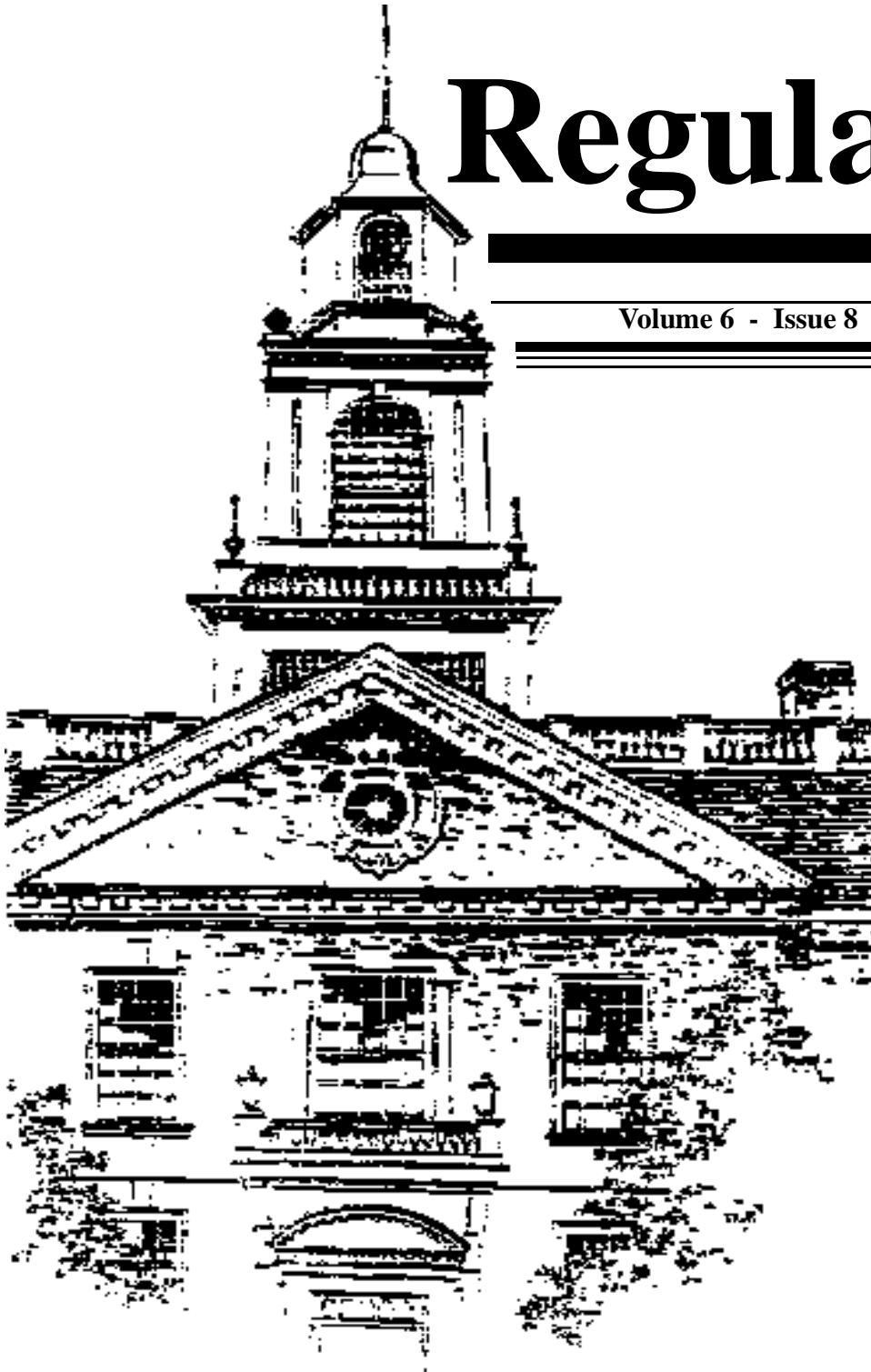


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# Delaware Register of Regulations



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Issue Date: February 1, 2003

Volume 6 - Issue 8

Pages 895 - 986

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## IN THIS ISSUE:

Regulations:

Emergency

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, 2003.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

**6 DE Reg. 279 - 280 (09/01/02)**

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

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## SUBSCRIPTION INFORMATION

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

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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897

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

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

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

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

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

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

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
FEBRUARY 1	JANUARY 15	4:30 P.M.
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.

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# TABLE OF CONTENTS

Cumulative Tables..... 900

## EMERGENCY

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Title XXI Delaware Healthy Children Program State  
Plan Sections 3.1, 6.2.10, And 6.2.11..... 906

## PROPOSED

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Pharmacy..... 908  
Board of Speech/Language Pathologists,  
Audiologists & Hearing Aid Dispensers..... 912

### DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Rule 8.8, Aminocarproic Acid (Amicar)..... 919

### DEPARTMENT OF EDUCATION

410 Satellite School Agreements..... 920  
729 School Custodians..... 921  
1102 Standards for School Bus Chassis & Bodies..... 923

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Training & Qualifications for Nursing Assistants &  
Certified Nursing Assistants..... 925

### DIVISION OF SOCIAL SERVICES

DSSM, Title XXI, Delaware Healthy Children  
Program..... 935

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### DIVISION OF AIR AND WASTE MANAGEMENT

Chronic Violator Regulations..... 936

### DIVISION OF FISH & WILDLIFE

Shellfish Regulation Nos. S-63, S-65, S-67, S-69,  
S-71, S-73 and S-75..... 940

Tidal Finfish Regulations,  
No. 4, Summer Flounder Size Limits; Possession  
Limits; Season..... 941  
No. 23, Black Sea Bass Size Limit; Trip Limits;  
Seasons; Quotas..... 941

### EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE

Neighborhood Assistance Act Tax Credit Program .... 943

### STATE EMPLOYEE BENEFITS COMMITTEE

Group Health Care Insurance, Proposed Revisions to  
Eligibility and Coverage Rules..... 948

## FINAL

Council on Police Training, Reg. II-16, Emergency  
Care & CPR Training..... 949

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Veterinary Medicine..... 950

### DEPARTMENT OF EDUCATION

Diversified Occupations Programs..... 955

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Delaware Cancer Registry Regulations..... 958

### DIVISION OF SOCIAL SERVICES

Title XIX, Medicaid State Plan, Attachment 4.19-B,  
pp. 14 & 14a..... 961  
Title XIX Medicaid State Plan, Attachment  
4.19-D, p. 4..... 964

### DEPARTMENT OF INSURANCE

Reg. 905, Standards for Safeguarding Customer  
Information..... 966

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### DIVISION OF AIR AND WASTE MANAGEMENT

Reg. No. 3, Ambient Air Quality Standards..... 968  
Reg. No. 24, Sec. 10, Aerospace Coatings..... 971

**GOVERNOR**

Appointments..... 982

---

**CALENDAR OF EVENTS/HEARING  
NOTICES**

Board of Pharmacy, Notice of Public Hearing..... 983

Board Of Speech/Language Pathologists, Audiologists,  
and Hearing Aid Dispensers, Notice of Public  
Hearing..... 983

Harness Racing Commission, Notice of Public  
Hearing ..... 983

State Board of Education, Notice of Monthly  
Meeting ..... 983

DHSS, Div. of Long Term Residents Protection,  
Training & Qualifications for Nursing  
Assistants & Certified Nursing Assistants,  
Notice of Public Hearing..... 983

Div. of Social Services, Title XXI, Delaware  
Healthy Children Program, Notice of  
Public Comment Period..... 984

DNREC, Div. of Air and Waste Management,  
Chronic Violator Regulations, Notice of Public  
Hearing..... 984

Div. of Fish and Wildlife, Shellfish Regulation  
Nos. S-63, S-65, S-67, S-69, S-71,  
S-73 and S-75, Notice of Public Hearing ..... 985

Tidal Finfish Reg. No. 4, Summer Flounder Size  
Limits; Possession Limits; Season,  
Notice of Public Hearing..... 985

Reg. No. 23, Black Sea Bass Size Limit;  
Trip Limits; Seasons; Quotas, Notice of  
Public Hearing..... 985

DEDO, Neighborhood Assistance Act Tax Credit  
Program Regulation, Notice of Public  
Comment Period..... 986

State Employee Benefits Comiittee, Group Health  
Care Insurance, Notice of Public Hearing..... 986

---

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

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

**DELAWARE COUNCIL ON POLICE TRAINING**

Reg. II-16, Emergency Care & CPR Training..... 6 **DE Reg.** 722 (Prop.)

**DELAWARE FIRE PREVENTION COMMISSION**

Sec. XVII, Ambulance Company's Intent to Discontinue Service & Sec. XVII, Basic Life Support Data Assessment Committee..... 6 **DE Reg.** 87 (Final)

**DELAWARE RIVER BASIN COMMISSION**

Proposed Amendments to the Comprehensive Plan and the Water Code Relating to the Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions..... 6 **DE Reg.** 476 (Prop.)

**DEPARTMENT OF ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION (TITLE 24 DELAWARE ADMINISTRATIVE CODE)**

300 Board of Architects, Rules and Regulations..... 6 **DE Reg.** 401 (Prop.)  
 6 **DE Reg.** 850 (Final)  
 700 Board of Chiropractic..... 6 **DE Reg.** 270 (Final)  
 6 **DE Reg.** 831 (Prop.)  
 1000 Board of Pilot Commissioners..... 6 **DE Reg.** 231 (Prop.)  
 6 **DE Reg.** 635 (Final)  
 1300 Board of Examiners of Private Investigators & Private Security Agencies..... 6 **DE Reg.** 124 (Prop.)  
 6 **DE Reg.** 637 (Final)  
 1800 Board of Plumbing Examiners..... 6 **DE Reg.** 571 (Prop.)  
 6 **DE Reg.** 861 (Final)  
 1900 Board of Nursing..... 6 **DE Reg.** 722 (Prop.)  
 2000 Board of Occupational Therapy, Rules and Regulations..... 6 **DE Reg.** 270 (Final)  
 6 **DE Reg.** 410 (Prop.)  
 2500 Board of Pharmacy..... 6 **DE Reg.** 480 (Final)  
 2600 Board of Physical Therapists,..... 6 **DE Reg.** 410 (Prop.)  
 2700 Board of Professional Land Surveyors..... 6 **DE Reg.** 271 (Final)  
 2900 Real Estate Commission..... 6 **DE Reg.** 8 (Prop.)  
 2925 Real Estate Commission, Education Guidelines..... 6 **DE Reg.** 272 (Final)  
 6 **DE Reg.** 516 (Final)  
 3300 Board of Veterinary Medicine..... 6 **DE Reg.** 273 (Final)  
 6 **DE Reg.** 575 (Prop.)  
 3500 Board of Examiners of Psychologists..... 6 **DE Reg.** 727 (Prop.)

**Merit Employee Relations Board**

Rule 10, Certification..... 6 **DE Reg.** 728 (Prop.)

**Public Service Commission**

Regulations Governing Pay phone Service Providers & Providers of Operator Services for Pay phones..... 6 **DE Reg.** 65 (Final)

**DEPARTMENT OF AGRICULTURE**

Forest Service Regulations..... 6 **DE Reg.** 127 (Prop.)  
 6 **DE Reg.** 517 (Final)  
 6 **DE Reg.** 581 (Prop.)

**Harness Racing Commission**

Rules 6.2.9, 8.3.6, 8.7 and 10.2.7.4.....	6	<b>DE Reg.</b>	416 (Prop.)
	6	<b>DE Reg.</b>	862 (Final)

**Thoroughbred Racing Commission**

Rule 13.0, Claiming Races.....	6	<b>DE Reg.</b>	729 (Prop.)
Rule 15.0, Medication, Testing Procedures.....	6	<b>DE Reg.</b>	233 (Prop.)
	6	<b>DE Reg.</b>	641 (Final)
Rule 15.0, Medication, Shock Wave Therapy.....	6	<b>DE Reg.</b>	585 (Prop.)

**DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)**

275 Charter Schools.....	6	<b>DE Reg.</b>	13 (Prop.)
	6	<b>DE Reg.</b>	273 (Final)
525 Requirements for Vocational-Technical Education Programs.....	6	<b>DE Reg.</b>	732 (Prop.)
530 Cooperative Education.....	6	<b>DE Reg.</b>	732 (Prop.)
535 Diversified Occupations Programs.....	6	<b>DE Reg.</b>	732 (Prop.)
540 Driver Education.....	6	<b>DE Reg.</b>	133 (Prop.)
	6	<b>DE Reg.</b>	432 (Prop.)
	6	<b>DE Reg.</b>	773 (Final)
601 School/Police Relations.....	6	<b>DE Reg.</b>	434 (Prop.)
	6	<b>DE Reg.</b>	775 (Final)
701 Unit Count.....	6	<b>DE Reg.</b>	74 (Final)
707 Salary Continuation: Operation Noble Eagle & Enduring Freedom.....	6	<b>DE Reg.</b>	398(Emer.)
	6	<b>DE Reg.</b>	436 (Prop.)
	6	<b>DE Reg.</b>	777 (Final)
1001 Participation in Extra-Curricular Activities.....	6	<b>DE Reg.</b>	18 (Prop.)
	6	<b>DE Reg.</b>	279 (Final)
1005 Membership in Fraternities and Sororities.....	6	<b>DE Reg.</b>	255 (Prop.)
	6	<b>DE Reg.</b>	643 (Final)
1025 Delaware Interscholastic Athletic Association.....	6	<b>DE Reg.</b>	280 (Final)
1049 DIAA Definitions.....	6	<b>DE Reg.</b>	282 (Final)
1050 DIAA Sportsmanship.....	6	<b>DE Reg.</b>	284 (Final)
1051 DIAA Senior High School Interscholastic Athletics.....	6	<b>DE Reg.</b>	6 (Errata)
	6	<b>DE Reg.</b>	288 (Final)
1052 DIAA Junior High/Middle School Interscholastic Athletics	6	<b>DE Reg.</b>	304 (Final)
1053 DIAA Waiver Procedure.....	6	<b>DE Reg.</b>	282 (Final)
1054 DIAA Investigative Procedure.....	6	<b>DE Reg.</b>	282 (Final)
1055 DIAA Appeal Procedure.....	6	<b>DE Reg.</b>	282 (Final)
1056 Recognition of Officials' Association.....	6	<b>DE Reg.</b>	282 (Final)
1105 School Transportation.....	6	<b>DE Reg.</b>	256 (Prop.)
	6	<b>DE Reg.</b>	643 (Final)

**PROFESSIONAL STANDARDS BOARD**

301 General Regulations for Certification of Professional Public School Personnel.....	6	<b>DE Reg.</b>	235 (Prop.)
302, 304, 311, 312, 313, 314, 1535, 1536, 1538, Amendment of Certification Regulations.....	6	<b>DE Reg.</b>	734 (Prop.)
1510 Issuance of Initial License.....	6	<b>DE Reg.</b>	251 (Prop.)
1511 Issuance & Renewal of Continuing License.....	6	<b>DE Reg.</b>	135 (Prop.)
	6	<b>DE Reg.</b>	518 (Final)
1512 Issuance & Renewal of Advanced License.....	6	<b>DE Reg.</b>	77 (Final)
1513 Denial of Licenses.....	6	<b>DE Reg.</b>	253 (Prop.)
1514 Revocation of Licenses.....	6	<b>DE Reg.</b>	254 (Prop.)
1517 Certification Career & Technical Specialist.....	6	<b>DE Reg.</b>	140 (Prop.)
	6	<b>DE Reg.</b>	523 (Final)
1540 Certification Science Teacher.....	6	<b>DE Reg.</b>	19 (Prop.)
	6	<b>DE Reg.</b>	319 (Final)
1541 Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science, Certificate for Middle Level Science.....	6	<b>DE Reg.</b>	21 (Prop.)
	6	<b>DE Reg.</b>	321 (Final)

1594 Delaware Administrator Standards.....	6 DE Reg.	22 (Prop.)
	6 DE Reg.	322 (Final)

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

Assisted Living Facilities, Regulations for.....	6 DE Reg.	525 (Final)
Criminal History Checks & Drug Testing for Home Health Agencies, Regulations for.....	6 DE Reg.	585 (Prop.)
	6 DE Reg.	835 (Prop.)
	6 DE Reg.	880 (Final)
Group Homes for Persons with Mental Illness, Regulations Pertaining to.....	6 DE Reg.	266 (Prop.)
	6 DE Reg.	323 (Final)
	6 DE Reg.	654 (Final)
Nursing Homes Admitting Pediatric Residents, Regulations for.....	6 DE Reg.	79 (Final)
Regulations for Assisted Living Facilities.....	6 DE Reg.	141 (Prop.)

**DIVISION OF PUBLIC HEALTH**

Birth Defect Surveillance & Registry Program Regulations.....	6 DE Reg.	741 (Prop.)
Cancer Registry Regulations.....	6 DE Reg.	744 (Prop.)
Clean Indoor Air Act Regulations.....	6 DE Reg.	267 (Prop.)
	6 DE Reg.	655 (Final)
	6 DE Reg.	837 (Prop.)
Delaware Radiation Control Regulations.....	6 DE Reg.	98 (Final)
EMS Pre-Hospital Advanced Care Directive Regulations.....	6 DE Reg.	588 (Prop.)
Production & Sale of Milk & Milk Products.....	6 DE Reg.	840 (Prop.)
Regulations for Adult Day Care Facilities.....	6 DE Reg.	83 (Final)
Regulation for the Certification of Radiation Technologists/Technicians.....	6 DE Reg.	99 (Final)

**DIVISION OF SOCIAL SERVICES****DSSM**

3002 Time Limit, Temporary Welfare Program.....	6 DE Reg.	155 (Prop.)
	6 DE Reg.	528 (Final)
3002.5, Assessment Prior to Termination of Benefits.....	6 DE Reg.	841 (Prop.)
3008 & 3012 Dependent Children.....	6 DE Reg.	337 (Final)
3024, Citizens and Aliens.....	6 DE Reg.	841 (Prop.)
6103, Eligibility.....	6 DE Reg.	592 (Prop.)
	6 DE Reg.	884 (Final)
9007.1 Citizenship and Alien Status.....	6 DE Reg.	156 (Prop.)
	6 DE Reg.	530 (Final)
	6 DE Reg.	843 (Prop.)
9045 Maximum Allowable Resources.....	6 DE Reg.	158 (Prop.)
	6 DE Reg.	531 (Final)
9046, 9048, 9049 & 9051, Noncitizen Eligibility and Certification.....	6 DE Reg.	339 (Final)
9060 Income Deductions.....	6 DE Reg.	439 (Prop.)
	6 DE Reg.	780 (Final)
9085 Reporting Changes.....	6 DE Reg.	441 (Prop.)
	6 DE Reg.	780 (Final)
14600 Third-Party Liability.....	6 DE Reg.	158 (Prop.)
	6 DE Reg.	532 (Final)
14900 Enrollment in Managed Care.....	6 DE Reg.	533 (Final)
15160.1 Eligibility Determination.....	6 DE Reg.	534 (Final)
15200 Transitional Medicaid.....	6 DE Reg.	29 (Prop.)
	6 DE Reg.	344 (Final)
15503 Screening Requirement.....	6 DE Reg.	534 (Final)
15505 Uninsured Requirement.....	6 DE Reg.	535 (Final)
16110 Adult Expansion Population.....	6 DE Reg.	535 (Final)
16210 Limitations on Retroactive Coverage.....	6 DE Reg.	535 (Final)
16220.5 Enrollment in Managed Care-Special Requirement for Adult Expansion Population.....	6 DE Reg.	535 (Final)
16310.3 Adults.....	6 DE Reg.	536 (Final)



16500.2 Procedures for Determining Eligibility.....	6	<b>DE Reg.</b>	536 (Final)
17500, 17520, 17550, Qualifying Individuals.....	6	<b>DE Reg.</b>	845 (Prop.)
18200.2 Uninsured Requirement.....	6	<b>DE Reg.</b>	536 (Final)
20210.7.1, 20620.1, 20995.1, Veterans' Pension Payments, Personal Needs Allowance.....	6	<b>DE Reg.</b>	846 (Prop.)
20910.5, Excess Shelter Allowance.....	6	<b>DE Reg.</b>	846 (Prop.)
25000 Children's Community Alternative Disability Program (CCADP).....	6	<b>DE Reg.</b>	536 (Prop.)
Delaware State Plan for TANF.....	6	<b>DE Reg.</b>	525 (Final)
		<b>DE Reg.</b>	442 (Prop.)
		<b>DE Reg.</b>	781 (Final)
Regulation #02-50, Nursing Home Patient Health Care Assessments	6	<b>DE Reg.</b>	720 (Emer.)
Title XIX Medicaid State Plan.....	6	<b>DE Reg.</b>	718 (Emer.)
		<b>DE Reg.</b>	778 (Final)
Title XIX Medicaid State Plan, Attachment 4.19-B pp. 14 & 14a.....	6	<b>DE Reg.</b>	746 (Prop.)
Title XIX Medicaid State Plan, Attachment 4.19-D, p. 4.....	6	<b>DE Reg.</b>	748 (Prop.)
Title XIX Medicaid State Plan, Inpatient Hospital Care Reimbursement Methodology for Interim Payments.....	6	<b>DE Reg.</b>	593 (Prop.)
		<b>DE Reg.</b>	885 (Final)
Title XIX Medicaid State Plan, Transportation as an Administrative Expense.....	6	<b>DE Reg.</b>	335 (Final)
		<b>DE Reg.</b>	437 (Prop.)
		<b>DE Reg.</b>	570 (Errata)

**DEPARTMENT OF INSURANCE**

Regulation 41, Medicare Supplement Insurance Minimum Standards.....	6	<b>DE Reg.</b>	437 (Prop.)
		<b>DE Reg.</b>	800 (Final)
Regulation 80, Standards for Prompt, Fair & Equitable Settlement of Claims.....	6	<b>DE Reg.</b>	593 (Prop.)
Regulation 86, Standards for Safeguarding Customer Information.....	6	<b>DE Reg.</b>	595 (Prop.)
Regulation 87, Use of Credit Information.....	6	<b>DE Reg.</b>	597 (Prop.)

