied Health Education
- c. Business Finance and Marketing
- d. Diversified Occupations
- e. Home Economics
- f. Technology Education
- g. Trades and Industrial Education

B. STATE FUNDED VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

1. APPLYING FOR STATE VOCATIONAL-TECHNICAL EDUCATION PROGRAM FUNDING

State funding is provided for vocational-technical education programs conducted in the local school districts which meet or exceed the state curriculum content standards and other criteria established by the school district. In new vocational-technical education programs being requested, the form titled Application for Approval of New Vocational-Technical Education Programs must also be completed and returned. New vocational-technical education program requests must include the following:

a. program purpose, outline and statement of objectives that satisfy or exceed approved state content standards. NOTE: If state curriculum content standards have not been approved for this program, suggested standards developed according to the state format, must be submitted;

b. documentation justifying need for program, i.e., advisory committee membership and minutes, Labor Department projections, and student interest survey results;

c. a signed Statement of Assurances which is included in the application forms sent to chief school officers the first week in January; and

d. course outlines for approved vocational-technical education programs are to be updated and resubmitted every three years. Any program on the approved list which has not been in operation during the past two years will be deleted and will require a new application to be reactivated.

C. EVALUATION AND MONITORING

All vocational-technical schools are encouraged to participate in the accreditation and review process of the Middle States Association of schools and colleges. The Department of Public Instruction is responsible for monitoring all federally supported vocational programs.

The Federal program evaluations are based primarily on the objectives, activities, and evaluation criteria stated in the approved project proposals. Evaluation visits are scheduled in conjunction with the State Council on Career and Vocational Education.

D. ALTERNATIVE METHODS OF INSTRUCTION

1. TECHNICAL-PREPARATION PROGRAMS

a. The technical preparation program which is also called "Tech Prep" or "Two plus Two" is the formal coordination (through written agreement) of vocational-technical secondary and post-secondary education curricula. This four-year program begins in the junior year

of high school and culminates at the second year of post-secondary school.

b. Students may earn post-secondary units of credit prior to high school graduation through participation in this program.

c. A sequential curriculum of academic and technical courses with an integrated approach to the teaching of all subject matter shall be the goal of all tech prep programs.

3. WORK STUDY PROGRAMS

Work study programs that meet established guidelines are specialized programs for disadvantaged students who are in need of financial assistance and are at risk of leaving school. Students must meet the following qualifications:

a. have been accepted for enrollment as a student in an approved vocational education program or already participating in a vocational-technical education plan;

b. are at least fifteen (15) years of age and less than twenty-one (21) years of age at the commencement of employment;

c. are capable of maintaining good standing in their vocational-technical education programs, including other academic content areas, while employed; and

d. are employed by the local educational agency or by other public or nonprofit private agencies or institutions where they may earn up to \$900.00 under minimum wage provisions.

F. VOCATIONAL-TECHNICAL EDUCATION UNIT SYSTEM FOR STATE FUNDING

1. REGULAR VOCATIONAL-TECHNICAL EDUCATION STUDENTS

a. Regular or special education students who are enrolled in State Board of Education approved vocational-technical education courses are to be included in the vocational enrollment and unit count.

b. The distribution of state funds to school districts is based on the "unit" allotment. The secondary unit consists of one teacher for 20 secondary pupils in grades 7-12. (The State makes special provision for children with disabilities by providing for a unit on the basis of a fewer number of pupils.)

c. A maximum of 900 minutes of vocational time per week per student may be credited toward the vocational unit determination.

2. VOCATIONAL-TECHNICAL EDUCATION UNIT

a. The basis for computing the vocational unit of 27,000 pupil minutes is as follows: 30 students per teacher (enrollment 15 to 1 in two 3-hour sessions) times 900 minutes per week instruction for a full-time vocational student (180) minutes per day x 5 days per week) equals

27,000 pupil minutes to the unit:

$$30 \times 900 = 27,000$$

(1) The vocational units for the new full-time New Castle, Polytech, and Sussex Vocational-Technical School Districts shall be calculated on 30 pupils enrolled in vocational-technical education courses as of the last day of September. 14 Del. C. §1703(g) prescribes the unit system formula:

b. Where each of 30 full-time students does not apply, any number of students and their minutes may total 27,000, eg., a vocational unit (with the same limits of 180 minutes per day per student and 900 minutes per week per student). For example, 60 students, each with 450 minutes per week, equals a vocational unit of 27,000 minutes.

c. One-half of the vocational units of pupils shall be deducted from the regular unit entitlement of a comprehensive high school according to the following formula:

vocational units x .5 = deductible (a major fraction shall be considered a whole unit)

d. The "vocational deduct" is applied to partially compensate for the double counting of the vocational students. The deduction is computed on a district basis as follows: The number of Division I vocational units earned in the schools of a district plus the number of "other" vocational units earned by the district's regular and special students who attend vocational programs in area vocational schools divided by two equals the deduct; the deduction will always be rounded off to a whole number. For example:

District vocational units	20
Other vocational units	+ 11 3115 deduct

e. Summer Vocational-Technical Education Students

Students enrolled in a summer vocational program which has been approved annually by the State Board of Education, and which is conducted by any school district beyond and in addition to the school year as defined by 14 Del. C. §1023, may be counted in a unit of pupils, grades 7 through 12 inclusive, at the rate of 27,000 pupil minutes per week or major fraction thereof after the first full unit.

f. Co-operative Vocational-Technical Education Students

Minutes generated through co-operative work experience programs shall count one-half as much as those generated by pupils enrolled in school based vocational-technical instruction programs. For example, for a pupil who spends 20 periods per week in a co-operative work experience program, the school district shall claim only one-half the 20 periods, or 10 pupil

periods. Teacher class time (one period for each 15 students counted) must be provided for coordination of students' on-the-job experiences. Students must be enrolled in an approved related vocational-technical program.

G. HOW TO APPLY FOR FEDERAL VOCATIONAL-TECHNICAL EDUCATION PROGRAM FUNDS

I. FEDERAL PROJECT APPLICATION PROCESS AND PROCEDURE

a. All persons planning to submit applications for funding should familiarize themselves with the provisions and regulations set forth in the current State Plan for Vocational Education and the appropriate curriculum content standards. Copies of the State Plan for Vocational Education may be found in school libraries and district offices with the person responsible for vocational-technical education programs.

(1) Projects will be reviewed for compliance with Federal regulations and compliance with Office for Civil Rights Guidelines.

(2) Projects will be reviewed by the staff from the Department of Public Instruction according to:

(a) pertinence of programs to the workplace and to new and merging technologies;

(b) responsiveness of programs to the current and projected occupational needs in the state;

(c) capacity of programs to facilitate entry into, and participation in, vocational-technical education and to ease the school-to-work and secondary to post-secondary transitions;

(d) technological and educational quality of vocational-technical curricula, equipment and instructional materials to enable vocational students and instructors to meet the technological demands of the workplace;

(e) capacity of vocational-technical education programs to meet the needs for general occupational skills and the improvement of academic foundations in order to address changing job requirements.

(3) Technical assistance is provided by the Department of Public Instruction who review the objectives, activities, timelines and evaluation criteria of each project. They are committed to working with potential service providers before and/or during the application process in refining the elements of the project application.

H. VOCATIONAL ASSESSMENTS FOR SPECIAL POPULATIONS OF STUDENTS

I. REQUIREMENTS

a. Every student with a disability enrolling

or enrolled in a vocational education program shall receive assessment of interests, abilities, and special needs with respect to successfully completing the vocational education program (P.L. 107.392 [c]) for students with disabilities and other special populations of students.

b. Additional vocational assessment may be indicated if test data does not give sufficient information for programming and placement of the student, or the student is not succeeding in the vocational program. Additional information is needed if the student is at risk of dropping out of school, or by the appropriate adult service agency during the formal referral process in the student's final year.

c. Individual programs of students who meet any of these four criteria will be reviewed by the IEP team in the case of identified special education students, and the student's advisor/counselor in other cases, to determine the need for additional vocational assessment.

d. Vocational assessment instruments must be appropriate for the population being tested. This includes: age, disability, reading levels, native language/primary communication mode.

e. Vocational assessment will be administered by staff trained to give the assessment.

f. Vocational assessment data will be reviewed with students and parents by designated staff members.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code,
Sections 354 & 563 (30 Del.C. 354, 563)

BEFORE THE DELAWARE STATE LOTTERY OFFICE
IN RE: PROPOSED RULES AND REGULATIONS
ORDER

Pursuant to 29 Del. C. section 4805(a), the Delaware State Lottery Office hereby issues this Order promulgating the proposed Video Lottery Employee Organization and Lottery Employee Regulations. Following notice and a public hearing held on September 23, 1997, the Lottery Office makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Lottery Office posted public notice of the proposed Regulations in the Register of Regulations and in the News-Journal and Delaware State News. The Lottery Office received no written comments from the public concerning the proposed Regulations prior to the public hearing. 2. The Lottery Office conducted a public hearing on the proposed Regulations on September

23, 1997. Prior to the hearing, the Lottery Director Wayne Lemons designated Video Lottery Operations Manager Donald Johnson as the hearing officer.

3. At the public hearing, the Lottery received into evidence a written report from Captain Scott Rugen of the Delaware State Police (marked exhibit #4). The report summarizes the position of the Delaware State Police in support of the proposed Regulations.

4. The Lottery Office also received testimony from George Smiley at the hearing. Mr. Smiley testified that he is the Secretary/Treasurer of Teamsters Local Union 326. Mr. Smiley objected to several of the proposed Regulations. After the hearing, Mr. Smiley sent a letter dated September 24, 1997 to the hearing officer which reiterated much of the same objections raised at the public hearing. This letter is incorporated into the record. The following is a summary of the comments presented by Mr. Smiley:

i. Section 3.2(3) requesting information about the original creation of the employee organization. Mr. Smiley stated that the original creators of the organization are not relevant to the fitness of the organization if those persons are no longer involved with the employee organization.

ii. Sections 3.2(4-5) requesting information about the parent body and affiliates of the employee organization. Mr. Smiley stated that this information is unnecessary because the employee organization is essentially an entity independent of the parent body and any affiliates.

iii. Section 3.2(7) requesting information about the pension and welfare systems maintained by the employee organization and the party managing the fund. Mr. Smiley stated that this information is not relevant since the statute only prohibits an organization from holding direct financial interests in video lottery agents.

iv. Section 3.2(8)(f) requesting information about the annual compensation of all employee organization personnel. Mr. Smiley stated that this information is not relevant and is already disclosed pursuant to federal labor laws.

v. Section 3.2(9) and section 4.2(15) requesting any other information that the Director determines is needed to determine competence, honesty, and integrity. Mr. Smiley objected to this regulation as providing too much open-ended discretion to the Lottery Director.

vi. Section 3.2(12) requesting a list of any litigation involving the employee organization. Mr. Smiley questioned what type of litigation cases would be included within this Regulation. For example, Mr. Smiley questioned whether the Regulation would apply to unfair labor practice charges or arbitration cases brought by or against the employee organization.

vii. Section 3.2(14) and section 4.2(18) requiring a waiver of liability to the State from any disclosure of information acquired during the investigation process. Mr. Smiley questioned why the Lottery Office would be releas-

ing any information obtained during the application process.

viii. Section 4.2(10)(ii) requiring key employees disclose criminal offenses for which they have been charged, indicted, or summoned but not convicted. Mr. Smiley stated that key employees should only be required to disclose information about convictions.

ix. Section 4.2(13) requiring key employees disclose whether they have ever been subpoenaed as a witness before any grand jury, legislative body, administrative body, or crime commission. Mr. Smiley objected to this requested information as irrelevant.

x. Section 4.2(17) requesting the key employee applicants execute a Release Authorization for the release of information about the applicant. Mr. Smiley stated that the portion of this Release directed to financial institutions would request personal financial information which is irrelevant.

FINDINGS OF FACT

5. The public was given notice and an opportunity to provide the Lottery Office with comments in writing and by oral testimony on the proposed regulations. The evidence received by the Lottery Office is summarized in paragraphs #3 and #4.

6. The proposed Regulations were required by the passage of House Bill No. 18 as amended by House Amendment No. 1, Del. Laws Volume 71, Chapter 184. Section 4805(a)(24)(f) of 29 Del. C. requires the Lottery Office to enact regulations for the registration of employee organizations and key employees. The legislation provided the Lottery Director with specific standards to review and assess the competency of employee organizations and key employees who wish to represent employees of a Delaware video lottery agent. For example, section 4805(a)(24)(c)(ii) provides:

(c) The application for registration by an employee organization or key employee of such employee organization may be denied or registration revoked under the following circumstances:

(ii) The applicant's competence, honesty, or integrity pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery based on the applicant's associations or by virtue of the fact that the applicant has been convicted of a felony crime of moral turpitude or has been arrested for an act constituting racketeering under 11 Del. C. section 1502(9)(a)(b)(2)(4-10) within ten (10) years prior to applying for registration hereunder or at anytime thereafter...

29 Del. C. section 4805(a)(24)(c)(ii).

7. The Lottery Office has considered the comments and evidence offered at the public hearing. These comments were reviewed in light of the statutory language

of House Bill 18 and the general powers of the Lottery Director under title 29, chapter 48. The Lottery Office finds that the majority of the proposed Regulations are directly related to the powers and obligations of the Lottery under the statute.

8. The Lottery Office received no comments about Chapters 1.0, 2.0, 5.0, 6.0, and 7.0. The Lottery Office will adopt these Regulations as proposed with the exception of the proposed Regulation 6.1. The hearing officer upon review of this Regulation finds that Regulation 6.1 should be clarified. Regulation 6.1 should be amended to specifically provide that applicants for employment with the Lottery Office who do not meet minimum requirements under the Lottery statute and Regulations can not be employed by the Lottery. The Lottery will not enact Regulation 6.1 as proposed. The Lottery will renounce a revised form of Regulation 6.1 which provides:

6.1 The Director shall conduct employment investigations for any person seeking employment with the Agency for compensation for a position which has direct access to lottery ticket sales agents, video lottery agents, or vendors. Those new employee applicants who do not meet the requirements of these Regulations and 29 Del. C. chapter 48 shall not be permitted to be employed by the Lottery.

9. The Lottery Office finds that proposed Regulation 3.2(3) requests information from employee organizations about the persons creating the organization. This information is clearly relevant for the Lottery's investigation of the fitness and competence of the employee organization as required by 29 Del. C. section 4805(a)(24)(c)(ii). The Lottery and Delaware State Police, in investigating the fitness of an organization, certainly need to know how long that organization has existed and from where it was created. The Lottery statute also requires the Lottery consider the associations of the employee organization and the key employee. Regulation 3.2(3) seeks information that is relevant to the association of any former founders of the organization in the current organization. This Regulation 3.2(3) will be enacted in its proposed form.

10. The Lottery Office finds that proposed Regulation 3.2(5) requests information from employee organization about the role of any affiliate in the activities of the organization in representing video lottery employees. This information is relevant to the Lottery's duty to determine who is the actual applicant and what other entities if any control that applicant. Regulation 3.2(5) will be enacted in its proposed form.

11. The Lottery Office finds that proposed Regulation 3.2(7) requests general information from an employee organization applicant about its pension and welfare systems. This information is relevant to the statutory requirement that an employee organization have no direct financial interest in any video lottery agent. 29 Del. C. section

4805(a)(24)(c)(iv). The requested information is readily accessible to an employee organization and is necessary for the investigation to be conducted by the Lottery and Delaware State Police. This Regulation 3.2(7) will be enacted in its proposed form.

For the sake of organization, the Lottery will reorder Regulations 3.2(6) and (7).

12. The Lottery Office finds that proposed Regulation 3.2(8)(f) requests the annual compensation of employee organization personnel. This information is relevant to assessing the competence and fitness of an employee organization. The role of each member of the organization and their respective position in the organization are relevant to a complete consideration of the makeup and operation of the employee organization. The representative from the Teamsters Local objected to this information in part because it is already disclosed by labor organizations under federal law. If the information is already public pursuant to federal requirements, the Lottery sees no burden to an employee organization from supplying the same information to a state investigating office. This Regulation 3.2(8)(f) will be enacted in its proposed form.

13. The Lottery Office finds that proposed Regulations 3.2(9) and 4.2(15) provide the Lottery Director with the power to request additional information relevant to an applicant's competence, honesty, or fitness. These Regulations simply provide the Director with the same powers that already exist under the statutory scheme enacted by House Bill 18. The Lottery will amend these regulations to add the phrase "necessary and reasonably related" after the word "needed" in the proposed regulations. The Lottery will renounce a new proposed Regulations 3.2(9) and 4.2(15) that provide as follows:

3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the following, without limitation:

...

(9) Any other information the Director determines is needed, necessary, and reasonably related to the competence, honesty, and integrity of the applicant or registrant as required by title 29 of the Delaware Code.

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following, without limitation:

(15) Any other information the Director determines is needed, necessary, and reasonably related to the competence, honesty, and integrity of the applicant or registrant as required by Title 29 of the Delaware Code.

14. The Lottery Office finds that proposed Regulation 3.2(12) requests the employee organization list litigation from the last five years. In order to assess the

competence, honesty, and integrity of the organization, it is necessary that the Lottery know the types of legal cases in which the employee organization has been involved. Cases raising bad faith claims against an employee organization are certainly relevant to the competence of the organization. The Lottery will propose a new rule that limits disclosure to litigation known to the employee organization. The Lottery will renounce a new proposed Regulation 3.2(12) which provides as follows:

3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the following, without limitation:

...

(12) A list of any known litigation involving the employee organization over the last five years.

15. The Lottery Office finds that proposed Regulation 3.2(14) requests the employee organization execute a waiver of liability from any disclosure or publication of information obtained during the investigation process. The proposed Regulation 4.2(18) requests a similar waiver from key employee applicants. This Regulation is not intended to provide for public dissemination of the investigatory materials but to protect the State in the event such materials are in fact disclosed or published. The Lottery could be required, for example, to disclose investigation files pursuant to a subpoena or Court order. This Regulation is a good faith attempt to limit the State's liability in the case of such an event. The Lottery will enact Regulations 3.2(14) and 4.2(18) in their proposed form.

16. The Lottery Office finds that proposed Regulation 4.2(10)(ii) requests that key employee applicants disclose criminal offenses for which they have been charged but not convicted. This information is clearly relevant to an investigation of the key employee's competence, honesty, or integrity. In fact, section 4805(a)(24)(c)(ii) specifically addresses cases where a key employee may be disqualified on the basis of an arrest for an offense that is still pending. The regulation as drafted allows the Lottery to obtain the criminal history of the applicant or registrant in order to determine if there are any offenses that fit within the statutory grounds for disqualification under 29 Del. C. section 4805(a)(24)(c)(ii). The Lottery will renounce a proposed Regulation 4.2(10)(ii) which provides as follows:

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following, without limitation:

...

(10) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime involved is denominated a felony or a misdemeanor:

(ii) Any criminal offenses, that occurred within

ten years of the application or registration, for which the applicant or registrant was arrested, charged, indicted, or summoned to answer, which are pending or for which he was not convicted;

17. The Lottery Office finds that proposed Regulation 3.2(4) requests that an employee organization provide information about the parent body of the organization and all affiliates. The Lottery finds that the name and address of the parent body is relevant to review and consideration of the competence and fitness of the employee organization. The Lottery finds relevant the names of any parent or affiliate which will control the registrant. This information is necessary to determine who in fact is the applicant. The Lottery agrees in part with the comments offered at the public hearing that the request for information about all other affiliates is unnecessary. The Lottery will not enact this Regulation in its proposed form. The Lottery will renounce a proposed Regulation 3.2(4) which will provide as follows:

3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the following, without limitation:

(4) The name and address of all affiliates which are either a parent body or any superior organization with any right or ability to control, supervise, discipline or set policy for this organization.

18. The Lottery Office finds that proposed Regulation 4.2(13) requests that a key employee state whether he has ever been a witness before a grand jury, legislative body, administrative body, or crime commission. The Lottery agrees in part with the comments at the public hearing that this request is too general. The requested information should be limited to instances when the key employee applicant was called to testify on matters pertaining to his competence, honesty, or integrity in operations of an employee organization. The Lottery will not enact the proposed Regulation 4.2(13). The Lottery will renounce a new proposed Regulation 4.2(13) which will provide:

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following, without limitation:

(13) Whether he has ever been subpoenaed as a witness before any grand jury, legislative body, administrative body, or crime commission on matters pertaining to the operation or performance in any labor organization, which shall include all details relating thereto.

19. The Lottery Office finds that proposed Regulation 4.2(17) requests key employee applicants execute a Release Authorization to allow the Delaware State Police to perform a background investigation of the applicant. The Lottery finds that the requested information with one exception is necessary to permit the Delaware State Police

to investigate the competence, honesty, and integrity of the applicant. The Lottery relies in part on the Staff Report of the Delaware State Police that such information is necessary for completion of a background investigation. The Lottery also notes that the same type of information is currently already requested by the Lottery's Video Lottery Regulations for employees of video lottery agents and technology vendors. The Lottery does believe that the proposed regulation should be revised to specify the purpose of the requested information. Also, the Lottery does question the necessity for a release of information from selective service boards. The Lottery believes this portion of the Regulation should be deleted. The Lottery will renote a new proposed Regulation 4.2(17) which provides as follows:

4.2(17) A Release Authorization directing all courts, probation departments, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant or registrant as requested by the Agency or the Delaware State Police that bears on and is necessary and reasonably related to the statutory standards of competence, honesty, or integrity as specified by 29 Del. C. section 4805(a)(24)(c)(ii).

CONCLUSIONS

20. The proposed Regulations were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. section 4805(a).

21. The Lottery deems the proposed Regulations, with the exception of the specific rules previously mentioned, necessary for the effective enforcement of 29 Del. C. section 4805 and for the full and efficient performance of the Lottery's duties thereunder. The Lottery concludes that the adoption of the proposed Regulations, with the noted exceptions, would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and the general welfare of the people under section 4805(a).

22. The Lottery, therefore, adopts pursuant to 29 Del. C. section 4805 and 29 Del. C. section 10118 the proposed Video Lottery Employee Organization and Lottery Employee Regulations except for proposed Regulations 3.2(4), 3.2(9), 3.2(12), 4.2(10)(ii), 4.2(13), 4.2(15), 4.2(17), and 6.1. The Lottery has considered the comments and suggestions made by the witnesses at the public hearing.

23. The Lottery does not adopt the proposed Regulations 3.2(4), 3.2(9), 3.2(12), 4.2(10)(ii), 4.2(13), 4.2(17) and 6.1 and will post notice of a new proposal for enactment of these four Regulations.

24. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on February 1, 1998.

Donald Johnson

Hearing Officer
Delaware State Lottery Office

It is So Ordered This _____ day of _____,
1998.

DELAWARE STATE LOTTERY OFFICE
VIDEO LOTTERY EMPLOYEE ORGANIZATION
AND LOTTERY EMPLOYEE REGULATIONS

1.0 Introduction

These regulations are authorized pursuant to section 4805 of Title 29 of the Delaware Code. Video lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

2.0 Definitions

The following words shall be accorded these meanings for purposes of these Regulations:

"Agency" - the Delaware State Lottery Office created pursuant to 29 Del. C. chapter 48.

"agent" or "licensed agent" or "licensed video lottery agent" - any person licensed by the Director of the Agency to conduct licensed video lottery operations.

"applicant" - any person applying for a license authorized under these regulations.

"background investigations" - the security, fitness, and background checks conducted of an applicant.

"Director" - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.

"employee organization" - any organization that admits or seeks to admit to membership employees of a Delaware video lottery agent and which has a purpose the representation of such employees in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment, or conditions of work.

"key employee" - any officer and any employee of an employee organization who has direct involvement with or who exercises authority, discretion or influence in the representation of employees of a Delaware video lottery agent in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment or conditions of work.

“licensee” - any person authorized by the Director to participate in video lottery operations.

“Lottery” - the public gaming system or games established and operated by the Delaware State Lottery Office.

“pension or welfare system maintained by an employee organization” - means any pension or welfare system created or established by an employee organization or one or more of the trustees or one or more members of the governing body of which is selected or appointed by the employee organization.

“pension system” - any plan, fund or program which is maintained by an employee organization, or by an employee organization and an employer, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

“person” - an individual, general partnership, limited partnership, corporation or other legal entity.

“registrant” - any employee organization or key employee applying for registration under these regulations.

“welfare system” - any plan, fund or program which is maintained by an employee organization or by an employee organization and an employer, to the extent that such plan, fund or program was established or is maintained for the purposes of providing for its participants, or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment, or vacation benefits, apprenticeship, or other training programs, or day care centers, scholarship funds, or prepaid legal services, or any other such benefit other than pension on retirement or death, and insurance to provide such pensions.

“video lottery” - any lottery conducted with a video lottery machine or linked video lottery machines with an aggregate progression prize or prizes.

3.0 Registration of Employee Organizations

3.1 Any employee organization representing or seeking to represent employees employed by a Delaware video lottery agent shall register with the Director of the

Agency. An employee organization shall be required to file a registration application with the Agency within ten (10) business days after it secures a signed authorization card from any employee who is employed by a Delaware video lottery agent. Any registration statement filed by an employee organization after the signature of an authorization card but prior to the employee organization’s petition for election shall not be subject to disclosure by the Agency to any video lottery agent.

3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the following, without limitation:

(1) The name of the registrant as shown on its charter or in its constitution;

(2) The current and former business addresses of the registrant, including the address of any office where matters pertaining to employees of a video lottery agent will be conducted;

(3) The names of all persons principally involved in the original creation of the employee organization;

(4) The name and address of: (i) all affiliates which are either a parent body or any superior organization with any right or ability to control, supervise, discipline or set policy for this organization; (ii) all affiliates which are chartered by the same parent body as this organization; (iii) all affiliates which are governed by the same constitution or bylaws.