**DEPARTMENT OF JUSTICE**

**DELAWARE SECURITIES ACT**

600 Registration of Broker-Dealers.....	6	<b>DE Reg.</b>	461 (Prop.)
601 Registration of Broker-Dealer Agents.....	6	<b>DE Reg.</b>	461 (Prop.)
		<b>DE Reg.</b>	749 (Prop.)
608 Registration Exemption for Certain Canadian Broker-Dealers.....	6	<b>DE Reg.</b>	463 (Prop.)
		<b>DE Reg.</b>	608 (Prop.)
610 Examination Requirement.....	6	<b>DE Reg.</b>	467 (Prop.)
		<b>DE Reg.</b>	755 (Prop.)
700 Registration of Investment Advisors.....	6	<b>DE Reg.</b>	467 (Prop.)
		<b>DE Reg.</b>	755 (Prop.)

**DEPARTMENT OF LABOR**

**DIVISION OF INDUSTRIAL AFFAIRS**

Clean Indoor Air Act Regulations.....	6	<b>DE Reg.</b>	602 (Prop.)
Unemployment Insurance Appeal Board Regulations.....	6	<b>DE Reg.</b>	605 (Prop.)
		<b>DE Reg.</b>	887 (Final)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF AIR & WASTE MANAGEMENT**

**Waste Management Section**

2002 Amendments to Delaware Regulations Governing Hazardous Waste.....	6	<b>DE Reg.</b>	106 (Final)
Delaware 2005 Rate-of-Progress Plan.....	6	<b>DE Reg.</b>	621 (Prop.)
Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-attainment area.....	6	<b>DE Reg.</b>	628 (Prop.)
Reg. No. 3, Sec. 11, Ambient Air Quality Standards.....	6	<b>DE Reg.</b>	609 (Prop.)
Reg. No. 24, Section 10, Aerospace Coatings.....	6	<b>DE Reg.</b>	190 (Final)
		<b>DE Reg.</b>	611 (Prop.)
6028, Reporting of a Discharge of a Pollutant or an Air Contaminant.....	6	<b>DE Reg.</b>	661 (Final)

# CUMULATIVE TABLES

## DIVISION OF FISH & WILDLIFE

Shellfish Reg. S-63 Oyster Harvesting Seasons.....	6 <b>DE Reg.</b> 399 (Emer)
Tidal Finfish Reg. No. 11, Red Drum Size Limits, Creel Limits.....	6 <b>DE Reg.</b> 755 (Prop.)
Tidal Finfish Reg. No. 22, Tautog Size Limit.....	6 <b>DE Reg.</b> 848 (Prop.)
Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas.....	6 <b>DE Reg.</b> 35 (Prop.)
	6 <b>DE Reg.</b> 348 (Final)
	6 <b>DE Reg.</b> 757 (Prop.)
Tidal Finfish Reg. No.24, Fish Pot Requirements.....	6 <b>DE Reg.</b> 35 (Prop.)
	6 <b>DE Reg.</b> 350 (Final)
Tidal Finfish Reg. No. 28, Atlantic Ocean American Shad Season and Closure.....	6 <b>DE Reg.</b> 756 (Prop.)
<b>Wildlife &amp; Non-Tidal Fishing Regulations</b>	
WR-2 Method of Take.....	6 <b>DE Reg.</b> 162 (Prop.)
	6 <b>DE Reg.</b> 536 (Final)
WR-3 Federal Laws & Regulations Adopted.....	6 <b>DE Reg.</b> 162 (Prop.)
	6 <b>DE Reg.</b> 537 (Final)
WR-4 Seasons.....	6 <b>DE Reg.</b> 163 (Prop.)
	6 <b>DE Reg.</b> 537 (Final)
WR-7 Deer.....	6 <b>DE Reg.</b> 163 (Prop.)
	6 <b>DE Reg.</b> 538 (Final)
WR-14 Falconry.....	6 <b>DE Reg.</b> 164 (Prop.)
	6 <b>DE Reg.</b> 538 (Final)
WR-15 Collection or Sale of Nongame Wildlife.....	6 <b>DE Reg.</b> 164 (Prop.)
	6 <b>DE Reg.</b> 539 (Final)
WR-16 Endangered Species.....	6 <b>DE Reg.</b> 165 (Prop.)
	6 <b>DE Reg.</b> 539 (Final)
WR-17 Species of Special Concern.....	6 <b>DE Reg.</b> 165 (Prop.)
	6 <b>DE Reg.</b> 539 (Final)

## DIVISION OF WATER RESOURCES

Delaware Regulations Governing the Control of Water Pollution.....	6 <b>DE Reg.</b> 474 (Prop.)
Total Maximum Daily Load (TDML) for Nutrients in the Appoquinimink Watershed.....	6 <b>DE Reg.</b> 350 (Final)
<b>Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well</b>	
Drillers, Well Drivers, and Pump Installers.....	6 <b>DE Reg.</b> 165 (Prop.)
	6 <b>DE Reg.</b> 801 (Final)
Shellfish Sanitation Regulations.....	6 <b>DE Reg.</b> 36 (Prop.)
	6 <b>DE Reg.</b> 350 (Final)

## DEPARTMENT OF PUBLIC SAFETY

### DIVISION OF HIGHWAY SAFETY

Policy Reg. 92, Standard Operating Procedures for the DUI Evaluation, Education and Outpatient Treatment Agencies.....	6 <b>DE Reg.</b> 758 (Prop.)
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### DIVISION OF STATE POLICE

Nonconsensual Towing Regulations.....	6 <b>DE Reg.</b> 206 (Final)
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## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### DIVISION OF FAMILY SERVICES

Child Abuse Registry.....	6 <b>DE Reg.</b> 765 (Prop.)
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## DEPARTMENT OF STATE

### DIVISION OF HISTORICAL & CULTURAL AFFAIRS

Historic Preservation Tax Credit Program.....	6 <b>DE Reg.</b> 108 (Final)
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## DEPARTMENT OF TRANSPORTATION

Statewide Long Range Transportation Plan.....	6 <b>DE Reg.</b> 38 (Prop.)
	6 <b>DE Reg.</b> 353 (Final)

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**EXECUTIVE DEPARTMENT****DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Co-Op Advertising Program.....	6 DE Reg. 174 (Prop.)
	6 DE Reg. 212 (Final)
	6 DE Reg. 683 (Final)
Direct Grants Program.....	6 DE Reg. 176 (Prop.)
	6 DE Reg. 685 (Final)
Matching Grants Program.....	6 DE Reg. 178 (Prop.)
	6 DE Reg. 688 (Final)
Neighborhood Assistance Act Tax Credit Program Regulation.....	6 DE Reg. 630 (Prop.)

**GOVERNOR'S OFFICE**

Appointments.....	6 DE Reg. 214
	6 DE Reg. 540
	6 DE Reg. 699
	6 DE Reg. 888
Executive Order No. 34, Terminating Drought Emergency.....	6 DE Reg. 698

**STATE EMPLOYEE BENEFITS COMMITTEE**

Group Health Care Insurance, Proposed Revisions to Eligibility and Coverage Rules.....	6 DE Reg. 180 (Prop.)
	6 DE Reg. 634 (Prop.)
	6 DE Reg. 690 (Final)

**Symbol Key**

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

**Emergency Regulations**

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

**Title XXI Delaware Healthy Children Program  
State Plan  
Sections 3.1, 6.2.10, And 6.2.11**

**NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to amend the Title XXI Delaware Healthy Children Program State Plan, effective January 1, 2003. Delaware Health and Social Services ("Department") must take this action on an emergency basis to expand the state plan to cover more DSCYF (Department of Services to Children, Youth and their Families) services. The Department has determined that immediate adoption is imperatively necessary for the preservation of public health, safety, or welfare if is not implemented without prior notice or hearing.

**Summary Of Proposed Revisions**

Effective January 1, 2003, this emergency regulation amends the Division of Social Services Title XXI Delaware Healthy Children Program (DHCP) State Plan to:

1 Remove the yearly limit of one bundled rate payment per 31 days in a calendar year. In this way, the DHCP Plan mirrors the Medicaid benefit which allows the bundled rate to be billed for up to 12 months per calendar year; and,

2 Remove the restriction that currently prevents DSCYF from billing any fee-for-service claims for children in Division of Youth and Rehabilitative Services (YRS) or Division of Family Services (DFS) who are not under the care of Child Mental Health (CMH) and do not have the bundled rate billed on their behalf.

**Findings Of Fact:**

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

**THEREFORE, IT IS ORDERED**, that the proposed revisions to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective January 1, 2003.

Vincent P. Meconi, Secretary, DHSS, January 15, 2003

**DSS EMERGENCY ORDER REGULATION #03-01****REVISION:**

**DELAWARE HEALTHY CHILDREN PROGRAM  
(DHCP)**

**Section 3. Methods of Delivery and Utilization  
Controls (Section 2102(a)(4))**

3.1 Describe the methods of delivery of the child health assistance using Title XXI funds to targeted low-income children. Include a description of the choice of financing

and the methods for assuring delivery of the insurance products and delivery of health care services covered by such products to the enrollees, including any variations. (Section 2102)(a)(4) (42 CFR 457.490(a))

The Delaware Healthy Children Program (DHCP) is targeted to children under age 19 with income at or below 200% of the Federal Poverty Level (FPL). The service package will include all of those basic benefit services provided under the State's Medicaid Managed Care program as it was structured during 1998. Services will be provided by the same fully capitated managed care organizations (MCOs) participating with Medicaid. In addition, participants in the DHCP will receive pharmacy services comparable to the Medicaid population. ~~They will also receive 31 days of mental health and substance abuse treatment services (any treatment modality) in a calendar year in addition to the basic MCO benefit of 30 outpatient visits for mental health. They will also receive all medically necessary mental health and substance abuse treatment services (any treatment modality) which exceed the basic MCO benefit of 30 outpatient visits for mental health. The mental health/substance abuse services will be provided through the State's Department of Services for Children, Youth, and Families. For children actively case managed by the Department's Division of Child Mental Health Services (a JCAHO-certified public mental health managed care provider), a monthly encounter rate will be billed to the DHCP. Children receiving mental health or substance abuse services by the Department's Division of Family Services or the Division of Youth Rehabilitation Services will have their care paid on a fee-for-service basis.~~ Beyond the 31 days of additional coverage of inpatient care, children will become eligible for Medicaid long-term care services. Thus the DHCP will provide very high quality mental health and substance abuse coverage - coverage which is better by far than most private sector coverage. Services will be provided statewide with no variations based on geography.

**(Note: Break In Continuity of Sections)**

6.2 The state elects to provide the following forms of coverage to children: (Check all that apply. If an item is checked, describe the coverage with respect to the amount, duration and scope of services covered, as well as any exclusions or limitations) (Section 2110(a)) (42 CFR 457.490)

**(Note: Break In Continuity of Sections)**

6.2.10.  Inpatient mental health services, other than services described in 6.2.18, but including services furnished in a state-operated mental hospital and including residential or other 24-hour therapeutically planned structural services (Section 2110(a)(10)) - *inpatient mental health services may be*

*provided as a "wrap-around" service for up to 31 days per calendar year with the limitation that the 31 days also includes any other mental health and/or substance abuse treatment services (including outpatient, residential and any other treatment modality) outside of the basic MCO benefit of 30 outpatient visits will be provided as "wrap-around" services by the DSCYF. Inpatient services will be provided with limits based on medical necessity. Children who need inpatient services beyond this will convert to Medicaid Long-Term Care.*

6.2.11.  Outpatient mental health services, other than services described in 6.2.19, but including services furnished in a state-operated mental hospital and including community-based services (Section 2110(a)(11)) - *30 days of outpatient care included in the basic MCO benefit. Additional days (up to 31), with limitations based on medical necessity, will be provided by the DSCYF, available through wrap-around. See note in 6.2.10.*

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## Symbol Key

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

## Proposed Regulations

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

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

24 DE Admin. Code 2500  
Statutory Authority: 24 Delaware Code,  
Section 2509 (24 **Del. C.** §2509)

**PLEASE TAKE NOTICE**, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0 and 11.0. The changes to Rule 1.0 relating to the national examinations make the rule consistent with the requirements of the National Association of Boards of Pharmacy (NABP). Regulation 11.0 is modified as it relates to stock medication, labeling, consultant pharmacist duties, and drug disposal. The changes to Rule 11 were made in response to public comment from an earlier proposal that was not enacted.

A public hearing will be held on March 12, 2003 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

### 1.0 Pharmacist Licensure Requirements

#### 1.1 Examination Requirements

##### 1.1.2 Candidates must obtain a passing grade of

~~75 as determined by NABP on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination Examination to be eligible for a license to practice. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.~~

1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. Any applicant who fails the examination ~~The applicant~~ shall be entitled to take a re-examination after 91 (ninety-one) days. If an applicant has failed the examination three times, he/she shall be eligible to re-take the examination NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months ~~between examinations~~ or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. ~~The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.~~

1.1.4 ~~Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination. The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE after 31 (thirty-one) days. If an~~

applicant has failed the examination three times, he/she shall be eligible to re-take the examination, provided that he/she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.

### **11.0 Pharmaceutical Services in Nursing Homes**

11.1 Definition: A nursing home is an institution licensed by the Division of Public Health State Board of Health that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest - Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

#### 11.2 General Requirements

11.2.1 Each ~~administrator~~ facility shall provide ~~within the facility,~~ a cabinet or medication carts for individual patient medications ~~prescriptions~~. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for ~~for the lock of~~ the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 ~~All bleaches, detergents, disinfectants, and external preparations so labeled shall be kept in a separate locked cabinet, compartment, or room apart from medicines, drugs or foods.~~ Internal medications must be stored separately from external medications.

11.2.3 ~~Adequate refrigeration (36° to 46° Fahrenheit) must be used to store medications requiring refrigeration. Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.~~

11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.

11.2.5 No persons except properly authorized licensed personnel shall handle or administer Rx only drugs. ~~"caution legend drugs" from individual prescriptions.~~

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, interim ~~or~~ and emergency supplies. These are to be kept separate from non-controlled medications. ~~There shall be accountability procedures for all Schedule II substances present.~~

11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained at the provider pharmacy and the facility showing the receipt and disposition of all

controlled substances. These records must be maintained for 2 years.

#### 11.3 Stock Medication

##### ~~11.3.1 Non-legend medications:~~

~~11.3.1.1 A minimal amount of non-legend drugs may be kept as stock supply.~~

~~11.3.1.2 If accountabilities for individual patients are found to be inadequate upon inspection, then the stock non-legend medications may be subject to limitations.~~

~~11.3.1~~ 11.3.2 Legend Prescription medications - Emergency, IV, and Anaphylactic supplies

~~11.3.1.1~~ 11.3.2.1 Certain prescription legend medications for **emergency use** may be stocked by the nursing home subject to ~~Board~~ approval by the Executive Secretary of the Board.

~~11.3.1.2~~ 11.3.2.2 **Emergency use** medications are those which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

~~11.3.1.3~~ 11.3.2.3 IV's and Vaccines must be submitted on ~~an IV interim~~ a stock list to the Executive Secretary of the Board for approval.