(5) The nature of the actual or probable involvement of any affiliate which represents or is seeking to represent employees who are employed by a video lottery agent, or which is involved or seeking to be involved in the control or direction of such representation.

(6) Information on any pension or welfare system maintained by the employee organization that hold any direct financial interest in any video lottery agent or technology provider.

(7) Disclosure of pension and welfare systems maintained by the employee organization and the names and titles of each officer or agent responsible for management of the pension or welfare system.

(8) With respect to all employee organization personnel:

(a) Full name, including any known alias or nickname;

(b) Designation of all key labor employees in the employee organization;

(c) Title or other designation in the employee organization;

(d) A brief description of the duties and activities of each individual;

(e) The business address and telephone

number of each individual; and,

(f) Annual compensation including salary, allowances, and other direct or indirect disbursements (including reimbursed expenses).

(9) Any other information the Director determines is needed to determine the competence, honesty, and integrity of the applicant as required by Title 29 of the Delaware Code.

(10) A written certification under oath in a form signed by the local employee organization president and secretary-treasurer, and chief official of the local employee organization if his title is other than president or secretary-treasurer, that the information contained on the application is complete and accurate.

(11) A statement whether the employee organization has ever been found by any court or governmental agency to be unsuitable to represent employees under a federal or state labor statute.

(12) A list of any litigation involving the employee organization over the last five years.

(13) A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the registrant as requested by the Agency or the Delaware State Police.

(14) A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the registrant from any disclosure or publication of information acquired during the investigation process.

3.3 To the extent, if any, that the information supplied in the registration or otherwise supplied by the employee organization or on the employee organization's behalf, becomes inaccurate or incomplete, the employee organization shall so notify the Agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

3.4 Upon request of the Agency, the employee organization shall supplement the information provided in the registration form as deemed necessary by the Agency.

3.5 All registration statements filed under these Regulations shall be valid for a one-year period and a renewed registration form or an updated supplemental registration form must be filed annually. The employee organization filing the registration form is under a continuing duty to promptly notify the Director of the Agency of any changes in disclosed information.

4.0 Registration of Key Employees of Employee

Organizations

4.1 Any key employee of an employee organization shall be required to register with the Agency at the same time as the application for registration is filed under section 3.0 of these Regulations, or within thirty (30) days after the date on which such individual is elected, appointed, or hired, whichever is later.

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following, without limitation:

- (1) Name, including any aliases or nicknames;
- (2) Title or position with the employee organization;
- (3) Date and place of birth;
- (4) Physical description;
- (5) Current address and residence history;
- (6) Social security number;
- (7) Citizenship and, if applicable, information concerning alien status;
- (8) Telephone number at current place of employment;
- (9) Employment history, including all positions held with a labor organization, union or affiliate, whether or not compensated;
- (10) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime involved is denominated a felony or a misdemeanor:
 - (i) Any convictions;
 - (ii) Any criminal offenses for which he was charged, indicted or summoned to answer, but for which he was not convicted;
 - (iii) Any criminal offenses for which he received a pardon;

(11) Whether he has ever been denied a business, liquor, gaming, or professional license, or has had such license revoked;

(12) Whether he has ever been found by any court or governmental agency to be unsuitable to be affiliated with a labor organization and if so, all details relating thereto;

(13) Whether he has ever been subpoenaed as a witness before any grand jury, legislative body, administrative body, or crime commission and if so, all details relating thereto.

(14) All key employee applicants will be required to submit a complete set of fingerprints to the Delaware State Bureau of Identification along with the standard release information.

(15) Any other information the Director

determines is needed to determine the competence, honesty, and integrity of the applicant as required by Title 29 of the Delaware Code.

(16) A written certification under oath by the applicant that the information contained on the application is complete and accurate.

(17) A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Agency or the Delaware State Police.

(18) A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the applicant from any disclosure or publication of information acquired during the investigation process.

4.3 To the extent, if any, that the information supplied in the application form, or otherwise supplied by the applicant, becomes inaccurate or incomplete, the applicant shall so notify the Agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

4.4 Upon request of the Agency, the applicant shall supplement the information provided in the application form as deemed necessary by the Agency.

4.5 All registration forms filed under these Regulations shall be valid for a one-year period and a renewed registration form or an updated supplemental registration form must be filed annually. The entity or individual filing such form is under a continuing duty to promptly notify the Director of any changes in disclosed information.

5.0 Procedure for Review of Registration Applications

5.1 All registration statements filed under these Regulations shall be valid for a one year period and a renewed registration must be filed annually. The entity or individual filing such form is under a continuing duty to promptly notify the Director of any changes in disclosed information. The Delaware State Police shall conduct all background investigations required for by these Regulations and 29 Del. C. section 4805(a)(24)(a).

5.2 All applications for registration shall be deemed approved unless the Director notifies the applicant within sixty (60) days of his decision not to approve the registration or unless extenuating circumstances require a longer period, in which case the Director shall act with all deliberate speed to complete the process.

5.3 The application for registration by an employee organization or key employee of such employee organization may be denied or registration revoked under the following circumstances:

(i) If the employee organization or key employee of such employee organization is in violation of standards established under the Labor Management Reporting and Disclosure Procedure Prohibition Against Persons Holding Office, 29 U.S.C. section 504(a).

(ii) The applicant's competence, honesty or integrity pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery based on the applicant's associations or by virtue of the fact that the applicant has been convicted of a felony crime of moral turpitude or arrested for an act constituting racketeering under 11 Del. C. section 1502(9)(a)(b)(2)(4-10) within ten (10) years prior to applying for registration hereunder or at anytime thereafter. Any employee or employee organization denied registration based on an arrest for an act constituting racketeering under 11 Del. C. section 1502(9)(a)(b)(2)(4-10) may apply for reconsideration of registration if subsequently acquitted or a nolle prosequi is entered or the charge is otherwise dismissed. In such instances, the Lottery shall reconsider the applicant's registration based on the criteria set forth in these Regulations and 29 Del. C. section 4805(a)(24).

(iii) The organization or individual has knowingly made or caused to be made any written statement to any representative of the Agency or the Delaware State Police or who has orally responded to an official inquiry by the Agency, its employees or agents, which was at the time and in light of circumstances under which it was made false or misleading.

(iv) The organization or key employee thereof holds or obtains a direct financial interest in any video lottery agent, provided the employee organization is provided a thirty (30) day period to divest of any such direct financial interest.

5.4 Any employee organization may continue to provide services to employees of a Delaware video lottery agent during the review of the application process and the appeal process, except where the employee organization is found in violation of section 5.3(iv) of these Regulations or there has been a previous violation of sections 5.3(i-iii) of these Regulations by the employee organization within the previous ten (10) years.

5.5 The failure of any key employee to satisfy the requirements of sections 5.3(i-iv) of these Regulations may constitute grounds for suspension of the registration of

the employee organization if the organization does not remove the key employee from his or her duties as defined in 29 Del. C. section 4803(j) and the definition of "key employee" contained in section 2.0 of these Regulations. The employee organization will be given a reasonable opportunity to remove or replace any key employee found to be in violation of sections 5.3(i-iv) of these Regulations.

5.6 In any case where the Director determines that a registration of an employee organization or key employee shall be denied or revoked, the Agency shall first give written notice to the applicant or registrant of the intended action, the reasons therefor, and the right to a hearing as provided for in 29 Del. C. chapter 101. The notice of the intended denial, suspension, or revocation shall comply with any applicable requirements of the Delaware Administrative Procedures Act in 29 Del. C. sections 10133-10134 and, at a minimum, afford the applicant or registrant an opportunity for a hearing.

5.7 If the applicant or registrant desires a hearing, it shall provide the Agency with a written statement within ten days of receipt of the notice which contains the following:

(1) A clear and concise assignment of each error which the applicant or registrant alleges to have been committed in the tentative determination to deny, suspend, or revoke the registration. Each assignment of error should be listed in a separately numbered paragraph.

(2) A clear and concise statement of the facts on which the applicant or registrant relies in support of each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the individual or an officer of the employee organization authorized to request the hearing.

(5) A verification by the person requesting the hearing or counsel that the statements contained in the statement are true.

5.8 The Secretary of Finance shall, within a reasonable time, if requested by the Director, appoint a hearing officer to determine whether the application for registration should be denied, suspended, or revoked. The appointed hearing officer shall be bound to conduct all hearings in conformance with the requirements of 29 Del. C. section 10131. Notice of the hearing shall be given at least twenty (20) days before the date it is to be held.

5.9 The applicant or registrant may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the registrant, written evidence of a representative's authority shall be presented to the hearing officer in a form satisfactory to

the hearing officer.

5.10 The applicant or registrant or his duly authorized representative, may with the approval of a hearing officer waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed on the record.

5.11 The applicant or registrant shall be given an opportunity for argument within the time limits fixed by the hearing officer following submission of the evidence. The hearing officer, upon request of the licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten days after the hearing date or within such other time as fixed by the hearing officer.

5.12 The Delaware Uniform Rules of Evidence shall be in effect in all proceedings before the hearing officer. The hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.

5.13 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.

5.14 Following the conclusion of the hearing and within ten days of the receipt of the transcript thereof, or within such other time as fixed by the hearing officer but in no event later than 45 days following the hearing, the hearing officer shall prepare a final decision, including his or her findings of fact and conclusions of law, and the order signed by the hearing officer shall be final. A copy of said order shall be served upon the party requesting the hearing or their attorney of record in person or by registered or certified mail.

5.15 The hearing officer's decision to deny an application of registration or to suspend or revoke a registration shall be appealable to the Superior Court under the provisions of the Delaware Administrative Procedures Act.

6.0 Lottery Employee Investigations

6.1 The Director shall conduct employment investigations for any person seeking employment with the Agency for compensation for a position which has direct access to lottery ticket sales agents, video lottery agents, or vendors.

6.2 Applicants for Lottery positions in section 6.1 of these Regulations will be required to submit a set of their fingerprints to the State Bureau of Identification along with a signed standard release. The submitted fingerprints shall

be processed by the S.B.I. in order to provide the Director with the individual's entire federal and state criminal history record.

6.3 Any applicant for a Lottery position in section 6.1 of these Regulations shall be required to submit an application form to the Agency to allow the Director to determine that the applicant does not pose a threat to the public interest of the State of Delaware or the integrity of the Lottery Office. The application materials shall request, without limitation:

- (1) Name, including any aliases or nicknames;
- (2) Title or position to be applied for;
- (3) Date and place of birth;
- (4) Current address and residence history;
- (5) Social security number;
- (6) Citizenship and, if applicable, information concerning alien status;
- (7) Telephone number;
- (8) Employment and educational history.
- (9) Qualifications for the position applied for;
- (10) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime is denominated a felony or a misdemeanor:

- (i) Any convictions;
- (ii) Any criminal offenses for which the applicant was charged, indicted, or summoned to answer, but for which he was not convicted;
- (iii) Any criminal offense for which he received a pardon;

Any other information the Director determines is needed to determine the qualifications and fitness of the applicant.

7.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES/MEDICAL
ASSISTANCE PROGRAM (DMAP)**

BEFORE THE DELAWARE DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

IN THE MATTER OF:)
)
REVISION OF THE REGULATIONS)
OF THE MEDICAID/MEDICAL)
ASSISTANCE PROGRAM)

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies to increase the value of excluded vehicles for long-term care Medicaid clients. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 1997 Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 1, 1997, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No oral or written comments, information, or factual evidence were received related to this proposed rule.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective February 10, 1998.

January 13, 1998
Date of Signature
Gregg C. Sylvester, M.D.
Acting Secretary
GCS/EA/tgm

DMAP SECTION 410.15 (Page 3)

2. Vehicles

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 410.13. Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per 410.13, up to ~~\$4500~~ \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds ~~\$4500~~ \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the ~~\$4500~~ \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per 410.13.

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to ~~\$4500~~ \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than November 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid

Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

IN THE MATTER OF:)
REVISION OF THE REGULATIONS)
OF THE MEDICAID/MEDICAL)
ASSISTANCE PROGRAM)
CONTAINED IN DMAP SECTION 420)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services published an emergency order in the September 1997 Register of Regulations, page 214, related to the revision of the regulation contained in DMAP SECTION 420 which increased the amount of funds that can be protected monthly in a personal needs account for individuals residing in nursing facilities. An increase of six dollars (from \$36 to \$42) was approved and funded by the Delaware Legislature effective July 1, 1997.

FINDINGS OF FACT:

No oral or written comments, materials, or suggestions were received from any individual or the public.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted as written effective July 1, 1997.

December 11, 1997
 Date of Signature
 Gregg C. Sylvester, M.D.
 Acting Secretary
 GCS/EA/tgm

DMAP 420

1. Personal needs

(a) ~~\$36.00~~ \$42.00 per month of available income is to be protected for the recipients direct personal needs, as defined by Form MAP-64 *

Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than December 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

BEFORE THE DELAWARE DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

IN THE MATTER OF:)
)
REVISION OF THE REGULATIONS)
OF THE MEDICAID/MEDICAL)
ASSISTANCE PROGRAM)

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies in the Medicaid Inpatient Hospital Provider Manual, Outpatient Hospital Provider Manual, Long-Term Care Provider Manual and Ambulance Transportation Provider Manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section

10115 in the October 1997 Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 1, 1997, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No oral or written comments, information or factual evidence were received related to these proposed rules.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective February 10, 1998.

January 13, 1998
Date of Signature
Gregg C. Sylvester, M.D.
Acting Secretary
GCS/EA/tgm

TO BE ADDED TO THE AMBULANCE PROVIDER SPECIFIC POLICY MANUAL

Criteria for Non-Emergency Ambulance Transportation for
Medicaid Clients in a Nursing Facility

The DMAP may cover non-emergency ambulance transportation for eligible Medicaid clients in a nursing facility when the transport is to and/or from a medical service (e.g., physician's office, clinic, dialysis center, or other medical consultation), and if one of the following criteria is met:

- if facility transport is not available; or
- if the client is ambulatory but cannot be safely transported via normal transport system (e.g., client is agitated, combative, or is otherwise mentally compromised); or
- if the client requires more physical assistance than can be provided by one facility attendant; or
- if the client has a physical or medical condition which contraindicates normal van/car transport (e.g., client is morbidly obese, or has a temporary condition that prevents ambulating); or
- if the client has another physical/medical condition which contraindicates normal van/car transport (e.g., cardiac condition, severely respiratory compromised, or requires assistance and transportation of medical equipment such as a ventilator, oxygen, or IVs).

The medical necessity of each transport must be documented on the claim being submitted to the DMAP for payment. The required documentation consists of the following:

- the “from” place of transport;
- the “to” place of transport; and
- a detailed description of the patient’s condition at the time of transport. The ambulance provider must receive documentation from the nursing facility that will verify which of the above criteria qualifies the recipient for non-emergency ambulance transportation.

TO BE ADDED TO THE LONG-TERM CARE PROVIDER
SPECIFIC POLICY MANUAL

Criteria for Non-Emergency Ambulance Transportation for
Medicaid Clients in a Nursing Facility

The DMAP may cover non-emergency ambulance transportation for eligible Medicaid clients in a nursing facility when the transport is to and/or from a medical service (e.g., physician’s office, clinic, dialysis center, or other medical consultation), and if one of the following criteria is met:

- if facility transport is not available; or
- if the client is ambulatory but cannot be safely transported via normal transport system (e.g., client is agitated, combative, or is otherwise mentally compromised); or
- if the client requires more physical assistance than can be provided by one facility attendant; or
- if the client has a physical or medical condition which contraindicates normal van/car transport (e.g., client is morbidly obese, or has a temporary condition that prevents ambulating); or
- if the client has another physical/medical condition which contraindicates normal van/car transport (e.g., cardiac condition, severely respiratory compromised, or requires assistance and transportation of medical equipment such as a ventilator, oxygen, or IVs).

The nursing facility is expected to transport Medicaid clients to and/or from medical services if the facility has vehicle (s) utilized for patient transportation.

It is the responsibility of the nursing facility to provide documentation to the ambulance provider that will verify which of the above criteria qualifies the recipient for non-emergency ambulance transportation.

TO BE ADDED TO THE LONG-TERM CARE
PROVIDER SPECIFIC POLICY MANUAL

The facility must bill any third party payer which may be liable for services provided. This billing must be done prior to billing the DMAP.

~~The facility must accept the DMAP payment as “payment in full” for services provided.~~

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 29 Delaware Code,
Section 8503(7) (29 **Del.C.** §8503(7))

IN RE) NATURE OF THE PROCEEDINGS
ADOPTION OF) SUMMARY OF THE EVIDENCE
AMENDMENT) FINDING OF FACT
TO) CONCLUSIONS OF LAW
PROCEDURES) DECISION TO WITHDRAW
OF THE EQUAL)
EMPLOYMENT)
REVIEW BOARD)

ORDER

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 Del. C. § 10115, the Department of Labor proposed an amendment to Section IV. 4.1 of the Procedures of the Equal Employment Review Board.

2. A public hearing was held on Monday, November 25, 1997, in Conference Room 049 of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Darrell J. Minott, Karen Peterson, Director of the Division of Industrial Affairs, was present to receive testimony and evidence at the November 25, 1997 hearing in Wilmington, Delaware.

Summary of the Evidence

4. Director Peterson noted for the record that the Department of Labor is withdrawing the amendment at the request of the Equal Employment Review Board.

There was no further testimony or evidence.

Findings of Fact

The Department of Labor recommends that the amendment be withdrawn.

Conclusions of Law

5. The Department of Labor proposed the amendment to the Procedures of the Equal Employment Review Board pursuant to its authority granted in 29 Del. C. § 8503.

Decision To Withdraw

6. It is the decision and order of the Department of Labor that the proposed amendment to the Equal Employment Review Board, a copy of which is attached as Exhibit "A", is hereby WITHDRAWN.

SO ORDERED, this _____ day of _____, 1998.

Darrell J. Minott
Secretary of Labor

IV. HEARING PROCEDURES

4.1 Hearings generally

Add the sentence, "Any representation by counsel must be obtained privately by the parties at their own expense." after sentence 3 of Regulation IV. 4.1. The new Regulation IV. 4.1 will read:

"Hearings generally - The Review Board is authorized to hear complaints filed by the Department of Labor against an employer alleged to have engaged in an unlawful employment practice. The purpose of the hearing is to develop a full and complete factual record upon which the Review Board may discharge its duties under 19 Del.C. § 712. Every party may appear with or without counsel, except for corporations which must be represented by counsel. **[Any representation by counsel must be obtained privately by the parties at their own expense.]** Oaths shall be administered by a member of the Review Board or the Deputy Attorney General, and documents or other tangible evidence shall be presented to the Review Board and examined by all parties."

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS**

Statutory Authority: 29 Delaware Code,
Section 8503(7) (29 Del.C. §8503(7))

BEFORE THE DEPARTMENT OF LABOR

IN RE) NATURE OF THE PROCEEDINGS
ADOPTION OF) SUMMARY OF THE EVIDENCE
REGULATIONS) FINDING OF FACT
REGARDING THE) CONCLUSIONS OF LAW

IMPLEMENTATION) DECISION TO ADOPT
OF 19 DEL. C. §708,))
11 DEL.C. §§8563))
and 8564))

ORDER

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 Del. C. § 10115, the Department of Labor proposed Regulations to provide guidance to employers and applicants regarding the implementation of 19 Del. C. § 708, 11 Del. C. §8563 and 11 Del. C. §8564.

2. A public hearing was held on Monday, November 25, 1997, in Conference Room 049 of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Darrell J. Minott, Karen Peterson, Director of the Division of Industrial Affairs, was present to receive testimony and evidence at the November 25, 1997 hearing in Wilmington, Delaware.

Summary of the Evidence

Those individuals testifying at the November 25, 1997 hearing in Wilmington, Delaware, and a summary of said testimony is as follows:

4. Mr. Joseph Letnaunchyn, President and Chief Executive Officer of the Delaware Healthcare Association, provided general comments on the regulatory process and comments on specific provisions of the regulations. He offered the following suggestions:

Regulation II A. (SERVICE LETTER) which defines persons for whom the service letter must be obtained should be changed. He stated that the Regulation should be modified to indicate that service letters must be obtained only for persons seeking employment in a health care facility or child care facility that affords direct access to persons receiving care;

Regulation II A. (SERVICE LETTER) should be modified to specify the minimal information which must be included in the reference letter for a person seeking employment who was not previously employed or was self-employed. Alternatively, Mr. Letnaunchyn proposed that the Regulation specify that, "... the information contained in a reference letter should be considered acceptable based on the judgment of the designated representative of the health care provider or day care facility that receives, and relies on, such reference letter.";

The Department of Labor should further clarify or define the term "good faith" effort in Regulation III C. (1) (a);

Regulation IV. B. 1 regarding the method

of contacting the Department of Children, Youth and Their Families for the Child Abuse Registry Check is unclear and should contain more specific information;

Regulation V. B. 1 regarding the method of contacting the Ombudsman's Office for the Adult Abuse Registry Check is unclear and should contain more specific information;

The Regulations should address the responsibilities of temporary agencies that supply employees to health care providers and day care facilities; and,

The Regulations should clarify that health care providers who operate any type of school-based programs must comply with the State's hiring practices and reporting requirements for educational facilities and are not required to comply with the provisions of Titles 11 and 19, as specified in this legislation.

Mr. Letnaunchyn submitted a written copy of his comments which was made a part of the record by Director Peterson. A copy of his submission is attached as Exhibit "A".

5. A written submission was received at the hearing from Pauline D. Koch, Administrator, Office of Child Care Licensing. In her submission, Ms. Koch requested that Regulation II. (DEFINITIONS) Section C. be changed from "...the Department of Services for Children, Youth and their Families" to "...the Department of Services for Children, Youth and Their Families." She further requested that Regulation IV B. 1. b. be changed to, "The employer must contact in writing the Department of Services for Children, Youth and Their Families."

She further proposed that the title of the Department in Regulation IV. C. and VI. B. 2 be changed from "...the Division of Children, Youth and Their Families" to "...the Department of Services for Children, Youth and Their Families". A copy of Ms. Koch's submission is included as Exhibit "B".

6. Prior to the hearing, a written submission was received from Robert Stewart, Esquire, recommending changes to the text, such as underlining all subheadings. Mr. Stewart also proposed adding the words "and fully releasing the employer from liability for doing so" to Regulation II. C. subsections 1. b. and 2.b.; Regulation IV. B. subsection 1. a. and 2. b.; and Regulation V. B. subsection 1. a and 2. b. Mr. Stewart also suggested numerous minor changes and additions to the wording of the Regulations. A copy of Mr. Stewart's written submission is attached as Exhibit "C".

7. Director Peterson stated that the record would be held open for a period of thirty (30) days following the hearing in order to receive further written submissions. No further written submissions were received.

Findings of Fact

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written documentation received. The Department of Labor's findings regarding the issues raised at the hearing are as follows:

8. The Department of Labor will correct the numbering of the Regulations by re-numbering Regulation II. ("SERVICE LETTER") as Regulation III.

9. The proposal that Regulation III. A. be amended for clarification is accepted.. The word "person" will be changed to "person seeking employment (as defined in Regulation I. A.)" in order to conform with the statute.

10. The proposal that Regulation III A. be changed to add the words "... information contained in the letters of reference should be considered acceptable based on the judgment of the designated representative of the health care provider or day care facility that receives, and relies on, such reference letter." is rejected. Authority for this language is not contained within the statute.

11. The proposal that the last sentence of Regulation III C. 1. a. further clarify methods by which employers can prove "good faith effort" is accepted. The new last sentence will read, "In order to prove that the service letter form has been sent, an employer may send the form by fax, Certified Mail or other means which provides proof of mailing, faxing, delivery or receipt."

12. The proposal to change Regulation IV. B. 1. and V. B. 1. is accepted (in part) and rejected (in part).

Regulation IV. B. 1.c. will be changed to add the words "in writing".

The last sentence of Regulation V. A. will be changed to "The Adult Abuse Registry check shall be performed by the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities."

Regulation V. B. 1. b. will be changed to, "The employer must contact the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities. The employer may contact that Division by telephone."

The Department of Labor has no authority or jurisdiction to further define the methods of contacting or receiving the Child Abuse Registry check or the Adult Abuse Registry check.

13. The proposal to add language so that Regulation III. A. and IV. A. conform with the statute regarding the responsibility of temporary agencies to comply with these sections is accepted. In addition, the Department will add the statutory language regarding temporary agencies to Regulation III. C. 2. a.

14. The proposal that the Regulations clarify that health care providers who operate any type of school-based programs comply with the State's hiring practices

and reporting requirements for educational facilities and are not required to comply with the provisions of Titles 11 and 19, as specified in the legislation is rejected. Authority for this language is not contained in the statutes.

15. The proposals of Pauline D. Koch, Administrator, Office of Child Care Licensing are accepted. These changes involve corrections and a minor clarification.

16. Mr. Stewart's proposal that the words "and fully releasing the employer from liability from doing so" be added to Regulations II. C. subsections 1. b. and 2. b.; Regulation IV B. subsection 1. a. and 2. b.; and Regulation V. B. subsection 1. a and 2. b. is rejected. Authority for this language is not contained in the statutes.

17. The proposal that the subheadings be underlined is accepted.

18. In addition to those changes stated above, the Department has made other minor changes to the text to correct and/or clarify the Regulations where necessary. These changes appear in Regulation III. C. 1. subsections b. and e.; Regulation III. C. 2. subsection b.; Regulation III C. 3. subsection a. and b.; Regulation VI. B. 2. and 3.; Regulation VI. C. 1.; and Regulation VII. A. 3., 4. and 6.