~~11.3.1.4~~ 11.3.2.4 IV medications must be submitted on a stock list for approval by the Executive Secretary of the Board. Only one IV box may be maintained at the facility, unless an exemption is granted. ~~by the Board. The number of Anaphylaxis or Emergency boxes must also be submitted for Board approval. A request for an additional box must be submitted to the Executive Secretary of the Board for approval.~~

~~11.3.1.5~~ 11.3.2.5 The number and contents of Anaphylaxis and Emergency boxes must be submitted to the Executive Secretary of the Board for approval

~~11.3.1.6~~ 11.3.2.5 If there is no specific There must be an accountability procedure at the facility for needles and syringes. ~~then these must be submitted on an IV or emergency box list for approval. These are legend items in the State of Delaware.~~

~~11.3.2~~ 11.3.3 Legend Prescription medications - Interim supply

~~The criteria for legend interim medications requiring Board approval are as follows:~~

~~11.3.3.1~~ 11.3.3.1 The interim supply may consist of medications selected from the following categories:

~~11.3.3.1.1~~ 11.3.3.1.1 antibiotics

~~11.3.3.1.2~~ 11.3.3.1.2 pain medications

~~11.3.3.1.3~~ 11.3.3.1.3 antidiarrheal

~~11.3.3.1.4~~ 11.3.3.1.4 cold/cough/antihistamines

~~11.3.3.1.5~~ 11.3.3.1.5 antiemetics

~~11.3.3.1.6~~ 11.3.3.1.6 antihypertensive

~~11.3.3.1.7~~ 11.3.3.1.7 anticonvulsants

- ~~11.3.3.1.8 antidiabetic agents~~
- ~~11.3.3.1.9 cardiovascular drugs~~
- ~~11.3.3.1.10 respiratory/bronchodilators~~
- ~~11.3.3.1.11 sedatives/hypnotics~~
- ~~11.3.3.1.12 anticoagulants~~
- ~~11.3.3.1.13 H2 antagonists~~

~~11.3.3.2 The pharmacy, medical, and nursing staff committee may select a maximum quantity of 6 dosage units for items present in this supply.~~

~~11.3.2.1 11.3.3.3 There can be no more than a total of 60 legend items present in this interim supply. The interim supply for a facility can contain no more than four dosage units per licensed bed of prescription medications, including controlled substances.~~

~~11.3.2.2 11.3.3.4 Only one interim box may be maintained at the facility, unless an exemption is granted. by the Board. A request for an additional box or supply must be submitted to the Executive Secretary of the Board for approval.~~

~~11.3.3 11.3.4 Approved lists for prescription drug stock. legend drug boxes.~~

~~11.3.3.1 11.3.4.1 The most current approved signed list or lists for each box must be maintained in the pharmacy, attached to the box or boxes in the facility, and shall become part of the Policy and Procedures manual.~~

~~11.3.3.2 11.3.4.2 When additions or deletions are made, then a complete revised list must be submitted for Board approval to the Executive Secretary of the Board for approval.~~

~~11.3.3.3 Location site(s) where each box will be stored in the facility must be included on each list submitted.~~

~~11.3.3.4 When there is a change of the provider pharmacy, all stock lists, even if unchanged, must be submitted to the Executive Secretary of the Board for approval within 15 days of initiation of pharmacy services.~~

~~11.3.4 11.3.5 Accountability for prescription drug stock. legend stock usage.~~

~~11.3.4.1 11.3.5.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply. The pharmacist shall review the records of new or changed orders to assure appropriateness. These records must indicate the patient name, location, name of medication, strength, quantity removed, date, time and nurse's signature. Copies of the usage (i.e. removal) records must be maintained at the facility in chronological order for 3 years.~~

~~11.3.4.2 The provider pharmacy is responsible for the accuracy of all stock drug box contents at the time of the filling of the medication. The replacement of approved stock medications must be supervised by a pharmacist and documented as such within 72 hours of usage. This check must also include any medication that became available when the medication is accessed. Records~~

documenting this filling or replacement of a stock medication by a pharmacy must be kept for a minimum of 3 years at the provider pharmacy and must be readily available for inspection by the Board.

~~11.3.4.3 11.3.5.2 Failure to comply with all aspects and intent of these procedures outlined can result in the revocation, suspension, or denial of the privilege of having stock medications present. controlled substances present in these supplies.~~

~~11.3.4.4 11.3.5.3 Continuous violations of accountability procedures for the stock non-controlled legend medications may result in review proceedings before the Board. of Pharmacy.~~

#### 11.4 Return Medication Procedures

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or and returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of disposition. such returns for disposal The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated and may be held until the patient's return or permanent discharge.

11.4.3 11.4.2 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication may be jointly performed by the consultant pharmacist or provider pharmacist with a designated nurse witness if shall be jointly performed by two authorized licensed personnel within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.

#### 11.5 Labeling

11.5.1 Labels on controlled substances must show contain the original dispensing date, the actual refill date, and amount of medication dispensed.

11.5.2 If a unit dose system is used then the provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for inpatient use in a nursing home may label the prescription, "to be administered according to current physician's orders." provided that:

~~11.5.3.1 The MAR accurately reflects the prescriber's current orders.~~

~~11.5.3.2 The pharmacy is informed of any change in directions within twenty-four (24) hours and promptly records the change on the patient's profile. Prescriptions for leave of absence or discharge must be labeled in compliance with 24 Del.C. §2536.~~



11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on a medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

**11.6 Duties of Consultant Pharmacist (CP):**

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of Delaware registered pharmacy interns, who may assist in chart reviews. Supervision of the pharmacy intern activities must be documented by the supervising pharmacist as pertaining to chart review.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

11.6.3 When a pharmacist becomes the consultant to a nursing home, he or she must notify the Board in writing within ten days of the starting date. The Delaware State Board of Pharmacy shall be notified in writing within ten days by the consultant pharmacist of termination of said services.

11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, the letter of notification must contain a request for an interview with a pharmacist on the staff of the Executive Secretary. At that interview, the consultant pharmacist will receive a self inspection form for nursing homes.

11.6.4 The consultant pharmacist CP shall be responsible for the development of written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing practitioner physician medication orders, medication errors, automatic stop orders, and medications for patient discharge and leave of absence. emergency; medication

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the nursing home in compliance with State and Federal and State laws.

11.6.4.4 Policies and procedures outlining the return or destruction on site of wastage for all controlled medications. substances.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure, and labeling of all prescription drugs and biologicals in accordance with UState and Federal and State requirements. For registered out-of-state providers an additional labeling requirement is having their the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen reviews, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all physicians' practitioners' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the consultant pharmacist CP shall serve on that Committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspections under the direct supervision of a pharmacist. Nursing station inspections must include, but are not limited to the following :- (1) Documentation of medication storage area(s) (59 to 86 Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit), (2) documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), (3) proper labeling, including any accessory or cautionary instructions, (4) proper expiration dates, (5) cleanliness, (6) accountability of all medication and (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. A copy of these inspection reports must be maintained at the facility.

11.6.6.1 Nursing station inspections must include, but are not limited to, documentation of the following:

11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit),

11.6.6.1.2 security of all drugs (e.g. medication room cabinets, carts, Board-approved drug boxes),

11.6.6.1.3 proper labeling, including any accessory or cautionary instructions,

11.6.6.1.4 proper expiration dates,

11.6.6.1.5 cleanliness,

11.6.6.1.6 interim, emergency, IV, anaphylactic boxes or kits are properly maintained.

11.6.6.2 A copy of these inspection reports must be maintained at the facility for 2 years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly. Each patient's chart will be reviewed at the facility. Documentation of the review is accomplished in the following manner:

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report summary which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. ~~The written summaries must be maintained in the facility. A copy must be sent to the Medical Director, attending physician, Administrator and the Director of Nursing. This written recommendation shall be forwarded to the prescribing practitioner, with the original documentation maintained in the patient chart.~~

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medication. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. Documentation will be maintained for a period of 12 months.

~~11.6.9~~ 11.6.8 The consultant pharmacist CP shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy related activities and concerns.

~~11.6.10~~ 11.6.9 The consultant pharmacist CP shall assume all other responsibilities required of a CP as set forth in any State or Federal or State statutes or regulations as enacted or amended or may be enacted or amended.

11.7 Notwithstanding this Regulation, nothing in the Regulation shall render a practice unlawful which is required by Federal regulation.

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,  
AUDIOLOGISTS, AND HEARING AID DISPENSERS**

24 DE Admin. Code 3700

Statutory Authority: 24 Delaware Code,  
Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706(a)(1) has proposed changes to its rules and regulations. The changes clarify the requirements for continuing education and the supervised clinical practicum that precedes the clinical fellowship year. An audit system will be used to monitor compliance with continuing education requirements.

A public hearing will be held at 2:00 p.m. on March 12, 2003 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**Board of Examiners of Speech/Language Pathologists,  
Audiologists & Hearing  
Aid Dispensers**

Statutory Authority: 24 **Del.C.** 3706(a)(1)

- 1.0 Division of Professional Regulation
- 2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists
- 3.0 Licensure Requirements for Hearing Aid Dispensers
- 4.0 Expired Licenses and Inactive Status
- 5.0 Requirements for Audiology Aides
- 6.0 Requirements for Speech Pathology Aides
- 7.0 Electronic Equipment
- 8.0 Continuing Education For All Licensees: Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
- 9.0 Code of Ethics for Speech/Language Pathologists and Audiologists and Hearing Aid Dispensers
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Division of Professional Regulation****1.1 Responsibilities**

1.1.1 All applications and other forms may be obtained from, and must be returned after completion, to the Division of Professional Regulation, ATTN: SLP-AUD-HAD, at 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467 by mail or in person during regular business hours. Information and forms are also available at the web site at <http://www.professionallicensing.state.de.us>

1.1.2 Fees required under the statute are to be made payable to the State of Delaware and remitted to the Division of Professional Regulation. No license shall be issued until all required fees are paid.

1.1.3 The Administrative Assistant assigned by the Division of Professional Regulation performs support functions for the Board and serves as the contact person for the Board to receive inquiries.

**2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists****2.1 Education**

2.1.1 To be eligible for a license as a Speech/Language Pathologist or Audiologist, the applicant must submit verification by an official transcript of completion of at least a master's degree or its equivalent, from an accredited college or university with major emphasis in speech-language pathology, audiology, communication disorders or speech-language and hearing science.

**2.2 Clinical Practicum**

2.2.1 The Speech/Language Pathology and Audiology applicant must have completed a minimum of 375 clock hours of supervised clinical practicum with major emphasis in the professional area for which the license is being sought. Clinical observation may qualify for up to 25 of the hours in the supervised clinical practicum.

2.2.2 A minimum of 250 clock hours in the area of specialty of the supervised clinical practicum must have been obtained at the graduate level.

**2.3 Clinical Fellowship Year (CFY)**

2.3.1 The Speech/Language Pathology or Audiology applicant must have the equivalent of nine (9) months of full-time or eighteen (18) months of part time (defined as 15-20 hours per week) supervised \* CFY in the major professional area in which the license is being sought. The CFY must start after completion of the academic and clinical practicum requirements.

\* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one hour on-site observations and 18 other monitoring activities. (From Appendix E of Clinical Fellowship Year adopted ASHA 1985)

**2.4 National Examination**

2.4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the

national examination approved by the Division of Professional Regulation for the area of specialty with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of Professional Regulation.

2.4.2 A Speech/Language Pathology or Audiology applicant with a temporary license is permitted to complete the appropriate national examination during the period of the temporary license.

2.4.3 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of additional course work and/or clinical experience.

**2.5 Application Process-Temporary Licensure**

2.5.1 An applicant must complete a notarized application for temporary licensure. Items which must be provided to the Division of Professional Regulation include:

2.5.1.1 Official Transcript(s);

2.5.1.2 Documents verifying the appropriate number and level of supervised clinical practicum hours;

2.5.1.3 CFY plan on a form approved by the Board, signed by the licensed professional who will provide the supervision;

2.5.1.4 payment of appropriate fees.

2.5.2 A temporary license is valid for one year from the date of issuance and may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.

**2.6 Application Process -Permanent Licensure**

2.6.1 Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.

2.6.2 An applicant who has ASHA Certification must comply with Section 2.6.1 and submit a copy of current ASHA certification.

2.6.3 An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this state, must comply with Section 2.6.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 Del.C. 3710 this section. Verification of practice should be by notarized letter from the employer(s).

2.6.4 An applicant who has completed the supervised CFY in Delaware and has a current temporary license, must submit the following documentation to the Division of Professional Regulation 30 days prior to

expiration of the temporary license:

- 2.6.4.1 proof of completion of the CFY,
- 2.6.4.2 national examination score unless previously provided,
- 2.6.4.3 licensure fee.

### **3.0 Licensure Requirements for Hearing Aid Dispensers**

#### 3.1 Education

3.1.1 To be eligible for a license as a Hearing Aid Dispenser, the applicant must submit verification of high school diploma or its equivalent.

#### 3.2 National Examination

3.2.1 Hearing Aid Dispensing applicants must have completed and passed the national examination approved by the Division of Professional Regulation, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor.

3.2.2 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of course work and/or supervised experience.

#### 3.3 Application Process - Temporary Licensure

3.3.1 An applicant must complete the application for temporary licensure. Items which must be provided to the Division of Professional Regulation include:

- 3.3.1.1 verification of a high school diploma or its equivalent,
- 3.3.1.2 payment of appropriate fees, and
- 3.3.1.3 notarized signature of a Delaware licensed sponsor stating a willingness to provide direct supervision and training. Direct supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

3.3.2 A temporary license is valid for one year from date of issuance and may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.

#### 3.4 Application Process-Permanent Licensure

3.4.1 All Hearing Aid Dispensing applicants must complete an application on a form approved by the Board and submit it with the appropriate fee to the Division of Professional Regulation.

3.4.2 A Hearing Aid Dispensing applicant who is currently licensed in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this state, must comply with 3.4.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. Applicants for reciprocal licensure from states not substantially similar to this state shall provide

proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 Del.C. 3710. Verification of practice should be by notarized letter from the employer(s).

3.4.3 Licensees holding temporary Hearing Aid Dispensing licenses must submit a passing score on the national examination described in 3.2.1 and the required fee to the Division of Professional Regulation to obtain a permanent license.

### **4.0 Expired Licenses and Inactive Status**

#### 4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

#### 4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of 20 CE's completed within the preceding 24 months (30 CE's for a triple license) as required by Section 8.2.3, and paying the fee established by the Division of Professional Regulation.

### **5.0 Requirements for Audiology Aides**

#### 5.1 Certification

5.1.1 Certification of the Audiology Aide must be by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, with documentation. The supervising Delaware-licensed audiologist must annually register each Audiology Aide using a form approved by the Board.

#### 5.2 Direct Supervision

5.2.1 An Audiology Aide assists a licensed audiologist in professional activities with direct supervision by the audiologist. Direct supervision requires the presence of the supervising audiologist on the premises when the aide is performing professional activities.

#### 5.3 Duties of the Audiology Aide

5.3.1 Duties of the Audiology Aide must be specified by the supervising audiologist and may include the following:

- 5.3.1.1 Air conduction pure tone assessment and data recording.
- 5.3.1.2 Hearing screenings.
- 5.3.1.3 Assisting with conditioning techniques.
- 5.3.1.4 Cursory otoscopy.
- 5.3.1.5 Basic hearing aid maintenance.
- 5.3.1.6 Routine instrument sterilization.
- 5.3.1.7 Biologic and electroacoustic assessment of the audiometer.

5.3.1.8 Clerical support.

5.3.1.9 Participation with the professional in research projects, in service training, or similar endeavors.

5.3.1.10 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed audiologist.

## **6.0 Requirements for Speech/Language Pathology Aides**

### **6.1 Education**

6.1.1 A Speech Pathology Aide must have a minimum of a high school diploma or its equivalent.

### **6.2 Direct Supervision**

6.2.1 A Speech Pathology Aide assists a licensed Speech/Language Pathologist in professional activities with direct supervision of the Speech Pathologist. Direct supervision requires the presence of the supervising Speech/Language Pathologist at all times where an aide is assisting with testing, and/or treatment.

### **6.3 Duties of the Speech/Language Pathology Aide**

6.3.1 Duties of the Speech Pathology Aide must be specified by the supervising Speech/Language Pathologist and may include the following:

6.3.1.1 Assisting with testing or treatment.

6.3.1.2 Clerical support.

6.3.1.3 Client escort.

6.3.1.4 Preparation of therapeutic materials

6.3.1.5 Equipment maintenance.

6.3.1.6 Participation with the professional in research projects, in service training, or similar endeavors.

6.3.1.7 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed Speech/Language Pathologist.

## **7.0 Electronic equipment**

### **7.1 Standards**

7.1.1 Calibration of electronic equipment used to assess hearing shall be performed by a certified professional consistent with the standards set by the American National Standards Institute (ANSI).

7.1.2 Every licensed Audiologist and Hearing Aid Dispenser shall annually submit proof of calibration to the Board. Any Audiologist who does not have such equipment may file an affidavit so stating on a form approved by the Board.

## **8.0 Continuing Education For All Licensees:**

Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

### **8.1 Philosophy**

8.1.1 Continuing education is required by the Delaware Board of Examiners to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these

fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

8.1.2 The Delaware Board of Examiners is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities which increase knowledge and enhance professional growth.

8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

### **8.2 Continuing Education Hours and Definitions Criteria**

8.2.1 One contact hour is abbreviated as CE and is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and CEU's issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)

8.2.2 Continuing Education Time Frame: CE requirements must be completed by April 30th of each license renewal period. Each licensee has up to 24 months in which to complete the minimum continuing education requirements, that is from May 1 (of the current renewal year) to April 30 of the next renewal year. Licenses expire on July 31 of the odd-numbered years.

8.2.3 The required number of continuing education contact hours vary with certification and/or professional status as outlined below:

8.2.3.1 New License: If a license would cover less than one year, the licensee is not required, but is encouraged, to accrue continuing education hours. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 10 CE's or one-half of the required total hours.

8.2.3.2 Single License: Individuals retaining a license in one area of specialty must obtain a minimum total of 20 CE's for each two-year license period.

8.2.3.3 Dual License: Individuals retaining licenses in two areas of specialty must obtain a minimum total of 20 CE's for each two year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensure to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

8.2.3.4 Triple License: Individuals retaining licenses in three areas of specialty must obtain a minimum of 30 CE's for each two-year license period, with 10 CE's

obtained in each area of licensure. One course may be split between areas of licensing to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

8.2.3.5 Temporary License: All continuing education requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during their CFY period.

8.2.3.6 Extenuating Circumstances: The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation. Extenuating circumstances may include, but are not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities.

8.2.4 Continuing education courses shall focus on the enhancement of clinical skills and professional growth as defined below.

8.2.4.1 Clinical Skills: conferences, workshops, courses, etc., that expand a licensee's scope of practice by enhancing skills in the areas of prevention, assessment, diagnosis and treatment of the client (minimum of 14 CE's for licensure period)

8.2.4.2 Professional Growth: conferences, workshops, courses, etc., that may not directly impact on clinical services to the population being served, but are of interest to the licensee and will allow the licensee the opportunity to stay abreast of current trends in the profession or related fields of interest (maximum of 6 CE's for licensure period)

8.2.5 Verification is required and allows the licensee to show the relevance of continuing education to professional practice. Excluded are any job related duties in the workplace such as staff meetings, in-service training, CPR, etc.

8.2.6 A licensee or sponsor who wishes to be sure that an activity will be approved by the Board may request advance approval from the Board by submitting a completed Board Approval form.

8.2.7 The Board will monitor compliance using an audit system. Licensees will be selected for audit and notified by mail in May of each renewal year. A licensee who is audited shall submit the Continuing Education Record. Licensees who are not audited shall retain their documentation as provided in Rule 8.4.1.2.

8.3 Suggested Activities for Obtaining CE's Continuing Education

8.3.1 ~~Continuing education courses shall focus on professional growth and the enhancement of clinical skills, and be recorded on the appropriate Board form(s). Verification is required and allows the licensee to show the relevance of continuing education to professional practice.~~

8.3.2 ~~All continuing education activities approved and sponsored by the American Speech, Language~~

~~and Hearing Association or other accredited related professional associations, including study of professional journals which grant ASHA CEU's. Verification is required—photocopy acceptable.~~

8.3.1 Continuing education activities sponsored by accredited related professional organizations, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in Rule 8.2.4. Verification of completion is required. Agenda of sessions attended and time spent is required for convention activities.

8.3.2 A licensee may receive up to 3 CE's for training obtained from a colleague who, after attending a professional conference, gives a formal presentation of the information from the conference after developing an agenda and outline.

8.3.3 ~~All scientific and clinical sessions and short courses of the American Speech, Language and Hearing Association National Conventions or other accredited related professional associations. Verification required—photocopy of short course completion acceptable. Agenda of sessions attended and time spent is required for convention activities.~~

8.3.4 ~~All Delaware Speech, Language and Hearing Association (DSHA) sponsored activities, including professional meetings. Verification of completion required.~~

8.3.5 ~~Delaware Department of Education course offerings in areas related to the professions (1/5 Delaware Department of Education (DDE) credit = 3 hours = 3 CE's) Verification required.~~

8.3.6 ~~Professional study group and journal group meetings recognized and monitored by the Delaware Speech, Language and Hearing Association. Verification required including summary/agenda and time spent.~~

8.3.7 8.3.3 Professional University/College coursework for academic credit in the field of Speech/Language Pathology, Audiology or Hearing Aid Dispensing. Verification of credits earned upon course completion along with a course description should be submitted to the Board for approval. The course description may be submitted for prior approval of the course. (1 undergraduate credit = minimum of 3 CE's ; 1 graduate credit = minimum of 5 CE's)

8.3.8 8.3.4 Professional presentations by licensee on professional required topics. Verification, including summary, time spent and verification from sponsor. Credit is given for each presentation only once during a licensure period. (1 hour of presentation = 3 CE's)

8.3.9 8.3.5 Professional publication in by licensee within ASHA or related specialty journals. Verification required. Reprint of publication.

8.3.10 8.3.6 Other continuing education with documentation of content and hours attended. A licensee

who wishes to be sure that an activity will be approved by the Board may request advance approval from the Board (See Rule 4.1.3)

#### 8.4 Continuing Education Checklist of Responsibilities

##### 8.4.1 All licensees shall:

8.4.1.1 ~~obtain a Continuing Education Record form~~ Complete the required continuing education by April 30 of each renewal year.

8.4.1.2 ~~Document completed continuing education activities on the Continuing Education Record form and retain in your records for three years following renewal.~~ document completed continuing education activities on Continuing Education Record

8.4.1.3 ~~If audited, provide documentation of having attended approved continuing education activities as outlined under Rule 8.2.3 to the Board. If an activity was completed but is not approved by the Board, the licensee shall replace the CE with an approved activity before July 31 of the renewal year.~~ obtain a Board Approval form and submit before the Board meeting preceding the start of a proposed activity if a licensee seeks advance approval and determination of CE's.

8.4.1.4 ~~obtain a Board Approval form and submit after completion of the CE activity for approval and determination of CE's.~~

8.4.1.5 ~~mail Continuing Education Record to the Division of Professional Regulation by May 1 of the renewal year~~

8.4.1.6 ~~retain photocopy of Continuing Education Record for personal records.~~

## 9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 Del.C. §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.

### 9.2 Standards of Professional Conduct

9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 Del.C. §3715(a)(2).

9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.

9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.

9.2.1.3 Licensees shall maintain reasonable

documentation of professional services rendered.

9.2.1.4 Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.

9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.

9.2.1.6 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

### 9.3 Standards of Professional Integrity.

9.3.1 A licensee who violates the following Standards of Professional Integrity may be guilty of consumer fraud, deception, restraint of competition, or price-fixing and disciplined pursuant to 24 Del.C. §3715(a)(6).

9.3.1.1 Licensees shall not charge for services not rendered nor misrepresent the services or products dispensed.

9.3.1.2 Licensees shall inform clients of the nature and possible effects of services. Care must be taken to speak to a client in lay terms that he or she can understand.

9.3.1.3 Licensees may use clients in research or as subjects of teaching demonstrations only with their informed consent. An informed consent must be explained and written in lay terms.

9.3.1.4 Licensees shall inform clients in any matter where there is or may be a conflict of interest. Conflicts of interest may be found when a client is steered to a particular provider by one with an expectation of financial gain (kickbacks) or a provider is involved in double dipping by providing services in a private practice that he or she is obligated to provide through public employment (double-dipping).

9.3.1.5 Licensees shall make no guarantees of the results of any product or procedure but may make a reasonable statement of prognosis.

9.3.1.6 Licensees shall provide services or dispense products only when benefits can reasonably be expected.

9.3.1.7 Licensees shall not engage in misrepresentation, dishonesty, fraud, or deceit. Misrepresentation includes statements likely to mislead or an omission of material information.

9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public.

9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 Del.C. §3715(a)(1).

9.3.2.1 Licensees shall accurately represent any credentials, education, and experience to the public.

9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 **Del.C.** §3707 has a duty to report that information to the Division of Professional Regulation.

#### 9.4 Miscellaneous Professional Standards

9.4.1 A licensee who violates the following Professional Standards may be subject to disciplinary action under 24 **Del.C.** §3715(a)(7)

9.4.1.1 Licensees shall respect the privacy of clients and not reveal, written authorization, any professional or personal information unless required by law.

9.4.1.2 Licensees shall not discriminate on the basis of race, sex, age, religion, national origin, sexual orientation, or disability.

9.4.1.3 Licensees shall offer services and products on their merits and should refrain from making disparaging comments about competing practitioners or their services and products.

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

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

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

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

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating

Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

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



proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

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

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

be disclosed.

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## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

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

**PLEASE TAKE NOTICE**, that pursuant to 3 Del. C. §10005 and 29 Del. C. §10115, the Department proposes to enact a new Rule 8.8. The proposed rule would provide as follows:

1 permit Amicar as a race day medication and to establish the procedure for the administration of Amicar and to establish the procedure for a horse to be in the Amicar program and to be removed from the Amicar program.

The Commission will accept written comments from February 1, 2003 through March 3, 2003. The Commission will hold a public hearing on the proposed rule amendment on March 4, 2003 at 10:00 a.m. at Dover Downs, 1131 N. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed Rule 8.8 is as follows:

#### **8.8 Aminocarproic Acid (Amicar)**

##### **8.8.1 General**

Aminocarproic Acid (Amicar) is a permitted race day medication. Amicar may only be administered in a Commission's designated area by the Commission's Lasix Veterinarian. All horses are eligible for Amicar. To become eligible, the trainer must file a written request with the Judge's office prior to entry of the horse in a race.

##### **8.8.2 Treatment Time**

Treatment time shall be within 120 minutes of post time up to a minimum of 75 minutes prior to post time.

##### **8.8.3 Dosage**

As a guideline, dosage shall be not less than 10 cc and not greater than 30 cc.

##### **8.8.4 Declaration of Amicar/Amicar Program**

Amicar must be declared at time of entry. A horse shall remain on the Amicar Program for a minimum period of 60 (sixty) days unless there is a medical reason to be removed at the discretion of the Commission or Lasix Veterinarian. That recommendation would be made to the Judges for their consideration. Following the 60 (sixty) days participation in the Amicar Program, the trainer may request that the horse be removed from the program. Such request must be in written form and shall be filed with the Judge's office for consideration. The written request shall be prior to entry in a race to ensure proper notification to the public.

8.8.5 Listing of Amicar Program Horses

A list of horses on the Amicar Program will be maintained by the Judge's office.

8.8.6 Racing Program Designation

A horse enrolled in the Amicar Program will be noted as an "A" in the racing program next to the "L" designated for Lasix.

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 410

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

### 410 Satellite School Agreements

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary seeks to amend regulation 410 Satellite School Agreements by adding the definition of a Satellite School from the statute as 1.0, adding clarity to section 1.0 (2.0 as amended) and eliminating the word etc. from 3.0 (4.0 as amended) and replacing it with the words "and other considerations relevant to the health and safety of students".

#### C. Impact Criteria

1. Will the re-adopted regulation help improve student achievement as measured against state achievement standards? The re-adopted regulation addresses the establishment of satellite schools not achievement standards.

2. Will the re-adopted regulation help ensure that all students receive an equitable education? The re-adopted regulation addresses the establishment of satellite schools not equal education issues.

3. Will the re-adopted regulation help to ensure that all students' health and safety are adequately protected? The re-adopted regulation addresses health and safety issues as part of the establishment of satellite schools.

4. Will the re-adopted regulation help to ensure that all students' legal rights are respected? The re-adopted regulation addresses the establishment of satellite schools not students' legal rights.

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

6. Will the re-adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The

re-adopted regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the re-adopted regulation? The statute requires that there be a regulation concerning the establishment of satellite schools.

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

### 410 Satellite School Agreements

~~1.0 Satellite school facilities shall be subject to the same health and safety codes required of other public school facilities. Plans and specifications of proposed satellite school facilities shall be submitted for review and approval, as appropriate, to the following agencies by the local district or charter school board: Fire Marshal of Appropriate Jurisdiction, Architectural Accessibility Board, Division of Public Health for food preparation and serving area and swimming pools, Department of Natural Resources & Environmental Control for wastewater and erosion control, local building officials to provide a Certificate of Occupancy or Approval, State Risk Manager and the Department of Education~~

~~1.1 Fire Marshal of Appropriate Jurisdiction~~

~~1.2 Architectural Accessibility Board~~

~~1.3 Division of Public Health for food preparation and serving area and swimming pools~~

~~1.4 Department of Natural Resources & Environmental Control, wastewater and erosion control~~

~~1.5 Local Building Officials to provide Certificate of Occupancy or Approval.~~

~~1.6 State Risk Manager~~

~~1.7 Department of Education~~

Definition: As per 14 Del.C. § 2005 a satellite school is

defined as a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school.

2.0 Satellite school facilities shall be subject to the same health and safety codes required of other public school facilities. Plans and specifications of proposed satellite school facilities shall be submitted for review and approval, as appropriate, to the following agencies by the local district or charter school board: Fire Marshal of appropriate jurisdiction, Architectural Accessibility Board, Division of Public Health for food preparation and serving area and swimming pools, Department of Natural Resources & Environmental Control for wastewater and erosion control, local building officials to provide a Certificate of Occupancy or Approval, State Risk Manager and the Department of Education.

2.0 3.0 Documentary evidence of review and approval by the authorities listed as 1.1 through 1.7 shall be provided to the Department of Education.

3.0 4.0 Upon receipt of the aforementioned documentary evidence, the Department of Education shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose considering such items as size, adequacy of sanitary facilities, adequacy of lighting and ventilation, ~~ete.~~ and other considerations relevant to the health and safety of students.

4.0 5.0 Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the satellite school. A copy of such certificate or permit shall be provided to the Department of Education. The satellite school facilities shall be subject to the same periodic inspections for health and safety as other public schools.

5.0 6.0 The reorganized school district or charter school shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.

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

**729 School Custodians**

**A. Type of Regulatory Action Required**  
Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary seeks to amend regulation 729 School Custodians in order to change section 2.4 to permit employment of the full custodial staff two months before pupil occupancy of a new building rather than one month and to eliminate the class hour certificate for the Building and Grounds Supervisor since it is not listed in the statute. Other changes simply clarify procedures involved in the allocation of school custodial positions.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the experience, allocation and classification of school custodial positions not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the experience, allocation and classification of school custodial positions not equal education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health and safety issues through experience, allocation and classification of school custodial positions.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the experience, allocation and classification of school custodial positions not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is important to add clarity to the statute concerning school custodial positions.

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

## 729 School Custodians

### 1.0 Experience:

Custodians may be allowed one (1) year's experience for each creditable year of experience in similar employment as determined by the district.

### 2.0 Allocation of Custodial Units

2.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.

2.2 Districts are allocated one (1) full-time custodial employee for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:

2.2.1 ~~One (1) unit for each classroom or its equivalent. What is counted as "equivalent" shall be determined by the Department of Education.~~ One (1) unit for each classroom. Other space that can qualify as part of a classroom unit shall be determined through criteria established by the Department of Education.

2.2.2 One (1) unit for a small auditorium (less than 150 students).

2.2.3 Two (2) units for a large auditorium (more than 150 students).

2.2.4 One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.

2.2.5 One (1) unit for a gymnasium.

2.2.6 One (1) unit for a combined auditorium and gymnasium (less than 150 students).

2.2.7 Two (2) units for a combined auditorium and gymnasium (more than 150 students).

2.2.8 One (1) unit for two locker rooms.

2.2.9 Seven (7) units for a swimming pool.

2.2.10 Units for a central heating plant are determined from the following table:

No. of Classrooms or equivalent	No. of Units
1 - 6	3/4
10 - 15	1
16 - 20	1 ½
21 - 25	2
26 - 30	2 ½
31 - 35	3
36 - 40	3 ½
41 - 45	4
46 - 50	4 ½
51 - 55	5
56 - 60	5 ½
61 or more	

2.2.11 One-half (½) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.

2.3 Part-time custodians equivalent to one or more full-time custodians may be employed with the provision that proper records will be maintained for review.

2.4 A full custodial staff for a new school building may be employed ~~one (1) month~~ two (2) months prior to the pupil occupancy of the building.

2.5 The termination date for custodial units in buildings closed shall be six (6) weeks from the last day classes are held in the building.

2.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.

2.7 When the school district signs a lease or in any way loses direct control of the building, ~~such as transfer or sale legislation through transfer, sale or legislation,~~ the custodial units for site maintenance and heating shall terminate on the effective date of the ~~lease or legislation~~ lease, transfer, sale or legislation.

2.8 ~~When the function of a building is changed it shall be reevaluated for custodial units. It is the school district's responsibility to notify the Department of Education when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department of Education. The Department will notify the district by letter of the results of the re-evaluation.~~

2.9 ~~All custodial allocations shall be determined and approved by the Department of Education. The Department of Education shall calculate and approve all custodial unit allocation requests submitted by the local school districts.~~

**3.0 Classification****3.1 Custodian-Fireman**

3.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a custodian-fireman.

3.1.2 There shall be only one custodian-fireman employed in each building.

**3.2 Chief Custodian**

3.2.1 ~~A chief custodian may be classified chief custodian when at least two other full-time custodians or the equivalent are employed in the school building or district. A custodian may be classified as a Chief Custodian when at least two other full-time custodians or the equivalent are employed in the school building or other district facility.~~ There shall only be one Chief Custodian per building.

3.2.2 ~~There can be only one (1) chief custodian in a building, but there can be as many chief custodians in a district as there are buildings in the district with three or more custodians.~~

3.3 Maintenance Mechanic: Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing board.

**3.4 Skilled Craftsperson**

3.4.1 Each district may classify an incumbent in one or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

3.4.1.1 has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

3.4.1.2 possesses a current state license in any of the fields listed in paragraph 3.4.1.1 above; or

3.4.1.3 is an Automobile Mechanic who possesses two or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or

3.4.1.4 is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or

3.4.1.5 is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

3.4.1.6 is an HVAC Mechanic who possesses two or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or

3.4.1.7 possesses two or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or

3.4.1.8 is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or

3.4.1.9 is a Roofer who possesses Training Certifications from two or more manufacturers of Roofing Systems in use by the District; or

3.4.1.10 is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

3.5 Building and Grounds Supervisor: Each district with ninety-five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule in 14 Del.C.§1311. This position is included in the total number of custodial personnel allowed. ~~Section 1311(c)~~.

**4.0 Certificates Granted by the Department of Education for Additional Hours of Special Training**

4.1 The following hourly requirements shall be met in order to ~~receive the Custodial Certificates listed below for~~ the Department of Education to grant the custodial certificates listed in 4.1.1 through 4.1.3. The certificate guarantees additional pay as specified in ~~the Del.C. 14 Del.C. §1311~~ but only the local school district can change a custodian's classification.

~~4.1.1 120 class hours minimum Building and Grounds Supervisor (issued only to those who hold this position):~~ Chief Custodian Certificate (120 class hours)

~~4.1.2 120 class hours Chief Custodian Certificate:~~ Fireman and Custodian Certificate (90 class hours)

~~4.1.3 90 class hours Fireman Custodian Certificate:~~ Custodian Certificate (60 class hours)

~~4.1.4 60 class hours General Custodian Certificate.~~

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**Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)****1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002**

**(Terminology and School Bus Types are Those Described in the National School Transportation Specifications and Procedures (NSTSP), May 2000)**

**A. Type Of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis Of Subject Matter Of The Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 (Terminology and school bus types are those described in the



National School Transportation Specifications and Procedures (NSTSP), May 2000) in order to reflect the additional requirements for school buses build on or after March 1, 2003 including changing the full title to reflect the additional standards for 2003.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses standards for school bus chassis and bodies not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses standards for school bus chassis and bodies not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the health and safety of students through the standards for school buses.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses standards for school bus chassis and bodies not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The statute requires the department of Education to make regulations concerning standards for school bus chassis and bodies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the local school districts for compliance with this regulation. The cost will be covered by the State.

### **1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 With Specified Changes For Buses Placed in Production on or after March 1, 2003**

**(Terminology and School Bus Types are Those Described in the ~~National School Transportation Specifications and Procedures~~ National School Transportation Specifications and Procedures (NSTSP), May 2000)**

The following six (6) sections of the regulation in addition to the title have been amended. Other than the title the amendments are additions to the existing regulation. They include the following, 1.2.1, 1.26.3.1, 2.25.5, 2.34.6, 2.28.3.1 and 2.49.1.1. As the remainder of the regulation was not affected it is not being reproduced here. The existing regulation may be viewed at:

<http://www.state.de.us/research/AdminCode/Education/Frame.htm>

1.2.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 66 passengers or greater shall have a 9,000 pound front axle minimum.

1.26.3.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 36 passengers or greater, shall have an engine that produces at least 190 h.

2.25.5 For bus chassis and bodies produced after March 1, 2003, the interiors shall have mar-proof side walls.

2.28.3.1 For bus chassis and bodies produced after March 1, 2003, buses for 36 passengers or greater shall be equipped with heated and remote control exterior rear view mirrors.

2.34.6 There shall be a rub rail (snow rail) or equivalent bracing located horizontally at the bottom edge of the body side skirts.

2.49.1.1 For bus chassis and bodies produced after March 1, 2003, a two-speed or variable speed windshield wiping system shall be provided and an intermittent feature shall be provided.

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

Statutory Authority: 16 Delaware Code  
Section 3006A (16 Del.C. §3006A)

**PUBLIC NOTICE**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted seven revised or new proposed regulations pertaining to training and qualifications of nursing assistants and certified nursing assistants. These proposed regulations define nursing related services, specify the requirement for Delaware certification as a CNA, detail requirements for certification and recertification and clarify the responsibility of nursing facilities to pay the costs of training nursing assistants in accordance with federal regulations.

**INVITATION FOR PUBLIC COMMENT**

Public hearings will be held as follows:

Wednesday, March 12, 2003, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 North DuPont Highway  
New Castle

Thursday, March 13, 2003, 10:00 AM  
Department of Natural Resources &  
Environmental Control Auditorium  
89 Kings Highway  
Dover

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

Written comments are invited on these proposed regulations and should be sent to:

Elise MacEwen, RN  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the March 13 public hearing.

**Regulations for Training and Qualifications for Nursing  
Assistants and Certified Nursing Assistants****SECTION 69.100 - DEFINITIONS**

**69.101 Advanced Practice Nurse** shall mean an individual whose education and licensure meet the criteria outlined in 24 Del., C. Chapter 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

**69.102 Assisted Living Facility** Assisted living facility is a residential arrangement for fee licensed pursuant to 16 Del. C., Chapter 11.

**69.103 Certified Nursing Assistant (CNA)** a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

**69.104 Department** the Department of Health and Social Services.

**69.105 Division** the Division of Long Term Care Residents Protection.

**69.106 Intermediate Care Facility** Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for intermediate care beds.

**69.107 Licensed Nurse** shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 Del. C., Chapter 19.

**69.108 Licensed Practical Nurse (LPN)** a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN's, CNA's, NA's and other unlicensed personnel.

**69.109 Nursing Assistant (NA)** an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

**69.110 Nursing Related Services** those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living and/or those physical and psychosocial basic skills encompassed in the certified nursing assistant curriculum.

**69.110 1 Nursing Services Direct Caregivers** those individuals, as defined in 16 Del. C., Section 1161(e), assigned to the direct care of nursing facility residents.