19. The Department has changed the last sentence of Regulation IX. to conform with the Administrative Procedures Act, specifically 29 Del. C. §10118 (e). That section states, in part, that, "The effective date of an order which adopts... a regulation shall be not less than 10 days from the date the order adopting... a regulation has been published in its final form in the Register of Regulations..." The last sentence of Regulation IX. will state, "These regulations shall take effect ten (10) days after the date of publication in the State's Register of Regulations."

Conclusions of Law

20. The Department of Labor proposed Regulations to provide guidance to employers and applicants regarding the implementation of 19 Del. C. § 708, 11 Del. C. §§8563 and §8564 pursuant to its authority granted in 29 Del. C. § 8503.

Decision To Adopt

21. It is the decision and order of the Department of Labor

that the Regulations as amended by the above findings, a true and correct copy of which are attached hereto as Exhibit "D", are hereby ADOPTED.

SO ORDERED, this _____ day of _____, 1998.

Darrell J. Minott

Secretary of Labor

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 29 Delaware Code,
Section 8503(7) (29 Del.C. §8503(7))

BEFORE THE DEPARTMENT OF LABOR

IN RE) NATURE OF THE PROCEEDINGS
ADOPTION OF) SUMMARY OF THE EVIDENCE
AMENDMENTS) FINDING OF FACT
TO PREVAILING) CONCLUSIONS OF LAW
WAGE REGULATIONS) DECISION TO ADOPT

ORDER

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 Del. C. § 10115, the Department of Labor proposed amendments to the Prevailing Wage Regulations. The Prevailing Wage Regulations implement the provisions of Delaware's Prevailing Wage Law, 29 Del. C. §6960, Prevailing wage requirements.

2. A public hearing was held on Monday, November 25, 1997, in Conference Room 049 of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Darrell J. Minott, Karen Peterson, Director of the Division of Industrial Affairs, was present to receive testimony and evidence at the November 25, 1997 hearing in Wilmington, Delaware.

Summary of the Evidence

4. Director Peterson noted for the record that there was a typographical error in amendment # 4. She stated that the second sentence of paragraph 6 c. should read, "The Heavy or Highway total will be divided by the Building rate..."

Those individuals testifying at the November 25, 1997 hearing in Wilmington, Delaware, and a summary of said testimony is as follows:

5. Mr. John Bonk, President of the Associated Builders and Contractors, stated that the Associated Builders & Contractors strongly opposes amendment # 5. He further stated that the record-keeping requirement proposed in this amendment would be an unnecessary and repetitive burden on contractors. He believes that the information is already required on the sworn payroll reports. Mr. Bonk also stated that the three-year requirement for maintaining the records required by amendment # 5 is a substantive obligation and, because it is not currently in

the prevailing wage law, the Secretary of Labor may not add substantive obligations to the Regulations.

6. Linda Wilson, Deputy Attorney General, Department of Justice, stated that she believes the statute does in fact, provide sufficient authority to promulgate the requirement of amendment # 5. She further stated that records reflecting all tasks performed on prevailing wage projects are necessary. Ms. Wilson stated that she would agree that the first phrase of the amendment could be deleted, but strongly recommends adoption of amendment # 5.

7. Director Peterson explained that both Delaware's Wage Payment & Collection Act (19 Del. C. Chapter 11) and Minimum Wage Act (19 Del. C. Chapter 9) contain a three-year record-keeping requirement and, therefore, the three-year record-keeping requirement for prevailing wage records is consistent with those laws.

8. Director Peterson noted for the record that written submissions had been received from the following:

J.A. Moore & Sons Construction Company
County Insulation Co.
Roberts Construction Company
Casey Electric
Wohlsen Construction Company
Advanced Power Control, Inc.
Jacobi Contractors, Inc.
KrapfCanDoIt Co.

Each of the parties submitted letters expressing opposition to amendment # 5. The written submissions were made a part of the record and are attached as Exhibit "A".

9. Director Peterson stated that the record would be held open for a period of thirty (30) days following the hearing in order to receive further written submissions. Written submissions opposing amendment # 5 were received following the hearing from:

Tighe, Cottrell & Logan
Jacobi Contractors
Enterprise Masonry Corporation
Wanex Electrical Services, Inc.
Brandywine Nurseries
Minker Construction
DelCollo Electric, Inc.
Stephen Cole Contracting, Inc.
Casey Electric
Wohlsen Construction Company
Paul A. Nickle, Inc.
Roberts Construction Company
Square One Electrical Construction Company, Inc.
J.W. Walker & Sons, Inc.
Taylor Kline
Advance Construction Company of Delaware

Metal Sales & Service, Inc.
A & H Metals, Inc.
Bruce Industrial Company, Inc.
Pace Electric, Inc.
C & D Contractors, Inc.
M. Davis & Sons, Inc.
J.F. Sobieski Mechanical Contractor, Inc.
Technivate
George Sherman Corporation
DiSabatino Construction Company
Spacecon, Inc.
N.C. Builders, Inc.
Best Drywall
Daniel D. Rappa, Inc.
Bartley & Devary Electric, Inc.
J.P. Lazorick Company, Inc.
Conectiv Services
Tri-State The Roofers

All of the letters state that the requirements of proposed amendment # 5 are "burdensome and repetitive". These written submissions are included as Exhibit "B".

Findings of Fact

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written documentation received. The Department of Labor's findings regarding the issues raised at the hearing are as follows:

10. There was no testimony on or opposition to amendment # 1, amendment # 2, amendment # 3 and amendment # 4.

11. Based upon the oral testimony and written submissions from the hearing, the Department of Labor wishes to modify the wording of amendment # 5 to read as follows:

"c. A daily log for each individual employed upon the site of construction. The log must list (in general terms) the tasks performed by each employee and the amount of time spent performing each task. (examples, "hung drywall", "wired lighting fixtures", etc.)"

Conclusions of Law

12. The Department of Labor proposed the amendments to the Prevailing Wage Regulations pursuant to its authority granted in 29 Del. C. § 8503.

Decision To Adopt

13. It is the decision and order of the Department of Labor that proposed amendments # 1, # 2, # 3 and # 4 (as corrected) to the Prevailing Wage Regulations, true and correct copies of which are attached hereto as Exhibit "C", are hereby ADOPTED.

Decision to Adopt

14. It is the decision and order of the Department of Labor that proposed amendment # 5, as modified by the Department of Labor, a true and correct copy of which is attached as Exhibit "D", is hereby ADOPTED.

SO ORDERED, this _____ day of _____, 1998.

Darrell J. Minott
Secretary of Labor

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**

AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code,
Chapter 60, (7 Del.C. Ch. 60)

Secretary's Order No. 97-A-0044__

Re: Regulation No. 37 ("NO_x Budget Program") of the Delaware Regulations Governing the Control of Air Pollution

Date of Issuance: December 29, 1997

Effective Date of Regulatory Changes: February 11, 1998

I. Background

On December 8, 1997, a public hearing was held to receive comments on a proposed new Regulation No. 37, which establishes a NO_x Budget Program for Delaware. This regulation is necessary to implement a September 27, 1994 MOU among 11 states and the District of Columbia which constitute the Ozone Transport Region. In an effort to reduce summertime ozone concentrations, these states have committed to a regional program to cap NO_x emissions and encourage trading of emissions allowances on a regional basis in order to substantially reduce NO_x emissions and corresponding ozone levels. Each state was assigned a NO_x budget based on 1990 emission levels after extensive consultations among regulatory agencies and affected sources throughout the region. A model rule was developed as of May 1, 1996, which then formed the basis for this rulemaking. Proper notice of the hearing was provided as required by law. In addition, considerable efforts were made in the two months leading up to this hearing to alert all potentially affected sources of the requirements in this proposed program, which has not changed since the 1994 MOU in terms of NO_x reductions, deadlines or the 1990 baseline.

Following the hearing on December 8, the record was left

open for three days to receive additional comments from the regulated community. Thereafter, AQM prepared a detailed response document in draft form which was submitted to the Hearing Officer on December 17, 1997, in an effort to expedite review of this matter. A final version of that response document was received on December 19, 1997, with no substantive changes from the draft, but with corrections of typographical errors, etc., and formal approval of Division Management.

This regulation will affect fossil fuel fired boilers or indirect heat exchangers with a max. rated heat input capacity equal to or greater than 250 MMBTU/hr; and all electric generating units with a rated output equal to or greater than 15MW.

II. Findings

1. Proper notice of the hearing was provided as required by law.

2. The AQM Response Document, dated December 18, 1997, and submitted on December 19, 1997, contains an accurate summary of comments in the record along with reasoned responses and sound recommendations for action by the Secretary on proposed Regulation No. 37. While many of the comments from affected sources have some merit, nevertheless AQM's Response Document provides a legally defensible record for this rulemaking.

3. A Hearing Officer's Report, dated December 22, 1997, which incorporates the Response Document by reference, recommends promulgation of Regulation 37 after appropriate amendments are made, consistent with AQM's Response Document.

4. The changes to be made as referenced in item 3 above, are not substantial and thus the agency does not need to repropose the regulation change.

5. While supporting AQM's positions on all substantive issues raised by this rulemaking, nevertheless, the Hearing Officer suggested additional consultation with Department of Justice attorneys regarding the burden of proof imposed on affected sources under §18.b of the proposed regulation before any enforcement action is undertaken.

III. Order

In view of the above findings, it is hereby ordered that the proposed Regulation No. 37 of the Delaware Regulations Governing the Control of Air Pollution be amended to reflect those changes specified in AQM's Response Document and that the regulation be promulgated in accordance with the customary process as required by law. It is understood that the provisions of § 18.b will not be enforced until such time as further legal review has been completed and necessary changes are made in that provision, if needed, to comply with due process requirements.

V Reasons

This Regulation is based on a long-standing MOU and Model Rule developed over several years in close coordination with all regulatory agencies and affected sources within the State Ozone Transport Region. Its provisions, therefore, come as no surprise to the parties involved and are necessary to address serious concerns about ground-level ozone in Delaware and throughout the region, in furtherance of the policies and purposes of 7 Del. C. Chapter 60.

Signed: Christophe A.G. Tulou
 Christophe A. G. Tulou, Secretary

NO_x Budget Program
 Regulation No. 37
 December 18, 1997

Section 1 - General Provisions

- a. The purpose of this regulation is to implement Delaware's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) by establishing in the State of Delaware a NO_x Budget Program.
- b. A NO_x allowance is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this regulation.
 - 1. All applicable state and federal requirements remain applicable.
 - 2. A NO_x allowance does not constitute a security or other form of property.
- c. On or after May 1, 1999, the owner or operator of each budget source shall, not later than December 31 of each calendar year, hold a quantity of NO_x allowances in the budget source's current year NATS account that is equal to or greater than the total NO_x emitted from that budget source during the period May 1 through September 30 of the subject year.
- d. Allowance transfers between budget sources sharing a common owner or operator and/or authorized account representative are subject to all applicable requirements of this regulation, including the allowance transfer requirements identified in Section 11 of this regulation.
- e. Offsets required for new or modified sources subject to non-attainment new source review must be obtained in accordance with Regulation 25 of Delaware's "Regulations Governing the Control of Air Pollution" and Section 173 of the Clean Air Act. Allowances are not considered offsets within the context of this regulation.

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

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

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

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

Section 2 - Applicability

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

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

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

Section 3 - Definitions

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

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

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

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

and the *NO_x Emissions Tracking System*.

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

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

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

g. *Allowance transfer* means the conveyance to another *account* of one or more *allowances* from one ~~person~~ **[account]** to another by whatever means, including but not limited to purchase, trade, auction, or gift in accordance with the procedures established in Section 11 of this regulation, effected by the submission of an *allowance transfer* request to the *NATS Administrator*.

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

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

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

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

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

baseline emissions of May 1 through September 30 for purposes of the *NO_x Budget Program*.

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

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

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

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

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

r. *Continuous Emissions Monitoring System (CEMS)* means the equipment required by this regulation used to sample, analyze, and measure which will provide a permanent record of emissions expressed in pounds per million British Thermal Units (Btu) and tons per day. The following systems are component parts included in a continuous emissions monitoring system: nitrogen oxides pollutant concentration monitor, diluent gas monitor (oxygen or carbon dioxide), a data acquisition and handling system, and flow monitoring systems (where appropriate).

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

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

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

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

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

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

y. *Fossil fuel* means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material. **[This definition does not include CO derived from any source.]**

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

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

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

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

dd. *Maximum heat input capacity* means the ability of a *budget source* to combust a stated maximum amount of

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

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

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

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

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

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

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

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

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

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

nn. *OTC* means the Ozone Transport Commission.

oo. *OTC MOU* means the Memorandum of Understanding

that was signed by representatives of eleven states and the District of Columbia on September 27, 1994.

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

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

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

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

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

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

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

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

use as of November 15, 1990.

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

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

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

Section 4 - Allowance Allocation

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

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

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

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

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

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

Phase II Target (Point Level).

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

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

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

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

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

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

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

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

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

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

been approved in accordance with Section 11 of this regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

x. The following statement: "I am authorized to make this submission on behalf of the owners and operators of the *budget source* for which this submission is made. I

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

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

2. For sources that notify the Department that they are subject to this regulation within six months of the effective date of this regulation, the Department shall *allocate* NO_x emissions *allowances* to the source as follows:

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

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

1. The less stringent of:

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

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

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

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

1. The less stringent of:

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

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

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

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

emissions or that derived from the application of an approved RACT limit to the actual May 1, 1990 to September 30 heat input value.

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

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

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

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

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

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

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

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

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

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

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

A. Name and mailing address of the source.

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

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

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

v. Quantification and justifying documentation of the

NO_x emissions reduction, including a description of the methodology used to verify the emissions reduction.

vi. The quantity of *current year* and future year allocations to be reduced, which is the portion of the *control period* emissions reduction that is to move off budget.

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

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

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

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

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

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

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

Section 5 - Permits

a. Within 120 days of the effective date of this regulation, the *owner or operator* of an *existing budget source* shall request amendment of any applicable construction or operating permit issued, or application for any permit submitted, in accordance with the State of Delaware “Regulations Governing the Control of Air Pollution”. The amendment request shall include the following:

1. A condition(s) that requires the establishment of a

compliance account in accordance with Section 6 of this regulation.

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

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

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

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

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

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

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

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

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

Section 6 - Establishment of Compliance Accounts

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

1. For *existing budget sources*, initial designations shall

be *submitted* no more than 30 days following the effective date of this regulation.

2. For *new budget sources*, initial designations shall be *submitted* no less than 90 days prior to the first hour of operation in a NO_x *control period*.

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

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

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

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

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

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

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

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

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

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

c. The Department shall review all *submitted* "Account Certificate of Representation" forms. Within 30 days of receipt of the "Account Certificate of Representation", the Department shall take one of the following actions:

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

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

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

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

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

Section 7 - Establishment of General Accounts

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

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

include the following minimum information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8 - Opt In Provisions

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

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

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

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

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

4. A description of the *opt-in* source, including fuel

type(s), maximum rated heat input capacity and electrical output rating where applicable.

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

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

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

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

ii. The documentation shall include:

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

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

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

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

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

ii. The documentation shall include:

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

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

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

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

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

10. The following statement: "*I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its*

attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

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

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

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

i. Verify that the monitoring methods used to determine the *opt-in-baseline control period* NO_x mass emissions and the *opt-in-baseline* NO_x *control period heat input* are consistent with those described in Section 13 of this regulation.

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

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

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

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

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

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

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

source.

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

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

A. The less stringent of:

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

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

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

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

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 55%; or,

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

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

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

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

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

d. Upon the approval of the *opt-in* application and assignment of an *allowance allocation*, the Department

shall authorize the *NATS Administrator* to open a *compliance account* for the *opt-in* source in accordance with Section 10 of this regulation.

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

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

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

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

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

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

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

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

3. **[Within 60 days of receipt on any revised opt-in application]**, the Department shall review the revised *opt-in* application.

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

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

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

C. Upon approval of any updated revised *opt-in*

application, the Department shall process the application in accordance with Section 8(g)(3)(ii) of this regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The Department shall authorize the *NATS Administrator* to deduct the excess allowances allocated to the *opt-in* source, calculated as the difference between the actual allocated allowances and the allowances

allocated on the basis of the revised *opt-in* application for the years of operation in *NO_x control periods*.

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

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

1. The *NETS Administrator* shall compare actual *heat input* data following each *NO_x control period* with the *opt-in-baseline heat input* for each *opt-in* source.

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

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

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

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

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

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

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

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

2. The Department shall authorize the *NATS Administrator* to deduct allowances equal to those

allocated to the *opt-in* source in the *NO_x control period* for the calendar year in which the *opt-in* source becomes a *budget source* by definition.

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

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

Section 9 - New Budget Source Provisions

a. *NO_x allowances* shall not be created for new *NO_x sources* that are *budget sources* by definition. The *owner or operator* is responsible to acquire any required *NO_x allowances* from the *NATS*.

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

1. Request a [~~permit/~~permit amendment/~~revision~~] in accordance with Section 5 of this regulation [**no less than 90 days prior to operation in any NO_x control period**].

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

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

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

~~{4}~~[5]. Complete the monitoring system certification prior to operation in any *NO_x control period*.

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

Section 10 - *NO_x Allowance Tracking System (NATS)*

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

1. The *allowances* allocated to each *budget source*.
2. The *allowances* held in each *account*.
3. The *allowances* deducted from each *budget source* during each *control period*, as requested by a transfer request submitted by the *budget source's authorized account representative* or alternate *authorized account representative* in accordance with Section 16(b) of this regulation.
4. *Compliance accounts* established for each *budget source* to determine the compliance for the source, including the following information:
 - i. The *account number* of the *compliance account*.
 - ii. The name(s), address(es), and telephone number(s) of the *account owner* (s).
 - iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.
 - iv. The name and street address of the associated *budget source*, and the state in which the *budget source* is located.
 - v. The number of *allowances* held in the *account*.
5. *General accounts* opened by individuals or entities, upon request, which are not used to determine compliance, including the following information:
 - i. The *account number* of the *general account*.
 - ii. The name(s), address(es) and telephone number(s) of the *account owner*(s).
 - iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.
 - iv. The number of *allowances* held in the *account*.
6. *Allowance transfers*.
7. Deductions of *allowances* by the *NATS Administrator* for compliance purposes, in accordance with Section 16(d) of this regulation.

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

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

Section 11 - Allowance Transfer

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

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

~~{comparable and consistent}~~ NO_x *budget* program regulations, and their participation in the *NATS*. ~~{A program is considered comparable and consistent if it is approved by the EPA for incorporation in the subject states' state implementation plan (SIP).}~~

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

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

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

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

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

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

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

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

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

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

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

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

g. Transfer requests judged valid by the *NATS Administrator* shall be completed and recorded in the *NATS* by deducting

the specified *allowances* from the originating *account* and adding them to the acquiring *account*.

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

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

1. The effective date of transfer.

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

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

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

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

Section 12 - Allowance Banking

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

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

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

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

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

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

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

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

$$0.10 \times \text{the regional NO}_x \text{ Budget}$$

the total number of *banked allowances* in the region

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

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

1. No later than October 1, 1998, the *authorized account representative* or *alternate authorized account representative* from any *budget source* seeking *early reduction allowances* shall submit to the Department an application that includes, at a minimum, the following information:

i. Identification of the *budget source*.

ii. Identification of the calendar time period for which *early reduction allowances* are being sought (i.e. May 1 -

September 30, 1997, May 1 - September 30, 1998, or both).

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

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

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

C. The actual emissions for the 1990 *control period*,

or;

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

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

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

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

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

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

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

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

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

C. The corrected *NO_x emissions early reduction allowance* is the result of subtracting the results of Section

12(d)(1)(ix)(B) of this regulation from the NO_x emissions *early reduction allowances* calculated in Section 12(d)(1)(viii) of this regulation.

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

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

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

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

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

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

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

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

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

i. If the Department determines that the emissions reductions were not enforceable, *real*, *quantifiable*, or *surplus*, the Department shall notify the *budget source's*

authorized account representative in writing, indicating the reason(s) the request for *early reduction allowances* is being denied.

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

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

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

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

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

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

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

4. On or before May 1, 1999, the Department shall publish a report which documents the applicable sources and the number of *early reduction credits* awarded.

Section 13 - Emission Monitoring

a. NO_x emissions from each *budget source* shall be monitored in accordance with this section and in accordance with the requirements of the *OTC* documents titled "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program", dated January 28, 1997, and "NO_x Budget Program Monitoring Certification and Reporting Instructions", dated July 3, 1997. The provisions of these documents are hereby adopted by reference.

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

NO_x Budget Program.

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

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

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

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

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

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

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

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

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

ii. Monitoring systems required to be installed by the NO_x Budget Program shall be installed and monitoring and recording hourly mass emissions data on and after July 1, 1998.

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

Monitoring Certification and Reporting Instructions".

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

i. Monitoring systems required to be installed by the NO_x Budget Program shall be installed and monitoring and recording hourly emissions data on July 1, 1998.

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

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

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

i. All existing *Part 75 budget sources* not required to install additional monitoring equipment shall submit to the Department a complete hardcopy monitoring plan containing monitoring plan changes and additions required by the NO_x Budget Program in the second quarter 1998 quarterly report as required under Section 15 of this regulation. These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

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

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

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in

accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

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

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

B. Formula verifications shall be *submitted* to the Department no later than July 1, 1998.

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

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

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

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

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

4. If the *Part 75 budget source* does not have a certified flow monitor, but does have a certified NO_x *CEMS*, the NO_x emissions rate in pounds per hour shall be determined by using the NO_x *CEMS* to determine the NO_x emission

rate in pounds per million BTU and the *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix D. The NO_x emissions rate (in pounds per hour) shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

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

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

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

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

1. The *authorized account representative* or alternate *authorized account representative* shall prepare and submit to the Department for approval a hardcopy monitoring plan for each NO_x *budget source*. Upon request by the Department, the *authorized account representative* or alternate *authorized account representative* shall also submit to the Department a complete electronic monitoring plan. Sources subject to the program on July 1, 1998 shall submit the complete monitoring plan no later than March 30, 1998. Sources becoming subject to the *budget* program after July 1, 1998 must submit a complete monitoring plan no later than 90 days prior to projected initial participation date. The monitoring plan shall be prepared in accordance with the requirements of the *OTC* documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring and Certification and Reporting Instructions", and shall contain the following information, as a minimum:

- i. A description of the monitoring method to be used.
- ii. A description of the major components of the monitoring system including the manufacturer, serial number of the component, the measurement span of the component and documentation to demonstrate that the

measurement span of each component is appropriate to measure all of the expected values. This requirement applies to all monitoring systems including NO_x CEMS which have not been certified pursuant to 40 CFR Part 75.

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

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

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

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

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

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

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

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

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

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

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

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

the most recent calibration of each of the components and the original accuracy specifications from the manufacturer of the fuel flow meter.

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

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

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

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

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

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

i. Any *non-Part 75 budget source* that has a maximum rated *heat input* capacity of 250 MMBTU/hr or greater which is not a peaking unit as defined in 40 CFR 72.2, or whose operating permit allows for the combustion of any solid fossil fuel, or is required to install a NO_x CEMS for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement, shall install, certify, and operate a NO_x CEMS. Any *budget source* that has previously installed a NO_x CEMS for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement shall certify and operate the NO_x CEMS.

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

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

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

2. Quality assurance requirements identified in Part

2, Section IV.

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

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

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

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

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

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

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

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

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

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

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

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

3. The *owner or operator* of oil-fired and gas-fired

boilers may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

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

i. The *owner or operator* of a *non-Part 75 budget source* using a NO_x CEMS to measure NO_x emission rate may elect to measure stack flow and diluent (O_2 or CO_2) concentration and use the procedures of 40 CFR Part 75, Appendix F, to determine the hourly *heat input*. For flow monitoring systems, the *non-Part 75 budget source* must meet all applicable requirements of 40 CFR Part 75.

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

A. The *owner or operator* of a *non-Part 75 budget source* may monitor fuel flow by using fuel flow meter systems certified under 40 CFR Part 75, Appendix D, or as defined in Part 2, Section III of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

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

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

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

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

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

Total electrical load

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling

and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 14 - Recordkeeping

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

Section 15 - Emissions Reporting

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

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

i. By meeting all current Part 75 reporting requirements and reporting the additional unit identification information as required by the NO_x Budget Program (100 and 500 level records) beginning with submittal of the quarterly report for the third calendar quarter of 1998.

ii. It is not necessary to submit hourly NO_x mass emissions data in 1998.

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

A. Additional unit identification information.

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

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

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

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

2. Beginning with the quarterly report for the third quarter of 1998, all *Part 75 budget sources*, that are required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program, shall meet the reporting requirements of the NO_x Budget Program by meeting all current Part 75 reporting requirements and the additional reporting requirements of the NO_x Budget Program including *submittal* of the following information:

i. Additional unit identification information.

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

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

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

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

3. All *non-Part 75 budget sources* shall meet the reporting requirements of the NO_x Budget Program by reporting all information required by the NO_x Budget Program as well as reporting hourly and cumulative NO_x mass emissions beginning with the quarterly report for the third quarter of 1998.

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

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

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

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

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

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

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

2. If the Department approves the shutdown exemption request:

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

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

Section 16 - End-of Season Reconciliation

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

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

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

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

3. *Allowances* which were allocated for any preceding

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

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

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

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

d. If by the December 31 compliance deadline the authorized account representative or alternate authorized account representative either makes no NO_x allowance deduction request, or a NO_x allowance deduction request insufficient to meet the allowances required by the actual emissions, a violation of this regulation may have occurred and the NATS Administrator may deduct the necessary number of NO_x allowances from the budget source's compliance account. The NATS Administrator shall provide written notice to the authorized account representative that NO_x allowances were deducted from the source's account.