~~**69.111 Personal Care Services** those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living.~~

**69.112 Physician** a physician licensed to practice in the State of Delaware.

**69.113 Registered Nurse (RN)** a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

**69.114 Rehabilitation** the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

**69.115 Resident** a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del. C., Chapter 11.

**69.116 Restraint** "physical restraints" are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. "Chemical restraints" are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

**69.117 Senior Certified Nursing Assistant** a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

**69.118 Skilled Care Facility** Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for skilled care beds.

**69.119 Student** a person enrolled in a course offering certification as a CNA.

**69.120 Supervision** direct oversight and inspection of the act of accomplishing a function or activity.

## SECTION 69.200 GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

69.201 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

69.202 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

69.204 A Certified Nursing Assistant must perform at least 64 hours of nursing related services in a health care

setting during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.

~~69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware shall be deemed qualified to meet the Department's requirements based on a current certificate from the jurisdiction where he/she presently practices, documentation of the equivalent of one year of full-time experience as a certified nursing assistant and verification that he/she is in good standing on that jurisdiction's Registry.~~ A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations § 483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:

A. The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.

B. The CNA must have 3 months of full-time experience as a CNA or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.

C. The CNA must be in good standing in the jurisdiction where he/she is currently certified.

69.206 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in an RN or LPN nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

69.207 Individuals who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.

69.207 8 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a



facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

69.209 A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, initial and any subsequent testing and fees for textbooks or other required course materials.

69.210 If a certified nursing assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall reimburse all personally incurred costs in completing the program. Such costs include tuition, initial and any subsequent testing and fees for textbooks or other required course materials. Such costs are payable upon completion by the CNA of a six month period of employment including the orientation period.

69.211 The facility shall be required to notify the Department upon reimbursement to a CNA of personally incurred costs of the nurse aide training and competency evaluation program for the purpose of inclusion in the CNA registry database. Facilities may contact the Department to verify the reimbursement status of any CNA seeking such reimbursement.

### **SECTION 69.300 - CNA TRAINING PROGRAM REQUIREMENTS**

#### 69.301 General

To obtain approval, the curriculum content for the Certified Nursing Assistant training programs shall meet each of the following requirements:

A. The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.

B. The program shall be a minimum of 150 hours in length, divided equally between clinical skills training and classroom instruction. Additional hours may be in either of these areas or both.

C. Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.

D. Classroom ratios of student to RN instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1.

E. The RN instructor shall directly supervise students at all times during clinical instruction. Students shall remain in visual contact with a licensed nurse in the clinical setting while performing any skills in which

proficiency has not been both demonstrated and documented.

F. Programs must notify the Division in writing (which may be faxed) when permanent and/or substantial changes to the program or the program's personnel are made. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook.

#### 69.302 Equipment

All programs shall have available at a minimum the following equipment:

A. Audio/Visual (Overhead projector and/or TV with VCR)

B. Teaching Mannequin, Adult, for catheter and perineal care

C. Hospital Bed

D. Bedpan/Urinal

E. Bedside commode

F. Wheelchair

G. Scale

H. Overbed Table

I. Sphygmomanometer

J. Stethoscope

K. Resident Gowns

L. Thermometers, Glass and Electronic

M. Crutches

N. Canes (Variety)

O. Walker

P. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors.

Q. Foley Catheter Drainage Bag

R. Hydraulic Lift

S. Adaptive eating utensils/equipment

#### 69.303 Curriculum Content

The following material identifies the minimum competencies that the curriculum content shall develop. Nursing assistants being prepared to work in skilled, intermediate, or assisted living facilities either as direct or contract staff shall master each competency. All demonstrable competencies for each student must be documented as mastered by the RN instructor in order for a student to qualify as successfully having completed that section of programming.

#### A. THE NURSING ASSISTANT ROLE AND FUNCTION

Introduces the characteristics of an effective nursing assistant: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nursing assistant as a member of the resident care team. Legal aspects of resident care and resident rights are presented. Relevant Federal and State statutes are also reviewed.

## Competencies:

(1) Function as a nursing assistant within the standards described below:

a. Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.

b. Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.

c. Understand the role of Long Term Care advocates, investigators and surveyors.

d. Identify the "chain of command" in the organizational structure of the health care agency.

e. Maintain personal hygiene and exhibit dress practices which meet professional standards.

f. Recognize the importance of punctuality and commitment to the job.

g. Differentiate between ethical and unethical behavior on the job.

h. Understand the role, responsibility and functional limitations of the nursing assistant.

(2) Demonstrate behavior that maintains resident's rights.

a. Provide privacy and maintenance of confidentiality.

b. Promote the resident's right to make personal choices to accommodate individual needs.

c. Give assistance in resolving grievances.

d. Provide needed assistance in going to and participating in resident and family groups and other activities.

e. Maintain care and security of resident's personal possessions as per the resident's desires.

f. Provide care which ensures that the residents are free from abuse, mistreatment, neglect or financial exploitation and report any instances of such poor care to the Division of Long Term Care Residents Protection. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.

g. Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the resident free from physical and chemical restraints.

h. Discuss the potential negative outcomes of physical restraints, including side rails.

#### B. ENVIRONMENTAL NEEDS OF THE RESIDENT

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in the long-term care setting. The nursing assistant is taught

why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

## Competencies:

(1) Apply the basic principles of infection control.

a. Identify how diseases are transmitted and understand concepts of infection prevention.

b. Demonstrate proper hand washing technique.

c. Demonstrate appropriate aseptic techniques in the performance of normal duties and understand the role of basic cleaning, disinfecting, and sterilization tasks.

d. Demonstrate proper isolation and safety techniques in the care of the infectious resident and proper handling and disposal of contaminated materials.

(2) Assist with basic emergency procedures.

a. Follow safety and emergency procedures.

b. Identify safety measures that prevent accidents to residents.

c. Recognize signs when a resident is choking or may have an obstructed airway.

d. Assist with clearing obstructed airway.

e. Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

f. Follow disaster procedures.

g. Report emergencies accurately and immediately.

h. Identify potential fire hazards.

(3) Provide a safe, clean environment.

a. Identify the resident's need for a clean and comfortable environment. Describe types of common accidents in the nursing home and their preventive measures. Be aware of the impact of environmental factors on the resident in all areas including but not limited to light and noise levels.

b. Report unsafe conditions to appropriate supervisor. Use the nurse call system effectively.

c. Report evidence of pests to appropriate supervisory personnel.

d. Report nonfunctioning equipment to appropriate supervisory/charge personnel.

e. Prepare soiled linen for laundry.

f. Make arrangement of furniture and equipment for the resident's convenience and to keep environment safe.

#### C. PSYCHOSOCIAL NEEDS OF THE

**RESIDENT**

Key Concepts: Focus is placed on the diverse social, emotional, recreational and spiritual needs of residents in a long term care setting. The curriculum shall describe some of the physical, mental, and emotional changes associated with aging and institutionalization, and present ways in which the nursing assistant may effectively communicate with residents and their families.

**Competencies:**

(1) Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease, developmental disabilities and other related disorders.

a. Indicate the ways to meet the resident's basic human needs for life and mental well being.

b. Modify his/her own behavior in response to resident's behavior. Respect the resident's beliefs recognizing cultural differences in holidays, spirituality, clothing, foods and medical treatments.

c. Identify methods to ensure that the resident may fulfill his/her maximum potential within the normal aging process.

d. Provide training in, and the opportunity for, self-care according to the resident's capabilities.

e. Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

f. Demonstrate skills which allow the resident to make personal choices and promote the resident's dignity.

g. Utilize resident's family as a source of emotional support and recognize the family's need for emotional support.

h. Recognize how age, illness and disability affect memory, sexuality, mood and behavior, including wandering.

i. Describe aggressive and wandering behavior; recognize responsibility of staff related to wanderers and aggressive residents.

j. Discuss how appropriate activities are beneficial to residents with cognitive impairments.

k. Recognize and utilize augmentative communication devices and methods of nonverbal communication.

(2) Demonstrate appropriate and effective communication skills.

a. Demonstrate effective verbal and nonverbal communications in keeping with the nursing assistant's role with residents, their families and staff.

b. Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the

licensed nurse.

c. Document observations using appropriate terms and participate in the care planning process.

d. Recognize the importance of maintaining the resident's record accurately and completely.

e. Communicate with residents according to their state of development. Identify barriers to effective communication. Recognize the importance of listening to residents.

f. Participate in sensitivity training in order to understand needs of residents with physical or cognitive impairments.

**D. PHYSICAL NEEDS OF THE RESIDENT**

Key Concepts: Presents the basic skills which nursing assistants use in the physical care of residents. The nursing assistant will learn basic facts about body systems and what is needed to promote good functioning. The nursing assistant will learn to provide physical care to residents safely and to keep the resident nourished, hydrated, clean, dry and comfortable. The nursing assistant will also learn to make observations regarding residents and to record and/or report observations. The nursing assistant will be introduced to the basics of range of motion and learn to integrate range of motion into routine personal care activities.

**Competencies:**

(1) Apply the principles of basic nutrition in the preparation and serving of meals.

a. Incorporate principles of nutrition and hydration in assisting residents at meals.

b. Understand basic physiology of nutrition and hydration.

c. Understand basic physiology of malnutrition and dehydration.

d. Identify risk factors for poor nutritional status in the elderly:

i. compromised skin integrity

ii. underweight or overweight

iii. therapeutic or mechanically

altered diet

iv. poor dental status

v. drug-nutrient interactions

vi. acute/chronic disease

vii. depression or confusion

viii. decreased appetite

e. Recognize how the aging process affects digestion.

f. Accurately calculate and document meal intake and report inadequate intake or changes in normal intake.

g. Accurately calculate and document fluid intake and report inadequate intake or changes in normal intake.

h. Recognize and report signs and symptoms of malnutrition and dehydration.

i. Understand concepts of therapeutic diets including dysphagia diets and the related risks associated with dysphagia including aspiration and aspiration pneumonia.

j. Incorporate food service principles into meal delivery including:

i. distributing meals as quickly as possible when they arrive from the kitchen to maintain food temperature.

ii. assisting residents with meal set-up if needed (i.e., opening packets or cartons, buttering bread if desired).

iii. serving meals to all residents seated together at the same time.

iv. offering appropriate substitutions if the residents don't like what they have received.

k. Utilize tray card or other mechanism to ensure the resident is served his/her prescribed diet and identify who to notify if a resident receives the wrong diet.

l. Demonstrate understanding of how to read menus.

m. Assist residents who are unable to feed themselves.

n. Demonstrate techniques for feeding someone who:

- i. bites down on utensils
- ii. can't or won't chew
- iii. holds food in mouth
- iv. pockets food in cheek
- v. has poor lip closure
- vi. has missing or no teeth
- vii. has ill fitting dentures
- viii. has a protruding tongue or tongue

thrust

- ix. will not open mouth

o. Demonstrate proper positioning of residents at mealtime.

p. Demonstrate skills for feeding residents who:

- i. are cognitively impaired
- ii. have swallowing difficulty
- iii. have sensory problems
- iv. have physical deformities

q. Demonstrate positioning techniques for residents who:

- i. have poor sitting balance
- ii. must take meals in bed
- iii. fall forward when seated
- iv. lean to one side
- v. have poor neck control
- vi. have physical deformities

r. Demonstrate use of assistive devices.

s. Identify signs and symptoms that require alerting a nurse, including:

- i. difficulty swallowing or chewing
- ii. coughing when swallowing

liquids

- iii. refusal of meal
- iv. choking on food or fluids
- v. excessive drooling
- vi. vomiting while eating
- vii. significant change in vital signs

t. Incorporate principles of a pleasant dining environment when assisting residents at mealtime including ensuring adequate lighting and eliminating background noise.

u. Demonstrate positive interaction with residents recognizing individual resident needs.

v. Ensure residents are dressed appropriately.

w. Allow residents to eat at their own pace.

x. Encourage independence and assist as needed.

y. Recognize and report as appropriate the risk factors and signs and symptoms of malnutrition, dehydration and fluid overload.

z. . Accurately calculate and document intake and output including meal percentages and fluids.

(2) Demonstrate understanding of basic anatomy and physiology in the following areas:

- a. Respiratory system
- b. Circulatory system
- c. Digestive system
- d. Urinary system
- e. Musculoskeletal system
- f. Endocrine system
- g. Nervous system
- h. Integumentary system
- i. Sensory system
- j. Reproductive system

(3) Recognize abnormal signs and symptoms of common illness and conditions. Examples are:

a. Respiratory infection – Report coughing, sneezing, elevated temperatures.

b. Diabetes – Report excessive thirst, frequent urination, change in urine output, drowsiness, excessive perspiration and headache. Understand the healing process as it relates to diabetes.

c. Urinary tract infection – Report frequent urination, burning or pain on urination, elevated temperature, change in amount and color of urine, blood or sediment in urine and strong odors.

d. Cardiovascular conditions – Report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, edema of the feet or legs.

e. Cerebral vascular conditions – Report dizziness, changes in vision such as seeing double, change in blood pressure, numbness in any part of the body, or inability to move arm or leg.

f. Skin conditions – Report break in skin, discoloration such as redness, black and blue areas, rash, itching.

g. Gastrointestinal conditions – Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, and constipation.

h. Infectious diseases.

(4) Provide personal care and basic nursing skills as directed by the licensed nurse in the appropriate licensed entity.

a. Provide for resident's privacy and dignity when providing personal care.

b. Assist the resident to dress and undress.

c. Assist the resident with bathing and personal grooming.

d. Observe and report condition of the skin.

e. Assist the resident with oral hygiene, including prosthetic devices.

f. Administer oral hygiene for the unconscious resident.

g. Demonstrate measures to prevent decubitus ulcers, i.e., positioning, turning and applying heel and elbow protectors.

h. Assist the resident in using the bathroom. Understand consequences of not assisting resident to the bathroom.

i. Assist the resident in using a bedside commode, urinal and bedpan.

j. Demonstrate proper bed making procedures for occupied and unoccupied beds.

k. Feed residents oral table foods in an appropriate manner. Demonstrate proper positioning of residents who receive tube feeding.

l. Distribute nourishment and water.

m. Accurately measure and record with a variety of commonly used devices:

i. Blood pressure

ii. Height and weight

iii. Temperature, pulse, respiration

n. Assist the resident with shaving.

o. Shampoo and groom hair.

p. Provide basic care of toenails unless medically contraindicated.

q. Provide basic care of fingernails unless medically contraindicated.

r. Demonstrate proper catheter care.

s. Demonstrate proper perineal care.

t. Assist the licensed nurse with a

physical examination.

u. Apply a non-sterile dressing properly.

v. Apply non-sterile compresses and soaks properly and safely.

w. Apply cold and/or heat applications properly and safely.

x. Demonstrate how to properly apply elastic stockings.

y. Demonstrate proper application of physical restraints including side rails.

(5) Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

a. Assist the resident in bowel and bladder training.

b. Provide enemas within the scope of duties of the nurse assistant.

c. Assist the resident in activities of daily living and encourage self-help activities.

d. Assist the resident with ambulation aids, i.e., cane, quadcane, walker, crutches, wheelchair and transfer aids, i.e., hydraulic lifts.

e. Perform range of motion exercise as instructed by the physical therapist or the licensed nurse.

f. Assist in care and use of prosthetic devices.

g. Assist the resident while using proper body mechanics.

h. Assist the resident with dangling, standing and walking.

i. Demonstrate proper turning and/or positioning both in bed and in a chair.

j. Demonstrate proper technique of transferring resident from low and high bed to chair.

(6) Demonstrate safety and emergency procedures including proficiency in the Heimlich maneuver and certification in cardiopulmonary resuscitation (CPR).

(7) Provide care to resident when death is imminent.

a. Discuss own feelings and attitude about death.

b. Explain how culture and religion influence a person's attitude toward death.

c. Discuss the role of the CNA, the resident's family and significant others involved in the dying process.

d. Discuss the stages of death and dying and the role of the nurse assistant.

e. Provide care, if appropriate, to the resident's body after death.

**See 5 DE Reg. 1908 (4/1/02)**

## SECTION 69.400 MANDATORY ORIENTATION PERIOD

### 69.401 SKILLED AND INTERMEDIATE CARE FACILITIES

#### A. GENERAL REQUIREMENTS

(1) All Nursing Assistants hired to work in a skilled or intermediate care facility, after completing 150 hours of training, shall undergo a minimum of 80 hours of orientation at least 40 of which shall be clinical. An exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training, sponsored by the facility where the Nursing Assistant will be employed immediately thereafter, shall only be required to complete additional facility specific orientation of 40 hours in the same facility.

(2) All Certified Nursing Assistants hired to work in a skilled or intermediate care facility shall undergo a minimum of 80 hours of orientation; at least 40 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation may be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

#### B. ORIENTATION PROGRAM REQUIREMENTS

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication (including the facility chain of command) and documentation requirements
- e. Process for reporting emergencies, change of condition and shift report
- f. Operation of facility equipment and supplies, including scales, lifts, special beds and tubs.
- g. Review of the plan of care for each assigned resident including:
  - i. ADL/personal care needs
  - ii. Nutrition, hydration and feeding techniques and time schedules
  - iii. Bowel and bladder training programs
  - iv. Infection control procedures
  - v. Safety needs
    - (a.) Role and function of the CNA/NA

- (b.) Resident rights/abuse

reporting

transfer techniques

procedures

weight

techniques

and nail care

denture care

orthotic devices

ankle protectors

(c.) Safety and body mechanics:

(d.) Vital signs

(e.) Psychosocial needs

(f.) Facility policies and

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

a. Taking and recording vital signs

b. Measuring and recording height and

c. Handwashing and infection control

d. Caring for the resident's environment

e. Bathing and skin care, including foot

f. Grooming and mouth care, including

g. Dressing

h. Toileting, perineal and catheter care

i. Assisting with eating and hydration

j. Proper feeding techniques

k. Positioning, turning and transfers

l. Range of motion

m. Bowel and bladder training

n. Care and use of prosthetic and

o. Assisting with ambulation

p. Measuring intake and output

q. Use of elastic stockings, heel and

r. Bedmaking skills

### 69.402 ASSISTED LIVING FACILITIES

#### A. GENERAL REQUIREMENTS

(1) Nursing Assistants hired to work in an assisted living facility, after completing 150 hours of instruction, shall undergo a minimum 64 hours of orientation, at least 24 of which shall be clinical. An exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training in a training program sponsored by the facility where the Nursing Assistant will be employed immediately thereafter shall only be required to complete an additional 32 hours of facility specific orientation in the same facility.

(2) Certified Nursing Assistants hired to work in an assisted living facility shall undergo a minimum of 64 hours of orientation at least 24 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation may be considered

a facility employee for purposes of satisfying the minimum facility staffing requirements as set forth by the Department.

**B. ORIENTATION PROGRAM REQUIREMENTS**

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

e. Process for reporting emergencies, change of condition and shift report

f. Operation of facility equipment and supplies, including but not limited to scales, lifts, and wheelchairs.

g. Review of the plan of care for each assigned resident including:

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

h. Role and function of the CNA/NA

i. Resident rights/abuse reporting

j. Safety and body mechanics: transfer techniques

k. Vital signs

l. Psychosocial needs

m. Facility policies and procedures

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

a. Taking and recording vital signs

b. Measuring and recording height and weight

c. Handwashing and infection control techniques

d. Caring for the resident's environment

e. Bathing and skin care

f. Grooming and mouth care, including denture care

g. Dressing

h. Toileting, perineal and catheter care

i. Assisting with eating and hydration

j. Proper feeding techniques

k. Positioning, turning and transfers

l. Range of motion

m. Bowel and bladder training

n. Care and use of prosthetic and orthotic devices

o. Assisting with ambulation

p. Measuring intake and output

q. Use of elastic stockings, heel and ankle protectors

r. Bedmaking skill

**69.403 TEMPORARY AGENCIES**

**A. GENERAL REQUIREMENTS**

(1) All Certified Nursing Assistants employed by temporary agencies and placed in a facility in which they have not worked within the previous six (6) months shall undergo a minimum of two (2) hours of orientation prior to beginning their first shift at the facility.