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

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

- i. A description of the error alleged to have been made by the NATS Administrator.
- ii. A proposed correction of the alleged error.
- iii. Any supporting documentation or other information concerning the alleged error and proposed

corrective action.

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

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

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

3. The NATS Administrator may, without prior notice of a claim of error and at the NATS Administrator's sole discretion, correct any errors in any account on the NATS Administrator's own motion. The NATS Administrator shall notify the authorized account representative and the Department no later than 20 business days following any such corrections.

Section 17 - Compliance Certification

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

b. The compliance certification shall be submitted no later than December 31 of each year.

c. The compliance certification shall contain, at a minimum, the following information:

1. Identification of the budget source, including the budget source's name and address, the name of the authorized account representative and alternate authorized account representative, if any, and the NATS account number.

2. A statement indicating whether or not emissions data was submitted to the NATS Administrator pursuant to Section 15 of this regulation.

3. A statement indicating whether or not the *budget source* held sufficient NO_x allowances, as determined in Section 16 of this regulation, in its *compliance account* for the NO_x allowance control period as of December 31 of the subject year, or by being identified in an *allowance transfer* request that was submitted by December 31 of the subject year, to equal or exceed the *budget source's* actual emissions as reported to the *NETS Administrator* for the control period.

4. A statement of certification whether the monitoring plan which governs the *budget source* was maintained to reflect actual operation and monitoring of the *budget source* and contains all information necessary to attribute monitored emissions to the *budget source*.

5. A statement of certification that all emissions from the *budget source* were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

6. A statement whether the facts that form the basis for certification of each monitor or monitoring method approved in accordance with Section 13 of this regulation have changed.

7. If a change is required to be reported in accordance with Section 17(c)(6) of this regulation, specify the nature of the change, when the change occurred, and how the *budget source's* compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor re-certification.

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

9. Signature of the *budget source's* authorized account representative or alternate authorized account representative and the date of signature.

d. The Department may verify compliance by whatever means necessary, including but not limited to:

1. Inspection of facility operating records.
2. Obtaining information on allowance deduction and transfers from the *NATS Administrator*.
3. Obtaining information on emissions from the *NETS Administrator*.
4. Testing emission monitoring devices.
5. Requiring the *budget source* to conduct emissions

testing using testing methods approved by the Department.

Section 18 - Failure to Meet Compliance Requirements

a. If the emissions from a *budget source* exceed allowances held in the *budget source's* compliance account for the control period as of December 31 of the subject year, the *NATS Administrator* shall deduct allowances from the *budget source's* compliance account for the next control period at a rate of three (3) allowances for every one (1) ton of excess emissions.

1. The *NATS Administrator* shall provide written notice to the *budget source's* authorized account representative that NO_x allowances were deducted from the *budget source's* account.

2. The authorized account representative or alternate authorized account representative may notify the *NATS Administrator* of any claim that the *NATS Administrator* made an error in recording submitted transfer information in accordance with Section 16(e) of this regulation.

b. In addition to NO_x allowance deduction penalties under Section 18(a) of this regulation, the Department may enforce the provisions of this regulation under 7 Del. C. Chapter 60. For the purposes of determining the number of days of violation, any excess emissions for the control period shall presume that each day in the control period (153 days) constitutes a day in violation unless the *budget source* can demonstrate, to the satisfaction of the Department, that a lesser number of days should be considered.

Section 19 - Program Audit

a. The Department shall conduct an audit of the NO_x Budget Program prior to May 1, 2002, and at a minimum every three years thereafter. The audit shall include the following:

1. Confirmation of emissions reporting accuracy through validation of NO_x allowance monitoring and data acquisition systems at the *budget source*.

2. Examination of the extent to which banked allowances have, or have not, contributed to emissions in excess of the budget for each control period covered by the audit.

3. An analysis of the geographic distribution of emissions as well as hourly and daily emission totals in the context of ozone control.

4. An assessment of whether the program is providing the level of emissions reductions anticipated and included in the SIP.

b. The Department shall prepare a report on the results of the audit. The Department shall seek public input on the conclusions contained in the audit report and provide for a public notice, public comment period, and allow for the request to hold a public hearing on the conclusions

contained in the report.

c. In addition to the Department audit, the Department may seek a third party audit of the program. Such an audit could be implemented by the Department or could be performed on a region-wide basis under the supervision of the *OTC*.

d. Should an audit result in recommendations for program revisions at the state level, the Department shall consider the audit recommendations, in consultation with the *OTC*, and if found necessary, propose the appropriate program revisions as changes to current procedures or modifications to this regulation.

Section 20 - Program Fees

The *authorized account representative* or alternate *authorized account representative* of each *compliance account* and each *general account* shall pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly, should a fee schedule be established.

FINAL REGULATIONS

NO_x BUDGET PROGRAM --- APPENDIX "A"

COMPANY	FACILITY and PLANT POINT	OTC IDENTIFIED ALLOWANCES	EXCEPTIONAL CIRCUMSTANCES ALLOWANCES	RESERVE ALLOWANCES	FINAL ALLOWANCES	SOURCE TYPE
DELMARVA POWER	Christiana Sub 001	6	-0-	1	7	Non-Part 75
	Christiana Sub 002	6	-0-	1	7	Non-Part 75
	Delaware City 002	1	-0-	1	2	Non-Part 75
	Edge Moor 001	1	-0-	1	2	Non-Part 75
	Edge Moor 002	241	-0-	1	242	Part 75
	Edge Moor 003	345	-0-	1	346	Part 75
	Edge Moor 004	621	28	1	650	Part 75
	Hay Road 001	49	-0-	1	50	Non-Part 75
	Hay Road 002	34	-0-	1	35	Non-Part 75
	Hay Road 3*	-0-	-0-	-0-	-0-	Part 75
	Indian River 001	340	-0-	1	341	Part 75
	Indian River 002	397	-0-	1	398	Part 75
	Indian River 003	762	-0-	1	763	Part 75
	Indian River 004	1,652	-0-	2	1,654	Part 75
	Indian River 10**	-0-	-0-	1	2	Non-Part 75
	Madison Str. 001	-0-	-0-	1	1	Non-Part 75
West Sub 001	2	-0-	1	3	Non-Part 75	
DFD Operating Services	McKee Run 001	72***	-0-	1	73	Non-Part 75
	McKee Run 002	44***	-0-	1	45	Non-Part 75
	McKee Run 003	184	-0-	2	186	Part 75
	VanSant 1*	-0-	-0-	-0-	-0-	Part 75
FIRST STATE	Co-Gen 1**	-0-	-0-	2	203	Non-part 75
STAR ENTERPRISE	Delaware City 001	93	-0-	1	94	Non-Part 75
	Delaware City 007**	-0-	-0-	1	105	Non-Part 75
	Delaware City 019	20	-0-	1	21	Non-Part 75
	Delaware City 034	70	-0-	1	71	Non-Part 75
	Delaware City 068	206	-0-	1	207	Non-Part 75
	Delaware City 069	227	-0-	1	228	Non-Part 75
	Delaware City 070	214	-0-	2	216	Non-Part 75
	Delaware City 074	117	-0-	1	118	Non-Part 75
TOTAL:		5,704	28	32	6,070	

NOTES: (*) These Units did not start operation until after 1990.

(**) Units operated in the 1990 NO_x control period but were not included in the "1990 OTC Baseline Emissions Inventory".

(***) OTC MOU allowances corrected from "1990 OTC Baseline Emissions Inventory" due to use of incorrect RACT factor.

FINAL REGULATIONS

1247

NO _x BUDGET PROGRAM APPENDIX "B"					
COMPANY	FACILITY or PLANT POINT	1990 BASELINE HEAT INPUT (10 ⁶ BTU)	1990 BASELINE NO _x EMISSIONS (Tons)	1990 BASELINE EMISSION RATE (lb/mmBTU)	RACT NO _x EMISSIONS (Tons)
DELMARVA POWER	Christiana Sub 001	16,245	5.8	0.709	5.8
	Christiana Sub 002	15,447	5.5	0.709	5.5
	Delaware City 002	1,612	0.6	0.703	0.6
	Edge Moor 001	1,835	0.7	0.708	0.7
	Edge Moor 002	2,409,836	655.8	0.545	648.1
	Edge Moor 003	3,451,182	928.7	0.540	516.0
	Edge Moor 004	6,213,944	1,436.8	0.463	1,147.3
	Hay Road 001	938,341	49.0	0.105	49.0
	Hay Road 002	631,111	33.6	0.106	33.6
	Hay Road 3*	-0-	-0-	-0-	-0-
	Indian River 001	1,816,612	755.6	0.828	755.6
	Indian River 002	2,134,257	882.3	0.828	882.3
	Indian River 003	4,521,301	1,853.7	0.819	762.1
	Indian River 004	8,747,546	3,671.6	0.838	1,830.8
	Indian River 10**	-0-	-0-	-0-	-0-
	Madison Street 001	1,079	0.4	0.706	0.4
	West Sub 001	6,105	2.2	0.709	2.2
DFD	McKee Run 001	344,472	91.6	0.524	55.0
	McKee Run 002	211,742	56.3	0.505	33.8
	McKee Run 003	1,724,601	411.7	0.447	321.8
	VanSant 1*	-0-	-0-	-0-	-0-
FIRST STATE	Co-Gen 1**	-0-	-0-	-0-	-0-
STAR ENTERPRISE	Delaware City 001	931,712	229.0	0.486	116.5
	Delaware City 007**	-0-	-0-	-0-	-0-
	Delaware City 019	318,601	20.1	0.126	20.1
	Delaware City 034	1,100,470	69.5	0.126	69.5
	Delaware City 068	1,820,133	588.5	0.647	345.8
	Delaware City 069	2,002,309	647.4	0.647	440.5
	Delaware City 070	1,888,905	610.7	0.647	368.3
	Delaware City 074	1,847,552	116.7	0.126	116.7

NOTES: Data as identified in "1990 OTC NO_x Baseline Emission Inventory",
Final OTC NO_x Baseline Inventory, Point-Segment Level Data.

(*) These Units did not start operation until after 1990.

(**) Indian River Point 10, First State Co-Gen 1, and Delaware City 007 were not included in the Reference Document, but were operating in the 1990 NO_x control period.

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Architectural Accessibility Board	Mr. Abdul G. Qaissaunee	01/09/00
Board of Chiropractic	Dr. Trent Camp	01/09/01
Board of Examiners of Private Investigators and Security Agencies	Ms. Patricia Beetschen Mr. Robert C. Shannon	01/09/01 01/09/01
Board of Dental Examiners	Dr. Connie F. Cicorelli Dr. Thomas E. Conley	01/09/01 01/09/01
Board of Registration of Geologists	Ms. Elizabeth K. Brown Dr. Robert Jordan Mr. Bangalore T. Lakshman	01/09/00 01/09/00 01/09/00
Board of Podiatry Examiners	Dr. Luis Garcia	01/09/01
Council on Banking	Mr. Robert Dickerson	12/30/00
Council on Correction	Ms. Dian Taylor	12/15/00
Council on Volunteer Services	Ms. Alice B. Barron Mr. James V. Healy	01/09/00 01/09/00
Council on Aging and Adults with Physical Disabilities	Ms. C. Regina Byers	01/09/01
Council on Hispanic Affairs	Mr. Rodolfo A. Alfonso Mr. Efrain Lozano, Jr. Ms. Maria M. Matos Dr. Jaime H. Rivera Mr. Israel F. Valenzuela	01/09/01 01/09/01 01/09/01 01/09/01 01/09/01
Council on Libraries	Ms. Janet Mee-Ling Chin Mr. James P. Neal	12/30/00 09/26/98
Council on Housing and Community Development	Mr. Don C. Brown	03/20/99

GOVERNOR'S APPOINTMENTS

1249

Delaware Private Industry Council	Ms. Janet L. Abrams	12/30/00
	Ms. Elaine Archangelo	12/30/00
	Mr. John C. Castle	12/30/00
	Ms. Alice Coleman	12/30/00
	Mr. Clifford Crouch	12/30/00
	Ms. Muriel E. Gilman	12/30/00
	Ms. Kathleen Ittel	12/30/00
	Mr. Michael E. Kozikowski, Sr.	12/30/00
	Mr. Samuel E. Lathem	12/30/00
	Dr. Dennis L. Loftus	12/30/00
	Mr. John McMahon, Jr.	01/09/01
	The Honorable Darrell Minott	12/30/00
	Mr. Vance Morris	12/30/00
	Mr. James P. Neal	12/30/00
	Mr. George Pennington	12/30/00
Mr. Benjamin T. Shaw	01/09/01	
Mr. Dana S. Shreve	01/09/01	
Mr. Duane L. Wayman, II	12/30/00	
Delaware Institute of Medical Education and Research	Dr. John J. Forest, Jr.	12/30/00
Governor's Council on Agriculture	Mr. Robert L. Baker	12/30/00
Health Resources Council	Mr. S. Bernard Ableman	01/05/01
	Dr. Steven Edell	01/10/01
	Dr. Larcy D. McCarley	01/05/01
	Ms. Terri Nicholau	12/30/00
	Ms. Phyllis A. Sheppard, Chairperson	12/30/00
	Dr. Gregg C. Sylvester	12/30/00
Historical Records Advisory Board	Ms. Jean K. Brown	12/10/00
	Mr. Robert C. Moor, Jr.	12/30/00
Interagency Coordinating Council	The Honorable Patricia M. Blevins	01/09/01
	Ms. Cynthia S. Miller	01/09/01
	Ms. Christine M. Long	01/09/01
	Ms. Louann Vari	01/09/01
Interagency Coordinating Council	Ms. Ann Woolfolk	01/09/01
State Examining Board of Physical Therapists	Mr. Bruce A. Goldsborough	01/09/01