(2) Any Certified Nursing Assistant employed by a temporary agency and undergoing orientation shall not be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

(3) Nursing Assistants employed by a temporary agency must be certified prior to placement in any nursing home.

**B. ORIENTATION PROGRAM REQUIREMENTS**

(1) The mandatory two-hour orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

e. Process for reporting emergencies, change of condition and shift report

f. Operation of facility equipment and supplies including but not limited to scales, lifts, special beds and tubs

g. Review of the plan of care for each assigned resident including:

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

**SECTION 69.500 VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION**

**69.501 TRAINING REQUIREMENTS AND COMPETENCY TEST**

Any Certified Nursing Assistant may pursue designation as a Senior Certified Nursing Assistant and shall be so designated if such individual meets the following minimum requirements:

A. Has been a Certified Nursing Assistant for a minimum of three years, in good standing with no adverse findings entered on the Nurse Aide Registry;

B. Has successfully completed an additional 50 hours of advanced training in a program approved by the Department;

C. Has passed a competency test provided by the Department or by a contractor approved by the Department.

## 69.502 VOLUNTARY SENIOR CNA CURRICULUM

The Senior CNA program must meet the same requirements as those specified in Section 2 of these regulations in terms of classroom ratios of students to instructors. The Senior CNA curriculum must meet the following minimum course content, which will provide an advanced level of knowledge and demonstrable skills. All demonstrable competencies shall be documented by the RN instructor.

### A. LEADERSHIP TRAINING AND MENTORING SKILLS

**Key Concepts:** Senior Certified Nursing Assistants will learn how to teach new Nursing Assistants standards of care. Senior CNAs will learn how to be a role model and preceptor for new Nursing Assistants and CNAs. Senior CNAs will learn how prepare assignments, conduct team meetings and resolve conflicts.

**Competencies:** Function effectively as a team leader and mentor/preceptor within the facility.

(1) Define the role and functions of an effective team leader and mentor.

(2) Identify principles of adult learning.

(3) Recognize various learning styles and communication barriers.

(4) Assess learner knowledge.

(5) Reserved

(6) Demonstrate effective communication techniques.

(7) Recognize the importance of teamwork.

(8) Actively participate in resident care plan and team meetings.

(9) Identify strategies for conflict management.

(10) Learn how to prepare assignments, assist with scheduling and other administrative duties.

### B. DEMENTIA TRAINING

**Key Concepts:** The senior CNA will gain greater knowledge of Alzheimer's Disease and related dementias. The senior CNA will gain the skills necessary to effectively care for residents exhibiting signs and symptoms of dementia. The senior CNA will act as a role model and resource person for other CNAs.

**Competencies:** Demonstrate appropriate skills and techniques necessary to provide care to residents exhibiting

signs and symptoms of dementia.

(1) Recognize signs and symptoms of Alzheimer's Disease and related disorders.

(2) Identify types of dementias.

(3) Discuss methods for managing difficult behavior.

(4) Demonstrate effective communication techniques.

(5) Recognize specific issues that arise in providing care to persons with Alzheimer's Disease and other memory loss conditions and appropriate interventions for dealing with these problems including, but not limited to, agitation, combativeness, sundown syndrome, wandering.

### C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING

**Key Concepts:** The senior CNA will gain greater knowledge of anatomy and physiology with emphasis on the effects of aging. The senior CNA will effectively carry out restorative nursing skills as specified in the resident's plan of care.

**Competencies:**

(1) Verbalize understanding of anatomy, physiology and pathophysiology of common disorders of the elderly.

a. Describe the effects of aging on the various organs and systems within the body.

b. Describe signs and symptoms of common disorders.

c. Describe the pathophysiology of common disorders.

d. Identify measures to assist residents with common medical problems (e.g., promoting oxygenation in residents with breathing problems).

e. Observe, report and document condition changes using appropriate medical terminology.

f. Recognize basic medical emergencies and how to respond appropriately.

(2) Maintain or improve resident mobility and the resident's ability to perform activities of daily living. Understand the reasons for rehabilitation (physiologically), reasons for, and benefits of Restorative Nursing and be able to demonstrate the same.

a. Assist the resident with exercise routine as specified in his/her care plan.

b. Carry out special rehabilitation procedures as ordered including working with the visually impaired, special feeding skills/devices, splints, ambulatory devices and prostheses.

c. Identify ways to prevent contractures.

d. Effectively communicate with the Rehabilitation Department.

**See 5 DE Reg. 1908 (4/1/02)**



**SECTION 69.600 SENIOR CNA TRAINING PROGRAM INSTRUCTORS**

A. The Primary Instructor is an individual responsible for the overall coordination and implementation of the senior certified nursing assistant training program. The primary instructor is present and available during clinical training. The primary instructor and all who serve as instructors in the program must meet the following qualifications:

- (1) RN licensure in the State of Delaware.
- (2) Three (3) years nursing experience in caring for the elderly or chronically ill of any age.
- (3) Instructors shall demonstrate:
  - a. Successful completion of "Train-the-Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies or;
  - b. Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.
- (4) Waiver of the Train-the-Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer(s) may provide assistance to instructors as resource personnel from the health field. They may provide instruction in their area(s) of expertise.

- (1) Trainers shall be registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.
- (2) One (1) year of current experience in caring for the elderly or have equivalent experience.
- (3) Trainers shall be licensed or certified in their field, where applicable.

**SECTION 69.700 TRAIN-THE-TRAINER PROGRAM REQUIREMENTS**

Each train-the-trainer program shall ensure that an RN designated as primary instructor meets the following minimum requirements:

**69.701 TRAINING COURSE CONTENT**

- A. Role of Trainer
- B. Communication techniques
- C. Demonstration skills
- D. Teaching a process
- E. Teaching techniques
- F. Training techniques
- G. Developing a formal training plan

**69.702 COURSE MANAGEMENT INFORMATION**

- A. Training time shall consist of sixteen minimum hours.

B. The train-the-trainer instructor must have formal educational preparation or experience with skills of adult learning.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services proposing to amend the Title XXI Delaware Healthy Children State Plan to expand the plan to cover more DSCYF (Department of Services to Children, Youth and their Families) services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by February 28, 2003.

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

**Summary Of Proposed Revisions**

Effective January 1, 2003, this regulation amends the Division of Social Services Title XXI Delaware Healthy Children Program (DHCP) State Plan to:

1 Remove the yearly limit of one bundled rate payment per 31 days in a calendar year. In this way, the DHCP Plan mirrors the Medicaid benefit which allows the bundled rate to be billed for up to 12 months per calendar year; and,

2 Remove the restriction that currently prevents DSCYF from billing any fee-for-service claims for children in Division of Youth and Rehabilitative Services (YRS) or Division of Family Services (DFS) who are not under the care of Child Mental Health (CMH) and do not have the bundled rate billed on their behalf.

**DSS PROPOSED REGULATION #03-02  
DELAWARE HEALTHY CHILDREN  
PROGRAM (DHCP)**

**Section 3. Methods of Delivery and Utilization Controls  
(Section 2102(a)(4))**

3.1 Describe the methods of delivery of the child health assistance using Title XXI funds to targeted low-income children. Include a description of the choice of financing and the methods for assuring delivery of the insurance products and delivery of health care services covered by such products to the enrollees, including any variations. **(Section 2102)(a)(4) (42 CFR 457.490(a))**

The Delaware Healthy Children Program (DHCP) is targeted to children under age 19 with income at or below 200% of the Federal Poverty Level (FPL). The service package will include all of those basic benefit services provided under the State's Medicaid Managed Care program as it was structured during 1998. Services will be provided by the same fully capitated managed care organizations (MCOs) participating with Medicaid. In addition, participants in the DHCP will receive pharmacy services comparable to the Medicaid population. They will also receive 31 days of mental health and substance abuse treatment services (any treatment modality) in a calendar year in addition to the basic MCO benefit of 30 outpatient visits for mental health. They will also receive all medically necessary mental health and substance abuse treatment services (any treatment modality) which exceed the basic MCO benefit of 30 outpatient visits for mental health. The mental health/substance abuse services will be provided through the State's Department of Services for Children, Youth, and Families. For children actively case managed by the Department's Division of Child Mental Health Services (a JCAHO-certified public mental health managed care provider), a monthly encounter rate will be billed to the DHCP. Children receiving mental health or substance abuse services by the Department's Division of Family Services or the Division of Youth Rehabilitation Services will have their care paid on a fee-for-service basis. Beyond the 31 days of additional coverage of inpatient care, children will become eligible for Medicaid long-term care services. Thus the DHCP will provide very high quality mental health and substance abuse coverage - coverage which is better by far than most private sector coverage. Services will be provided statewide with no variations based on geography.

**(Note: Break In Continuity of Sections)**

6.2 The state elects to provide the following forms of coverage to children: (Check all that apply. If an item is checked, describe the coverage with respect to the amount, duration and scope of services covered, as well as any exclusions or limitations) **(Section 2110(a)) (42 CFR 457.490)**

(Note: Break In Continuity of Sections)

6.2.10  Inpatient mental health services, other than services described in 6.2.18, but including services furnished in a state-operated mental hospital and including residential or other 24-hour therapeutically planned structural services (Section 2110(a)(10)) - inpatient mental health services may be provided as a "wrap-around" service for up to 31 days per calendar year with the limitation that the 31 days also includes any other mental health and/or substance abuse treatment services (including outpatient, residential and any other treatment modality) outside of the basic MCO benefit of 30 outpatient visits will be provided as "wrap-around" services by the DSCYF. Inpatient services will be provided with limits based on medical necessity. Children who need inpatient services beyond this will convert to Medicaid Long-Term Care.

6.2.11  Outpatient mental health services, other than services described in 6.2.19, but including services furnished in a state-operated mental hospital and including community-based services **(Section 2110(a)(11)) -30 days of outpatient care included in the basic MCO benefit. Additional days (up to 31), with limitations based on medical necessity, will be provided by the DSCYF, available through wrap-around. See note in 6.2.10.**

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
7 Delaware Code, Chapter 79 (7 Del.C. Ch. 79)**

**REGISTER NOTICE  
SAN # 2001-22**

- 1. Title Of The Regulations:**  
DNREC Chronic Violator Regulations
- 2. Brief Synopsis Of The Subject, Substance And Issues:**  
These new regulations define criteria and establish a process for determining when a facility or regulated party should be declared a chronic violator by virtue of its inability to maintain compliance with the state's environmental permits, laws or regulations.
- 3. Possible Terms Of The Agency Action:**  
There is no sunset provision associated with 7 Del. C. Chapter 79 or these regulations.

**4. Statutory Basis Or Legal Authority To Act:**

7 Del.C. Chapter 79

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

N/A

**6. Notice Of Public Comment:**

DNREC will hold a public workshop on the newly proposed Chronic Violator Regulation on Tuesday, March 11, 2003, at 6:30 p.m. The workshop will be held in DNREC's Auditorium located at 89 Kings Highway, Dover, Delaware.

DNREC will hold a public hearing on the newly proposed Chronic Violator Regulation on Wednesday, March 19, 2003, at 6:30 p.m. The public hearing will be held in DNREC's Auditorium located at 89 Kings Highway, Dover, Delaware.

**7. Prepared By:**

Jennifer M. Bothell, DNREC Enforcement Coordinator,  
739-4403 January 15, 2003

**Proposed  
Chronic Violator Regulations**

**1.0 Authority**

1.1 These regulations are promulgated pursuant to the authority granted to the Secretary by 7 Del. C. Chapter 79.

**2.0 Applicability**

2.1. The Chronic Violator regulations are administered by the Department of Natural Resources and Environmental Control pursuant to 7 Del. C. Chapter 79.

2.2. These regulations apply to the following DNREC Regulatory Programs adopted under Title 7: Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 and Title 16 Chapters 63 and 78:

2.2.1 Erosion and Sedimentation Control (7 Del. C. Chapter 40) Control of erosion of sedimentation at construction sites and other land disturbing activities.

2.2.2 Stormwater Management (7 Del. C. Chapter 60) -- Under the NPDES program for stormwater from facilities and hard surfaces.

2.2.3 Solid Waste (7 Del. C. Chapter 60) -- Landfill permitting, transportation of solid waste, and illegal dumping of solid waste.

2.2.4 Water Discharges (7 Del. C. Chapter 60) -- NPDES program, all point source discharges into waters of the State.

2.2.5 Air Emissions (7 Del. C. Chapter 60) -- All point source emissions to air, including mobile and stationary sources.

2.2.6 Marinas (7 Del. C. Chapter 60) - All boat

docking facilities, marinas, and vessel pumpout stations.

2.2.7 Scrap Tires (7 Del. C. Chapter 60) -- Storage requirements for scrap tires.

2.2.8 Beverage Containers (7 Del. C. Chapter 60) -- Bottle Bill, requires stores to take returnable containers and pay the refund.

2.2.9 Ocean Dumping (7 Del. C. Chapter 60) -- Prohibits the disposal of solid wastes in the ocean and other waters of the State.

2.2.10 Water Supply (7 Del. C. Chapter 60) - Permitting of water supply wells.

2.2.11 On-Site Wastewater (7 Del. C. Chapter 60) -- Permitting of on-site wastewater treatment systems.

2.2.12 Debris Pits (7 Del. C. Chapter 60) -- Remediation of debris disposal areas.

2.2.13 Labeling of Plastic Products (7 Del. C. Chapter 60) -- Requires that all plastic containers sold in Delaware contain the triangle enclosed code number of the type of plastic the container is made of.

2.2.14 Oil Pollution Liability (7 Del. C. Chapter 62) -- Prohibits the discharge of oil to the water or land.

2.2.15 Hazardous Waste (7 Del. C. Chapter 63) -- Regulates the generation, storage, transportation, treatment and disposal of hazardous waste.

2.2.16 Coastal Zone (7 Del. C. Chapter 70) -- Control of the location, extent, and type of industrial development in Delaware's coastal areas.

2.2.17 Underground Storage Tanks (7 Del. C. Chapter 74) -- Controls the storage of petroleum products in underground storage tanks.

2.2.18 Aboveground Storage Tanks (7 Del. C. Chapter 74A)-- Controls the storage of petroleum products and hazardous substances in aboveground storage tanks.

2.2.19 Extremely Hazardous Substances (7 Del. C. Chapter 77) -- Prevention of sudden releases of extremely hazardous substances and the generation of pressure waves and thermal exposures beyond the property boundaries of the facility where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases.

2.2.20 Pollution Prevention (7 Del. C. Chapter 78) -Establish a program to demonstrate and facilitate the potential for pollution prevention and waste minimization through technical assistance, education, and outreach.

2.2.21 Hazardous Substances Cleanup (7 Del. C. Chapter 91) -- State Superfund program.

2.2.22 Emergency Planning/Community Right-to-Know --(16 Del. C. Chapter 63) -- Requires the report of hazardous materials meeting specific threshold requirements stored at facilities for the purpose of emergency response and community right-to-know.

2.2.23 Asbestos (16 Del. C. Chapter 78) -- Regulates the practice of asbestos containment, removal, transportation, storage and disposal.

2.2.24 Wetlands (7 Del. C. Chapter 66) -- Protection of tidal wetlands.

2.2.25 Subaqueous Lands (7 Del. C. Chapter 72) -- Control of activities in state-owned subaqueous lands.

### **3.0 Definitions**

The following definitions shall have the meaning ascribed for the purposes of enforcing Chapter 79 and this Regulation only:

3.1 **"Chronic Violator"** means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State's environmental permits, laws, or regulations as administered by the Department.

3.2 **"Days"** means calendar days.

3.3 **"Facility"** means any site or structure regulated by the Department or subject to the provisions contained in the laws listed under Section B.2. of this regulation.

3.4 **"Department"** means the Department of Natural Resources and Environmental Control.

3.5 **"Person"** means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation or authority), limited liability company, association, state, municipality, commission, political subdivision of a state or any interstate body.

3.6 **"Public Meeting"** means a forum to receive oral and written comments and other supporting materials from the public and the facility or regulated party as part of the administrative record.

3.7 **"Regulated Party"** means any person regulated by the Department or subject to the provisions contained in the laws listed under Section B.2. of this regulation.

3.8 **"Secretary"** means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

### **4.0 Criteria**

In determining if a facility or regulated party is a chronic violator, the Secretary shall apply the following criteria with respect to the State's environmental permits, laws or regulations as administered by the Department:

4.1 Inability to maintain compliance; or

4.2 Engaged in a pattern of willful neglect; or

4.3 Engaged in a pattern of disregard.

A facility or regulated party need only meet one of these criteria in order to be designated a chronic violator.

### **5.0 Initiation of Review**

5.1 At the Secretary's discretion, he/she may initiate a review of any facility or regulated party at any time to determine if the facility is a chronic violator.

5.2 The Secretary shall review a facility or regulated party to determine if it is a chronic violator if one of the

following conditions apply in a timeframe not to exceed 5 years:

5.2.1 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 Del. C. § 6013(c)) at the same facility regardless of owner; or

5.2.2 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 Del. C § 6013(c)) under the same Department regulatory program, as defined in Section 2.0, against the same person at different locations.

### **6.0 Notification of Review**

6.1 The Secretary shall issue a Notice of Chronic Violator Review to the facility or regulated party within ten (10) days of the Secretary's decision to conduct a review.

6.2 Within ten (10) days after the facility or regulated party has received the written notice, the Department shall publish a public notice stating that a review has commenced, identifying the facility or regulated party being reviewed, describing the reason why the review was initiated, and requesting public and facility or regulated party comments within sixty (60) days.

6.3 Any comments received by the Department shall be made available to the facility or regulated party and the public, within three (3) working days of receipt. A hard copy version of comments will be stored in the Department's facility file.

6.4 The Department shall issue a written notice of the status of the review to the facility or regulated party and to the public every six months from the date of the Public Notice. If, during said review, new violations come to the attention of the Department the Secretary may consider the new violations and allow a further comment period by the facility, regulated party, or the public.

### **7.0 Factors to be Considered When Conducting Review**

The Secretary may consider any relevant factors when deciding whether a facility or regulated party meets one or more of the chronic violator criteria. In conducting his/her review, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. Factors that must be considered are:

7.1 The nature and extent of the harm caused or threatened.

7.2 The impact on the integrity of regulatory programs.

7.3 Duration of noncompliance.

7.4 Number of violations of a similar nature.

7.5 Total number of violations of all types.

7.6 Economic benefit attributable to violations.

7.7 Relationship/relevance of violations to activity for which permit is sought.

7.8 Whether any or all of the violations were willful or grossly negligent.

7.9 The extent of deviation from the permit, order or other requirement.

7.10 The demonstrated attitude of new owners/managers (if ownership and/or management has changed at the facility).

7.11 Actions taken or not taken to prevent, mitigate or respond to harm caused or threatened by the violation.

7.12 Whether any or all of the violations were self-reported within 15 consecutive days after the date of discovery.

All of these factors need not apply in order for a facility or regulated party to be considered a chronic violator.