GOVERNOR'S APPOINTMENTS

State Committee of Dietetics/Nutritionists	Ms. Ruth Ann Messick	12/30/00
State Board of Accountancy	Mr. Paul C. Seitz	01/09/01
Statewide Independent Living Council	Ms. Elva Vandever	01/09/01
WILMAPCO Council	Mr. Robert W. Coy	
Worker's Compensation Advisory Council	Mr. John S. Bonk	12/10/00
	Mr. Clifford B. Hearn, Jr.	12/10/00
	Mr. George B. Heckler, Jr.	12/10/00
	Mr. A. Richard Heffron	12/10/00
	Mr. James Johnson	12/10/00
	The Honorable Robert I. Marshall	12/10/00
	Mr. William J. McCloskey	12/10/00
	The Honorable William A. Oberle, Jr.	12/10/00
	Mr. Joseph J. Rhoades	12/10/00
	Ms. Karen W. Wright	12/10/00

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF EXAMINERS OF
PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,
Section 3506(a)(1) (24 **Del.C.** 3506(a)(1))

**DELAWARE BOARD OF EXAMINERS OF
PSYCHOLOGISTS
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to repeal the existing Rules and Regulations and adopt the new Rules and Regulations. The regulations will define the official board office, meetings of the board, officers of the board, procedures for licensure, evaluation of credentials, supervised experience, failure to pass examination, psychological assistants, continuing education, professional conduct, complaint procedures, license renewal and procedures for licensure applicable to full-time faculty members in a nationally accredited doctoral level clinical training program in the State of Delaware.

A public hearing will be held on the proposed Rules and Regulations on March 9, 1998 at 9:30 a.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested persons on the proposed rules and regulations, and individuals are urged to submit their comments in writing. Anyone wishing to obtain a copy of the proposed regulations, or to make comments at the public hearing, should contact the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or write to the Delaware Board of Examiners of Psychologists, P. O. Box 1401, Cannon Building, Suite 203, Dover, DE 19903.

DELAWARE REAL ESTATE COMMISSION

The Delaware Real Estate Commission will hold a public hearing for the purpose of receiving oral or written comment on the proposed revision to the Rules and Regulations as well as the proposed revision to the Sellers Disclosure of Real Property Condition Report. The hearing will be scheduled for March 12, 1998 at 9:00 a.m. in Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover,

Delaware. Those who wish to submit written comment may send in care of the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467.

DELAWARE COUNCIL ON REAL ESTATE APPRAISERS

The Delaware Council on Real Estate Appraisers a subcommittee of the Delaware Real Estate Commission, will hold a public hearing for the purpose of receiving oral or written comment on the proposed revision to the Rules and Regulations. The hearing will be scheduled for March 17, 1998 at 9:30 a.m. in Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Those who wish to submit written comment may send in care of the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467.

**DELAWARE BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE**

Advisory Council

PLEASE TAKE NOTICE that the Respiratory Care Practice Advisory Council to the Delaware Board of Medical Practice, pursuant to the authority of Title 24, Delaware Code, § 1770B(c)(5), has developed and proposes to promulgate Rules and Regulations governing all aspects of the practice of Respiratory Care by licensed respiratory care practitioners in the State of Delaware.

A public hearing will be held on the proposed Rules and Regulations on Thursday, March 5, 1998, at 2:30 p.m., at the Cannon Building, 861 Silver Lake Boulevard, conference room B, Dover, Delaware, 19901. The Council will receive and consider input in writing from interested persons on the proposed new Rules and Regulations. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Rosey Vanderhoogt at the above address or by calling (302) 739-4522 extension 203.

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

DEPARTMENT OF EDUCATION

THE STATE BOARD OF EDUCATION WILL HOLD ITS MONTHLY
MEETING ON FEBRUARY 19, 1998

DEPARTMENT OF FINANCE

DIVISION OF REVENUE
OFFICE OF THE STATE LOTTERY

The Lottery proposes these rules pursuant to 29 Del.C. §§ 4805(a), 4805(a)(24)(f), 4805(25) and 29 Del.C. § 10115. Proposed rules 3.2(4), 3.2(9), 3.2(12), 4.2(10)(ii), 4.2(13), 4.2(15), and 4.2(17) would clarify the background investigation requirements for employee organizations and key employees. Proposed rule 6.1 would clarify the background investigation requirements for Lottery employees. Copies of the proposed rules may be obtained from the Lottery Office. Comments may be submitted in writing to Donald Johnson, at the Lottery Office on or before 4:00 p.m. on March 3, 1998. The Lottery Office is located at 1575 KcKee roa, Suite 102, Dover, DE 19901 and the phone number is (302) 739-5291.

DIVISION OF REVENUE

PROPOSED TECHNICAL INFORMATION
MEMORANDUM 98-1

SUBJECT: "CHECK THE BOX" REGULATIONS

Public Comment shall run from February 1, 1998 through March 3, 1998 and comments must be received by March 3, 1998. Comments shall be made in writing to John Maciejewski, whose address appears at the conclusion of this Memorandum.

Purpose of Regulation -- The purpose of this regulation is to explain the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity classification.

DEPARTMENT OF HEALTH &
SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE
Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) hereby publishes notice of proposed policy amendments several Medicaid provider manuals including the General Policy Manual, the Long-Term Care Provider Manual, the Non-Emergency Transportation Provide Manual, the Home and Community-Based Services Provider Manual, the Hospice Provider Manual, the Practitioner Provider Manual, and the Independent Laboratory Provider Manual.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than March 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) hereby publishes notice of proposed policy amendments to the Medicaid eligibility policy manual reflecting changes made to the program as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (PRWORA) and changes to coverage for aliens mandated by PRWORA and new coverage for some aliens funded by the State.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than March 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF JUSTICE
DELAWARE SECURITIES ACT

**NOTICE OF ISSUANCE OF
PROPOSED RULES AND REGULATIONS
PURSUANT TO THE DELAWARE SECURITIES ACT**

The Securities Commissioner is issuing for notice and comment proposed rules and regulations pursuant to the Delaware Securities Act. The proposed rules and regulations are intended to replace the current regulations and cover the following subject areas:

- A. Organization and Functions of the Securities Division
- B. Practice and Procedure in Administrative Hearings
- C. Investigations
- D. Securities Registration and Notice Filings
- E. Exemptions from Registration
- F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents
- G. Investment Advisers and Investment Adviser Representatives

The proposed rules and regulations are issued pursuant to the authority granted in 6 Del. C. §§7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309(c), 7309A(f), 7312, 7314(b)(4), 7317(c) and 7325(b).

Comments may be presented in writing to the attention of Charles F. Walker, Securities Commissioner, State of Delaware Department of Justice, 820 N. French Street, Wilmington, Delaware, 19801. Comments must be received no later than 5:00 p.m. on March 5, 1998, for consideration.

DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT & TRAINING
GOVERNOR'S ADVISORY COUNCIL ON
APPRENTICESHIP AND TRAINING

Notice of Proposed Rule Changes:

Summary:

The Governor's Council on Apprenticeship and Training proposes to recommend rule changes at its regular meeting on March 10, 1998 at Buena Vista Conference Center 661 South Dupont Highway, New Castle, DE 19720. Changes are proposed to certain definitions in Sec. 106.2 including Administrator, Apprentice, Full time, Apprenticeship Standards, Council,

Delaware resident contractor, On-site visit, Registrant or sponsor, and Registration Supervisory inspection. In addition, changes are proposed to Sec. 106.3, 106.5, 106.6, 106.7

Comments:

Copies of the proposed rules are published in the Delaware Register of Regulation and are on file at the Department of Labor, Division of Employment and Training, 4425 N. Market Street, Wilmington, DE 19802 for inspection during regular business hours. Copies are available upon request without charge. Interested persons may submit comments in writing to the Governor's Advisory Council on Apprenticeship and Training c/o Walt Purzycki at the Department of Labor, Division of Employment and Training.

Public Hearing:

A public hearing on the changes will be held during the regular meeting of the Council at 10:00 a.m. on March 10, 1998 at Buena Vista Conference Center, 661 South Dupont Highway, New Castle, DE where interested persons can present their views.

that time. Delaware's Transportation Conformity Regulation is modeled after the federal guidelines and the federal guidelines have changed numerous times since it was first proposed. Now that the federal rules are final, we are proceeding with the development of Delaware's regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:
N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C. Chapter 60 Section 6010
Clean Air Act Amendments of 1990

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

6. NOTICE OF PUBLIC COMMENT: Public hearing to be held February 17, 1998 - DNREC Auditorium, 89 Kings Highway, Dover DE, beginning at 5:00 p.m. For further information, please contact Phil Wheeler at 739-4791

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**

DIVISION OF AIR & WASTE MANAGEMENT

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

1. TITLE OF THE REGULATIONS: Transportation Conformity - Regulation 32

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES: Transportation Conformity - Regulation 32. In keeping with the provisions of the Clean Air Act, this regulation ensures that the State of Delaware's transportation plans, programs and projects that get Federal money or approval conform to the goals of the State Implementation Plan (SIP) to reduce auto emissions. The proposed regulation requires that every time the State plans a project that impacts air quality, an analysis must be done to determine if that project will increase pollution over the amount predicted in the State Implementation Plan, mentioned above.

Delaware's original proposed transportation conformity regulation was presented for public hearing in November 1994. However, Delaware's regulation was not adopted at

INDUSTRIAL ACCIDENT BOARD

The Industrial Accident Board proposes to adopt or amend Rule nos. 8, 9, 30, and 31 at its regular meeting on March 10, 1997 at 11:00 at the Hearing Room of the Board, First Federal Plaza, 710 King Street, Wilmington, DE.

The change in Board Rule 8 will require a party to submit an opinion to the Board when relying on said opinion at the time of a hearing. The change in Board Rule 9 is intended to improve the pretrial process to insure timely filing of the pretrial memorandum identifying and narrowing issues. It will also bring the pretrial process into conformance with the Workers' Compensation Statute as amended by Senate Bill 147. Proposed Rule 30 will prohibit interrogatories except in unusual circumstances: Proposed Rule 31 will require employers to state the reason(s) for requesting certain medical procedures prior to the payment of compensation benefits.

Comments:

Copies of the proposed rules are published in the Delaware Register of Regulations and are on file at the Department of Labor, Division of Industrial Affairs, 4425 North Market Street, Wilmington, DE 19802 for inspection during regular hours. Copies are available upon request. Interested persons may submit comments in

writing before March 2, 1998 to the Industrial Accident Board, c/o the Division of Industrial Affairs.

Public hearing:

A public hearing on the changes will be held during the regular meeting of the Industrial Accident Board at 11:00 a.m. on March 10, 1998 at the Hearing Room of the Board, First Federal Plaza, 710 King Street, Wilmington DE where interested persons can present their views.

INSURANCE DEPARTMENT

Regulation No. 47

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Monday, February 23, 1998 at 10:00 a.m. in the second floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, Delaware 19904.

..... The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public on Insurance Department Regulation No. 47 regarding education for insurance agents, brokers, surplus lines brokers, and consultants.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, February 13, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, Delaware 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 171 or 800-282-8611 no later than Friday, February 13, 1998.

Regulation No. 63

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, February 26th, 1998 at 10:00 a.m. in the 2nd Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public

on the agent community's request to strike the cap on agent commissions from Insurance Department Regulation 63,

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 **Del. C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Thursday, February 19, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 171 or 800.282.8611 no later than Thursday, February 19, 1998.

VIOLENT CRIMES COMPENSATION BOARD

NOTICE IS HEREBY GIVEN THAT THE VIOLENT CRIMES COMPENSATION BOARD (VCCB) WILL HOLD A PUBLIC HEARING ON WEDNESDAY, FEBRUARY 25, 1998 AT DEL TECH COMMUNITY COLLEGE, TERRY CAMPUS, DOWNES LECTURE HALL AT 7:00 P.M. TO ADOPT A NEW REGULATION ENTITLED "MENTAL HEALTH PRACTITIONERS, QUALIFICATIONS, LICENSURE" AND TO MAKE NON-SUBSTANTIVE CHANGES TO EXISTING REGULATIONS.

SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT THE OFFICE AT 995-8383.