### **8.0 Violations to be Considered When Conducting Review**

The Secretary may consider any violations when conducting his/her review. The types of violations that shall be considered by the Secretary shall include, but not be limited to:

8.1 Violations that cause or genuinely threaten harm to the environment or to public health or safety.

8.2 Violations resulting in criminal convictions.

8.3 Tampering with monitoring or sampling equipment or interfering with samples or analytical results.

8.4 Filing false reports or inaccurate or misleading information.

8.5 Failing to maintain or use required pollution control equipment, structures or practices.

8.6 Repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring Reports.

8.7 Repeatedly conducting a regulated activity without a required permit or authorization.

### **9.0 Secretary's Determination**

In making a determination, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. The Secretary shall consider the following when determining if a facility or regulated party meets one or more of the chronic violator criteria in Section D:

9.1 Relevant factors per Section 7.0;

9.2 Violations per Section 8.0;

9.3 Public comments received per Section 6.0; and

9.4 Comments from the facility or regulated party per Section 6.0.

### **10.0 Notification of Determination**

10.1. The Secretary shall issue a Notice of Chronic Violator Determination to the facility or regulated party once a determination has been made. The notice will describe in detail the basis for the Secretary's determination. If the facility or regulated party is determined to be a Chronic

Violator, the notice will also describe the penalties, limits, requirements or restrictions being imposed in accordance with Section K and the requirements to be met in order to petition for removal of the Chronic Violator designation.

10.2 Once the facility or regulated party has received the Notice of Chronic Violator Determination, the Department shall publish, within ten (10) days, a public notice announcing the determination and describing the basis for the Secretary's determination, and information on how to obtain the full Determination document. If the facility or regulated party is determined to be a Chronic Violator, the Public Notice will also summarize the penalties, limits, requirements or restrictions being imposed.

10.3 Persons or facilities determined by the Secretary to be chronic violators shall be provided due process under 7 Del. C. § 6008 and § 6009.

### **11.0 Penalties and Requirements**

11.1 The Secretary may impose limits, requirements or restrictions on a facility or regulated party determined to be a chronic violator by virtue of the exercise of his/her authority over such facility or regulated party through permitting provisions or enforcement actions. Such limits, requirements or restrictions may include, but not be limited to:

11.1.1 denying permit applications or modifying, suspending or revoking operating permits,

11.1.2 imposing a schedule of compliance;

11.1.3 requiring capital improvements and associated performance standards;

11.1.4 specifying the requirements for development and implementation of a system for managing environmental performance and compliance; or

11.1.5 instituting a requirement for the facility or regulated party to submit an annual environmental performance statement. Such a statement shall include, but not be limited to:

11.1.5.1 a description of the facility.

11.1.5.2 a listing of environmental permits held by the facility.

11.1.5.3 emissions and discharges from the facility.

11.1.5.4 disclosure of environmental violations of enforcement actions taken against the facility during the previous year.

11.1.5.5 a description of any pollution prevention or waste reduction activities undertaken at the facility during the previous year and the results of those activities.

11.1.5.6 plans to achieve compliance with all applicable laws, regulations or permits.

11.2 The Secretary may reject any permit application or revoke any permit upon a finding that the applicant has been determined by the Secretary to be a

chronic violator.

11.3 Notwithstanding other applicable enforcement provisions contained in relevant sections of Chapters covered by 7 Del. C. § 7901(b), the Secretary is authorized to impose an administrative penalty of up to \$10,000 per day for each violation against any person that is determined to be a chronic violator in accordance with the provisions of 7 Del. C. § 7904(a). The person's right to contest or appeal the assessment of a penalty authorized under this Section shall be in accordance with the applicable provisions of the Delaware Code under which the violation and enforcement action is being taken.

## **12.0 Chronic Violator Delisting**

12.1 Any person determined to be a Chronic Violator may petition the Secretary to have the Chronic Violator designation removed once it has met the limits, requirements, or restrictions of the Notice of Chronic Violator Determination. The petition must include the following information, as appropriate:

12.1.1 demonstration of compliance with the limits, requirements, or restrictions of the Notice of Chronic Violator Determination through an audit conducted by an independent third party if required by the Secretary;

12.1.2 description of actions taken to prevent violations of the kind that led to the notice; and

12.1.3 description of other violations that have occurred since the notice and how they were addressed.

12.2 Upon receipt of the petition, the Department shall issue a public notice announcing the petition and requesting public comments within 90 days.

12.3 Within 30 days of receipt of the petition, the Department will notify the facility or regulated party of the administrative completeness of the petition or its deficiencies.

12.4 Upon a meritorious request for a public meeting, as defined in Section 3.6 of this Regulation, received within a reasonable time as stated in the Public Notice, the Secretary shall conduct a public meeting to review and receive additional comments on the petition.

12.5 The Department shall have 90 days from the date the petition is determined to be administratively complete to conduct applicable inspections of the facility and/or the regulated party's record to confirm the petition's statements.

12.6 The Secretary will then have an additional sixty (60) days to review the petition, the inspection reports, audit reports if required, and public comments and issue a decision to the facility or regulated party that the Chronic Violator Status has been withdrawn or will be continued.

12.7 When the petition is granted or denied, the Secretary will issue a letter to the facility or regulated party, and the Department will issue a public notice indicating the Chronic Violator's status.

## DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,  
Section 6010, (7 Del.C. §6010)

**SAN# 2002-23**

- 1. Title Of The Regulations:**  
Amendments To Shellfish Regulations
- 2. Brief Synopsis Of The Subject, Substance And Issues:**  
Oyster harvesting regulations need to be updated to cover the harvest season; the harvestable amount of oysters and areas where oysters may be landed in 2003. It is also proposed that it be unlawful for any oyster container that is empty or partially filled to have an oyster tag attached.
- 3. Possible Terms Of The Agency Action:**  
None
- 4. Statutory Basis Or Legal Authority To Act:**  
7 Del.C. §1902, 7 Del.C. §2106
- 5. Other Regulations That May Be Affected By the Proposal:**  
None
- 6. Notice Of Public Comment:**  
Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 5 2003 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2003
- 7. Prepared By:**  
Richard Cole (302) 739-4782, January 10, 2003

### Proposed Amendments To Shellfish Regulation Pertaining To Oysters

#### **S-63 Oyster Harvesting Seasons**

It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during the seasons beginning at sunrise on May 10, ~~2002~~ and ending at sunset on June 29, ~~2002~~ and beginning at sunrise on September 2, ~~2002~~ and ending at sunset on December 31, ~~2002~~. (*Subject to change after public hearing*).



**S-65 Oyster Landing Areas**

(a) It shall be unlawful for any person to land oysters taken for direct sale from the state's natural oyster beds at any site other than in the town of Leipsic, Flemings Landing, Port Mahon, Bowers Beach, Lewes or the Cedar Creek areas.

(b) 'To Land' shall mean to bring to shore.

**S-67 Oyster Harvesting Gear**

(a) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any gear other than an oyster dredge that measures no more than 52 inches in length along the tooth bar.

(b) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with an oyster dredge with teeth measuring more than four (4) inches in length.

(c) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with more than two oyster dredges overboard at the same time.

(d) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any dredge that is attached to another dredge.

**S-69 Oyster Minimum Size Limit**

(a) It shall be unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 inches between the two most distant points on the edges of said oyster's shell.

**S-71 Oyster Harvesting Control Dates**

(a) A person is authorized to participate in the seasonal harvest of oysters for direct sale from the State's natural oyster beds provided said person complies with the following criteria:

1. He/she has a valid oyster harvesting license and meets the eligibility requirements in §2103, 7 Del. C.

2. He/she has indicated in writing to the Department no later than 4:30 PM on a date at least 30 days prior to the opening date of the oyster harvesting season that he/she will participate.

3. He/she pays the harvest fee of \$1.25 per bushel for his/her individual allotment of oysters no later than 4:40 PM on a date at least 10 days prior to the opening date of the oyster harvesting season.

(b) In the event a person who indicates in writing to the Department that he/she will participate in the next seasonal harvest of oysters from the State's natural oyster beds and then fails to pay his or her oyster harvest fee on time said person's share of oysters shall be pooled and made available for subsequent allocations to individuals who have paid their

oyster harvest fees on time. The quantity of the subsequent allocation of oysters shall be determined by dividing the pooled allotments by the number of paid participants. Interested participants may obtain no more than one subsequent allocation by paying the oyster harvest fee of \$1.25 per bushel prior to harvesting same.

**S-73 Oyster Harvesting Licensee Requirements**

(a) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel.

(b) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters.

(c) It shall be unlawful for any person to possess a bushel bag or oyster cage that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag or oyster cage

**S-75 Oyster Harvest Quota**

The oyster harvest quota for the ~~2002~~ 2003 season is ~~24,445~~ 11,640 bushels.

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**DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 6010, (7 Del.C. §6010)

**SSN# 2002-24**

**1. Title Of The Regulations:**

Tidal Finfish Regulations

**2. Brief Synopsis of the Subject, Substance and Issues:**

The coast wide requirements for recreational black sea bass fishermen, as mandated by the Atlantic States Marine Fisheries Commission's Fishery Management Plan (FMP), in 2003 are a 12.0 inch minimum size length with a 25 fish creel limit and a closed season from September 2, 2003 through September 15, 2003 and December 1, 2003 through December 31, 2003. Delaware currently has an eleven and one half (11.5) inch minimum size limit, a 25 fish creel limit and no closed season. It is proposed to amend Tidal Finfish Regulation No. 23 to increase the minimum size limit for black sea bass from 11.5 inches to 12.0 inches for recreational fishermen and establish a closed season for September 2, 2003 through September 15, 2003 and December 1, 2003 through December 31, 2003.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2003. Delaware is obligated to cap the summer flounder recreational harvest at 129,000 fish for 2003. This is only 22,271 more fish than were landed in 2002. Given that over one million marine recreational fishing trips occur annually in Delaware and that the 2000 year class of summer flounder was reported to be above average thus suggesting that more fish may be available for harvest in 2003; it is unadvisable to significantly alter the management measures that were in place for 2002. It is proposed that the seven management options that were presented for the 2002 fishing season, which included size ranges from 16 inches to 17.5 inches and creel limits ranging from 4 fish to 7 fish, and a variety of seasonal closures be presented again for public review and comment. The adopted management approach for 2002 included a 17.5 inch minimum size, 4 fish creel limit and closed season from January 1 through May 15. This particular option will be slightly adjusted by eliminating the closed season for the 2003 fishery. It is anticipated that the minimum size and bag limit will restrain the catch without the need for any additional reduction associated with the closures.

### 3. Possible Terms Of The Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

### 4. Statutory Basis Or Legal Authority To Act:

7 Del. C. § 903, 7(e)(2)(a)

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

None

### 6. Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on February 24, 2003 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 3, 2003.

### 7. Prepared By:

Richard Cole, (302) 739-4782, January 13, 2003

### No. 4, Summer Flounder Size Limits; Possession Limits; Seasons.

a) ~~It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land summer flounder beginning at 12:01 AM January 1, 2002 and ending midnight May 15, 2002.~~ *(Note: closed season to be determined in combination with creel and minimum size limit.)*

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. *(Note: creel limit to be determined in combination with seasonal closure and size limit.)*

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~seventeen and one half (17.5)~~ *(Note: minimum size limit to be determined in combination with seasonal closure and creel limit.)* inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one half (17.5)~~ *(Note: minimum size limit to be determined in combination with seasonal closure and creel limit.)* inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder.

2) A receipt from a licenses or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

4) A valid commercial food fishing license and a foodfishing equipment permit for gill nets.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter any summer flounder



or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ *(Note: creel limit to be determined in combination with seasonal closure and size limit.)* summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

**Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware in 2003.**

Option	Opening Day	Final Day	Number of Open Days	Bag Limit	Minimum Size
1	01-Jan	32-Jul	212	7	16"
2	01-Jan	06-Aug	218	5	16.5"
3	01-Jan	23-Aug	235	5	17"
4	25-May	02-Aug	70	7	16"
5	25-May	09-Aug	77	5	16.5"
6	25-May	27-Aug	95	5	17"
7	01-Jan	31-Dec	365	4	17.5"

#### **No. 23 Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas**

a) It shall be unlawful for any person to have in possession any black sea bass *Centropritis striata* that measures less than eleven (11) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~eleven and one half (11.5)~~ *twelve (12)* inches total length.

~~c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.~~

~~"One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to~~

~~any port in Delaware." It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.~~

~~d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled." The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled. It shall be unlawful for any recreational fisherman to take and reduce to possession or to land black sea bass during the periods beginning at 12:01 AM on September 2, 2003 and ending at midnight on September 15, 2003 and beginning at 12:01 AM on December 1, 2003 and ending at midnight on December 31, 2003.~~

e) Is omitted intentionally.

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## **EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code,  
Sections 5005(11) & 7903(10); 30 Del.C. 2004

**Department of Health and Social Services  
Delaware Economic Development Office  
Tax Appeal Board**

**Notice of Amendments to and Re-proposal of the  
Regulation Governing Neighborhood Assistance  
Act Tax Credit Program**

#### **Title Of Regulation**

Neighborhood Assistance Act Tax Credit Program  
Regulation

#### **Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Re-proposed Regulation And Of Public Comments On The Initial Proposal**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Secretary of DHSS, the Director of DEDO and the members of the TAB proposed to adopt a regulation pertaining to the tax credit set forth in the Neighborhood Assistance Act, 30 *Del. C.* §§2001 — 2007. The regulation sets forth certain definitions pertaining to the Act and the regulation and explains how to apply for approval of a Contribution or a Program and the procedures pertaining to the application process.

Notice of the public hearing to consider the proposed

regulation appeared in the Delaware Register of Regulations on November 1, 2002, *see* 6 Del. Reg. 630 — 633 (November 1, 2002) and in Delaware newspapers of general circulation on November 17, 2002 and in the Delaware Register of Regulations on December 1, 2002, *see* 6 Del. Reg. 820 — 821 in accordance with 29 *Del. C.* §10115(b). An employee of DEDO designated by the Director of DEDO, the Secretary of DHSS and the members of the TAB in accordance with 29 *Del. C.* §10117(1) held the public hearing on the Regulation on December 9, 2002 at the offices of DEDO on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801, as duly noticed.

At the public hearing on December 9, 2002, representatives of the following individuals or organizations made written and oral, or oral comments only: Senator Margaret Rose Henry, Neighborhood Assistance Act Advisory Counsel, Metropolitan Wilmington Urban League, Neighborhood House, Inc., Delaware Association of Community-Based Development Organizations, WCCNPAC and Delaware Rural Housing Consortium. All representatives of these organizations expressed support for the goals of the Act and its implementation. Most of the representatives also presented technical comments on the Regulation, which fell into three areas of primary concern: the definition of “Contribution,” the definition of “Impoverished Area” and the definition of “Resident-Controlled.” Two representatives also commented on other matters: whether Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations must be organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 and whether Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations must have been in existence for a minimum time or have engaged in a minimum number of projects.

The comments pertaining to the definition of “Contribution” focused on whether it would be possible for Applicants to make Contributions not only in cash, but in-kind. Comments focused on the first and last sentences of the definition, which are contradictory. The intention of DHSS, DEDO and TAB was to permit Contributions of the Fair Market Value of goods and services, and the last sentence of the definition was inadvertently not deleted in the final draft of the Regulation as proposed. That sentence is removed in the re-proposed version set forth below. Thus, goods and services may be used as a Contribution to a Neighborhood Organization, a Community Development Corporation or a Community-Based Development Organization as well as in a Program under which an Applicant provides assistance directly to persons in an Impoverished Area.

The comments pertaining to the definition of “Impoverished Area” focused on the necessity for a separate regulation-making proceeding by DHSS and the TAB to delineate Impoverished Areas for purposes of the Act. The organizations making comments asserted that such a proceeding would unduly prolong the implementation of the Act. The organizations suggested that various existing definitions used by DHSS, DEDO and the Department of Finance for other purposes could be adapted to define Impoverished Areas. Among the existing measures suggested were those used in the Delaware Strong Communities Program and the definition of “targeted area” used in 30 *Del. C.* §2020(1). One commenter suggested that in rural portions of the State, pockets of poverty exist in census tracts and even block group analyses that are not classified as “low income” or “economically distressed.”

Representatives of one organization suggested that the definition of “Resident-Controlled” be changed so that only one-third, rather than 51%, of the members of the governing body of Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations should be required to reside or work in the Impoverished Area served by the organization.

One representative suggested that eligible Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations should not be limited solely to those described by Section 501(c)(3) of the Internal Revenue Code of 1986. The representative suggested that such organizations that were exempt from income taxation under any provision of the Internal Revenue Code of 1986 that otherwise met the definitions in the Act should qualify.

Finally, one representative was concerned that one of the Program Priorities in section 3.0(ii) of the Regulation pertaining to the capacity of an Applicant to carry out a Program or of a Neighborhood Organization, Community Development Corporation or Community-Based Development Organization not be interpreted as meaning that an Applicant, Neighborhood Organization, Community Development Corporation or Community-Based Development Organization must have been in existence for some minimum period of time or that it have engaged in a minimum number of projects.

In light of the public comments summarized above, the Secretary of DHSS, the Director of DEDO and the members of the TAB have made certain changes in the originally proposed regulation that are reflected in the text of the re-proposed regulation set forth below. The changes clarify that in-kind contributions of goods and services were intended to be included in the definition of “Contribution.” Further, the Secretary of DHSS, the Director of DEDO and the members of the TAB have accepted the comments of the public regarding the definition of “Impoverished Area” and have included a substantive definition of the term to use pre-

existing geographic designations made for other purposes that are based on census tracts. Additionally, the revised definition will contain a mechanism to address the “pockets of poverty” problem that was pointed out by one commenter. These changes obviate the need for a separate regulatory proceeding to define Impoverished Areas. The definition of “Resident-Controlled” has not been amended in light of the comments. The Secretary of DHSS, the Director of DEDO and the members of the TAB believe that the 51% control standard in the regulation assures that the residents of Impoverished Areas will control Community Development Corporations and Community-Based Development Organizations operating in an Impoverished Area. The Secretary of DHSS, the Director of DEDO and the members of the TAB have concluded that the comments regarding whether Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations must or must not be described in section 501(c)(3) of the Internal Revenue Code of 1986 does not need to be addressed in the Regulation, because the Act adequately addresses this question. Accordingly, no change has been made to the Regulation in this respect. The Secretary of DHSS, the Director of DEDO and the members of the TAB have concluded that no change in the regulation is necessary to address the concern expressed regarding whether an organization must have been in existence for a specific time period or whether it must have engaged in a specific number of projects. Rather, the Secretary of DHSS, the Director of DEDO and the members of the TAB conclude that the capacity of Applicants to carry out Programs, and of Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations to carry on specific activities must be judged with flexibility, according to the specific facts of a given proposal. Accordingly, no change has been made to the Regulation in this respect.

**Statutory Basis And Legal Authority To Act**

29 *Del. C.* §§ 5005(11) & 7903(10); 30 *Del. C.* § 2004.

**Other Regulations Affected**

None.

**How To Comment On The Re-proposed Regulation**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Mr. Alex Bradley, Delaware Economic Development Office, Carvel State Office Building, 10<sup>th</sup> Floor, 820 N. Market Street, Wilmington, DE, 19801, phone (302) 577-8477. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Alex Bradley at the address of the Delaware Economic

Development Office set forth above. Written comments must be received on or before Monday, March 3, 2003.

**Proposed Neighborhood Assistance Act Tax Credit Program Regulation****1.0 Introduction**

This regulation is promulgated under the authority granted by 30 *Del. C.* §2004 to the Secretary of DHSS, the Director of DEDO, and the TAB to make regulations for the approval or disapproval of Applications from Business Firms for the NAA Credit. The Act, administered by DHSS, DEDO & TAB, is the Neighborhood Assistance Act, 30 *Del. C.* §§ 2001 – 2007. The Act is designed to encourage both Contributions by Business Firms to Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations performing Community Service and offering Neighborhood Assistance and the direct operation by Business Firms of Programs for the provision of Job Training, Education, Community Services, Crime Prevention Housing and Economic Development to benefit individuals living in Impoverished Areas.

This regulation sets forth the definition of certain terms used in the Act and describes (i) the eligibility requirements for Business Firms desiring to participate in the program, (ii) the processes used by the Council to provide guidance and recommendations to the Director of DEDO and the TAB on business firms that should receive a tax credit, (iii) how to apply for the tax credit, (iv) how the Council will assist DEDO, DHSS and the TAB.

**2.0 Definitions.**

For purposes of this regulation, initially capitalized terms not otherwise defined in this section 2.0 shall have the meanings set forth in the Act.

For purposes of this regulation, initially capitalized terms not defined by the Act shall have the following definitions:

“Act” means the Neighborhood Assistance Act, 30 *Del. C.* §§2001 – 2007, as amended from time to time.

“Administrator” means the DHSS, DEDO and the TAB, with the guidance of the Council. For purposes of the approval process over Applications, DEDO shall have primary responsibility for administration of the Act.

“Applicant” means a Business Firm that makes an application for approval of an Investment or a Program in accordance with this regulation.

“Application” means an application made by an Applicant on the form prescribed by the Administrator setting forth pertinent information pertaining to (i) the Applicant, (ii) the Investment proposed, including, as appropriate, the qualification of the recipient of a Contribution as a Neighborhood Organization, a Community

Development Corporation or Community-Based Development Organization, (iii) the purposes for which such Neighborhood Organization, a Community Development Corporation or Community-Based Development Organization will expend or use a Contribution, (iv) a description of a Program, (v) the amount of cash or in-kind support that will be used in the Program and detailed information concerning the underlying factual basis and valuation methodology that the Applicant used to value goods and services proposed to be furnished in connection with a Program, (vi) the Impoverished Area or Low Income People involved, and (vii) such other information or types of information as the Administrator deems necessary. The Administrator may require submission of additional materials to substantiate information elicited by an Application.

**“Contribution”** means a contribution of money or of goods and services, valued at their Fair Market Value, to (i) a Neighborhood Organization for use by such organization in providing Community Services or in offering Neighborhood Assistance, or (ii) a Community Development Corporation or Community-Based Development Organization for use by such organization in the planning and implementation of Economic Development projects.

**“Council”** means the Neighborhood Assistance Act Advisory Council established by 30 *Del. C.* §2004.

**“DEDO”** means the Delaware Economic Development Office.

**“DHSS”** means the Department of Health and Social Services.

**“Emergency Assistance”** means the provision of payments or services for families in order to eliminate or alleviate an emergency condition. An "emergency condition" is defined the loss of the family shelter or the loss of energy supply to the family shelter.

**“Fair Market Value”** means, with respect to an item of goods or services, the price in a market in which the item of such goods or services is most commonly sold to the public at which such item would change hands between an unrelated willing buyer and an unrelated willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.

**“Impoverished Area”** means any clearly-defined, economically distressed urban or rural area in the State of Delaware that has been certified as such by DHSS and approved by the TAB. DHSS shall make its certification of an Impoverished Area based on federal census studies and current indices of social and economic conditions. The following areas are hereby certified by DHSS and approved by the TAB as Impoverished Areas: (i) census tracts described in 30 *Del. C.* §2020(1)e., as amended, or in any successor statutes thereto, and (ii) areas designated as ranking “4” or “5” in the document prepared by DHSS in July, 1997 entitled “Community Prioritization in Delaware”

and in any updated version of such document based on data gathered by the federal government in the 2000 census and on current indices of social and economic conditions. Additionally, DHSS may certify and TAB may approve as an Impoverished Area any area whose boundaries can be described geographically and that meets one or more of the following criteria: (A) the geographic area has a higher than average percentage of households receiving public assistance; (B) the rate of unemployment in the geographic area is higher than average in the State; (C) the geographic area has a higher than average concentration of residents who are Low Income People; (D) the geographic area has a demonstrated need for assistance in economic development, has significant numbers of vacant or substandard properties or infrastructure problems that may create substandard living conditions or cause the area to be economically distressed; and, (E) the population in the geographic area has special needs to be served by the activities of a Neighborhood Organization, Community Development Corporation or Community-Based Development Organization. DHSS may make the foregoing certification and TAB may approve such certification based on a letter application to DHSS with supporting documentation required by DHSS that is made by an Applicant, or by a Neighborhood Organization, Community Development Corporation or Community-Based Development Organization. If the “Community Prioritization in Delaware” document is updated based on data gathered by the federal government in the 2000 census and on current indices of social and economic conditions, areas designated as ranking “4” or “5” in either version of the document shall constitute Impoverished Areas during the fiscal year of the State in which such update is made. Thereafter, only areas designated as ranking “4” or “5” in such updated version of “Community Prioritization in Delaware” shall constitute Impoverished Areas; provided however, that Applicants whose Applications have been approved in accordance with Section 5.0 of this regulation shall not, as a result of such update, be deprived of any NAA Credit, including any carryforward thereof, based on such Application.

**“Investment”** means (i) the amount of a Contribution or (ii) the amount of money and the Fair Market Value of goods and services proposed to be made or expended within the taxable year of the Applicant on a Program.

**“Locally Based”** means, with respect to a Community Development Corporation or a Community-Based Development Organization, that such Community Development Corporation or Community-Based Development Organization is organized by residents of and located in one or more of the Impoverished Areas in which they serve.

**“Low Income People”** or **“Low Income Person”** means individuals or an individual with an annual income that is fifty percent (50%) or below the established median

income for the State or for any political subdivision thereof for which median income data is available from the United States census.

**“NAA Credit”** means the credit described in 30 *Del. C.* §2005, subject to the limitations of 30 *Del. C.* §2006 and regulations governing the NAA Credit promulgated by the Delaware Division of Revenue.

**“Program”** means the direct provision by an Applicant in an Impoverished Area of (i) Neighborhood Assistance, (ii) Job Training for individuals not employed by the Applicant, (iii) Education for individuals not employed by the Applicant, (iv) Community Services, (v) Crime Prevention, (vi) Housing, or (vii) Economic Development.

**“Proposal”** means the description of the relationship between the Business Firm making an Application and the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization to which the Business Firm will make a Contribution and a description of how the Neighborhood Organization will provide Community Services or Neighborhood Assistance or of how the Community Development Corporation or Community-Based Development Organization will engage in Economic Development.

**“Resident-Controlled”** means, for purposes of the definition in the Act of the terms “Community Development Corporation” and “Community-Based Development Organization,” an organization that otherwise meets the definition of a “Community Development Corporation” or “Community Based Development Organization” under the Act, the by-laws or other organizational documents of which require that at least fifty-one percent (51%) of the members of the board of directors, or other governing body of such organization, reside or work in the Impoverished Area served by the organization.

**“TAB”** Means the Tax Appeal Board.

### **3.0 Program Priorities**

Applications received for consideration of an Investment must meet all eligibility requirements under the Act and this regulation, including, but not limited to the purpose of the Program or Proposal with respect the Investment is to be made, the eligibility requirements for the Business Firm making an Application and for the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization that will receive a Contribution.

Applications will be reviewed and ranked on the following factors: (i) financial feasibility of the Program or Proposal, (ii) capacity of the Applicant to carry out a Program or of the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization that will receive a Contribution to implement the activities described in the Proposal; (iii)

specific description of goals to be achieved and the relationship of such goals to the priorities established by the Act; (iv) proposed methods by which the success of the Program or Proposal can be measured; (v) specific description of the impact of the Program or Proposal on an Impoverished Area; and, (vi) other information requested in the Application form prescribed by the Administrator and any supplementary information requested by the Administrator.

### **4.0 Making Application for NAA Credits**

Applications may be submitted at any time directly to: Administrator of the Neighborhood Assistance Act, Delaware Economic Development Office, 99 Kings Highway, Dover Delaware 19901. The Administrator will review the Application for completeness. If the Application is incomplete, the Administrator will return it to the Applicant and shall specify in what regard it is incomplete. The Administrator may also request additional information or other documentation in support of an Application.

### **5.0 Procedures for Recommendation of Approval or Disapproval of Application**

**5.1 Initial Processing and Distribution of Complete Applications.** When the Administrator finds that an Application is complete, it shall submit copies of the Application to DEDO, the members of the TAB and the members of the Council.

#### **5.2 Council Review of Application.**

**5.2.1** The Council shall review Applications transmitted to it by the Administrator in accordance with Section 5.1 hereof at its public meetings held in compliance with 29 *Del. C.* §10004. In addition to posting its agenda publicly, as required by 29 *Del. C.* §10004(e), the Council shall mail a written notice of such meetings to all Applicants whose Applications will be reviewed by the Council at such meetings at least seven days in advance of such meetings.

**5.2.2** At its meeting, the Council shall review the completed Applications based on eligibility criteria set forth in the Act and this regulation.

**5.2.3** The Council shall prepare a written recommendation to the Director of DEDO and the members of the TAB on all Applications reviewed at its meetings. The Council’s recommendation shall include a recommendation for the approval or disapproval of an Application and a recommended amount of the Investment to be approved. The Council shall send its written recommendation to the Director of DEDO, the members of the TAB and the Applicant.

#### **5.3 Hearing on Application**

**5.3.1** In General. Hearings on all Applications shall be conducted jointly by (i) the Director of DEDO, or an employee of DEDO designated by the Director of DEDO, and (ii) the members of the TAB to consider Applications

based on the criteria for eligibility set forth in the Act and in this regulation and on the recommendation of the Council. If the Director of DEDO and the members of the TAB so agree, the hearing may be conducted by an employee of DEDO designated as a hearing officer by both the Director of DEDO and the members of the TAB.

5.3.2 Scheduling of Hearings. The Director of DEDO and the members of the TAB, or the hearing officer designated by them in accordance with section 5.3.1, shall schedule a hearing on an Application after receiving the written recommendation of the Council described in subsection 5.2.3 hereof and shall notify the Applicant of the hearing in compliance with the provisions of 29 Del. C. §10122. The recommendation of the Council shall become part of the record in the hearing, and the Applicant will be asked to stipulate to the inclusion of such recommendation in the record of the hearing; provided, however, that the Applicant shall have the opportunity to introduce evidence and testimony at the hearing to supplement or contradict the recommendation.

5.3.3 Conduct of Hearing; Burden of Proof. The hearing shall be conducted on the record in accordance with the procedures for agency case decisions set forth in 29 Del. C. §§ 10121 – 10129. The burden of proof shall always be on the Applicant.

5.3.4 Final Order; Proposed Order. The Director of DEDO and the members of the TAB shall decide whether to approve or disapprove an Application, with or without modification of the Investment or Program, and on the amount of the approved Investment or Program based on the entire record of the case and shall issue a final order in accordance with 29 Del. C. § 10128. If a designated hearing officer conducts the hearing, such hearing officer shall comply with the requirements of 29 Del. C. § 10126 in preparing a proposed order for the consideration of the Director of DEDO and the members of the TAB, a copy of which shall be such section.

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## **STATE EMPLOYEE BENEFITS COMMITTEE**

Statutory Authority: 29 Delaware Code,  
Sections 5210(4), 9602(b)(4)  
(29 Del. C. §§5210(4), 9602(b)(4))

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 29 Del. C. Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendment inserts a new sentence in Rule 7.01 that clarifies that coverage is retained

under certain circumstances for public school or higher education employees through the end of the summer.

The public hearing originally scheduled and noticed for December 5, 2002 was canceled due to inclement weather. The public hearing on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules will be held on Friday, February 28, 2003 at 1:00 p.m., in Room 205, Second Floor Conference Room, of the Public Safety Building, 303 Transportation Circle, Dover, Delaware, 19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Brenda L. Lakeman at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be March 3, 2003. Anyone wishing to obtain a copy of the proposed Group Health Care Insurance Eligibility and Coverage Rules or to make comments at the public hearing should notify Brenda L. Lakeman at the above address by calling (302) 739-8331.

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

**State Of Delaware  
State Employee Benefits Committee  
Group Health Care Insurance  
Proposed Revisions To Eligibility And Coverage Rules**

7.01 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required contributions have been made. In the event an Employee fails to make the required contributions for any optional coverage selected, coverage will revert to "Basic" coverage on the first day of the month for which the Employee failed to make the required contribution. If an employee works one day in the month in which they terminate, they shall earn state share for the entire month.

**PLEASE NOTE: AS THE REMAINDER OF THE REGULATION IS NOT BEING MODIFIED IT IS NOT BEING PUBLISHED.**

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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**DELAWARE COUNCIL ON  
POLICE TRAINING**

Statutory Authority: 11 Delaware Code,  
Section 8404(a)(5) (11 Del.C. §8404(a)(5))

**ORDER****I. Summary of the Evidence and Information Submitted**

The Chairman of the Council on Police Training approves the proposed regulation as published in the Delaware Registry of Regulations on December 1, 2002. Notices of the proposed regulation were published in The News Journal and the Delaware State News on November 29, 2002 in the form attached hereto as Exhibits A and B. The notices invited written comments (only one was received). The notices also invited the public to attend a hearing on December 19, 2002 to comment on the proposed regulation. No members of the public attended the hearing.

**II. Findings of Facts.**

The Chairman finds that it is necessary to adopt the regulation to promote public safety.

**III. Decision To Adopt the Regulation.**

For the foregoing reasons, the Chairman concludes that it is necessary to adopt the regulation. Therefore, pursuant to

11 Delaware Code § 8404(a)(14), the regulation attached hereto as Exhibit C is hereby adopted.

**IV. Text and Citation.**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit C, and said regulation shall be cited in the *Regulations of the Council on Police Training*.

**V. Effective Date of Order.**

The action referred to above was taken on January 15, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED**, this 15<sup>th</sup> day of January, 2003.

Richard Carmean/Chairman, Council on Police Training

~~As authorized by 8404(a)(5): In order to retain certification, all police officers in the State of Delaware must receive recertification in Emergency Care every three years, and recertification in C.P.R. annually from a certified Council on Police Training or Delaware State Fire School instructor. The Chief of Police shall forward to the Administrator, documentation of recertification for each officer under his/her command within 90 days of the anniversary of initial Emergency Care & C.P.R.~~



**Certification.**

All police officers in the State of Delaware shall have successfully completed a First Responder course adhering to the United States Department of Transportation curriculum for First Responder courses as offered by the Delaware State Fire School or as taught in a certified police training academy by a credentialed medical services instructor.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE  
24 DE Admin. Code 3300  
Statutory Authority: 24 Delaware Code  
Section 3306(a)(1) (24 Del.C. §3306(a)(1))**

**ORDER****Summary of the Evidence and Information Submitted****Written Comments**

There were no written comments received addressing the proposed rules and regulations.

**Sworn Testimony**

No member of the public appeared to offer testimony addressing the proposed rules and regulations.

**Findings of Fact**

1. Pursuant to 24 *Del. C.* § 3306 (a) (1), the Board of Veterinary Medicine of the State of Delaware (the "Board") proposed to revise Rule 2.1 in its Rules and Regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on December 17, 2002, at 1:00 p.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on December 17, 2002, at which a quorum of the Board of Veterinary Medicine was

present.

5. The Board has decided that the revision to Rule 2.1 is necessary to prohibit advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised.

6. The Board of Veterinary Medicine finds the proposed revision serves to implement or clarify 24 *Del. C.* Chapter 33.

**Text and Citation**

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 6, Issue 5 (November 1, 2002). The text is attached hereto as Exhibit "E" with the changes noted.

**Decision**

**NOW, THEREFORE**, based on the Board of Veterinary Medicine's authority to formulate rules and regulations pursuant to 24 *Del. C.* § 3306 (a) (1), it is the decision of the Board of Veterinary Medicine to adopt the proposed revision to Rule 2.1 of its Rules and Regulations. The Board has decided that the revision to Rule 2.1 is necessary to prohibit advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. A copy of the rules and regulations is attached hereto as Exhibit "F" with the changes incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

**IT IS SO ORDERED** this 14th day of January, 2003.

**Delaware State Board Of Veterinary Medicine**

Sharon Little, D.V.M., President  
Madelyn Nellius, Vice-President, Public Member  
John T. Gooss, V.M.D., Professional Member  
Marie-Anne Woolley, D.V.M., Professional Member  
William Cross, Public Member

- 1.0 Direct Supervision
- 2.0 Unprofessional Conduct
- 3.0 Privileged Communications
- 4.0 Veterinary Premises and Equipment
- 5.0 Qualification for Licensure by Examination as a Veterinarian
- 6.0 Character of Examination - North American



- Veterinary Licensing Examination (NAVLE)
- 7.0 Reciprocity
- 8.0 Licensure - Renewal
- 9.0 Continuing Education
- 10.0 Voluntary Treatment Option

**1.0 DIRECT SUPERVISION (24 Del.C. § 3303(10))**

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 Del.C. § 3302 (6) must be performed under direct supervision. Direct supervision of support personnel also includes:

1.1.1 The initial examination of the animal by the veterinarian prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support personnel to administer emergency measures prior to the initial examination.

1.1.2 The development of a treatment plan by the veterinarian that shall be referenced by support personnel.

1.1.3 The authorization by the veterinarian of the work to be performed by support personnel.

1.2 At no time may support personnel perform the following activities (24 Del. C. § 3303(10)):

- 1.2.1 Diagnosing.
- 1.2.2 Prescribing.
- 1.2.3 Inducing Anesthesia.
- 1.2.4 Performing Surgery.
- 1.2.5 Administration of Rabies Vaccinations.
- 1.2.6 Operative dentistry and oral surgery.
- 1.2.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters).

1.2.9 Splinting or casting of broken bones in other than emergency situations.

- 1.2.10 Euthanasia.
- 1.2.11 Issue health certificates.
- 1.2.12 Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are

regulated by federal and state guidelines.

**See 6 DE Reg. 273 (9/1/02)**

**2.0 UNPROFESSIONAL CONDUCT (24 Del.C. § 3313(a)(1))**

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following;

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks without the required direct supervision as specified in Section 1.1 of the Rules & Regulations.

2.1.3 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.4 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.5 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.6 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

2.1.7 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological/ results.

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del.C. § 1325.

2.1.9 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del. C. § 1325.

2.1.9.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.9.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.9.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

2.1.10 Leaving an animal during the maintenance stage of anesthesia.

2.1.11 Improper labeling of prescription drugs. The package or label must contain:

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

2.1.12 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.13 Misrepresenting continuing education hours to the Board.

2.1.14 Failure to obey a disciplinary order of the Board.

2.1.15 Prescribing medication without examining the animal(s) within a period of one year.

2.1.16 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call." The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.

**See 5 DE Reg. 1897 (4/1/02)**

**See 5 DE Reg. 1962 (5/1/02)**

**See 6 DE Reg. 273 (9/1/02)**

### 3.0 PRIVILEGED COMMUNICATIONS (24 Del.C. § 3313(a)(7))

3.1 Privileged Communications. Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal. The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

**See 6 DE Reg. 273 (9/1/02)**

### 4.0 VETERINARY PREMISES & EQUIPMENT (24 Del.C. § 3313 (9))

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

**See 6 DE Reg. 273 (9/1/02)**

**5.0 QUALIFICATION FOR LICENSURE BY EXAMINATION AS A VETERINARIAN** (24 Del.C. § 3307)

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the applicant meets the statutory exemptions in 24 Del. C. § 3309.

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

**See 6 DE Reg. 273 (9/1/02)**

**6.0 CHARACTER OF EXAMINATION - NORTH AMERICAN VETERINARY LICENSING EXAMINATION (NAVLE)** (24 Del.C. § 3306)

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) after November 2000 or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

**See 6 DE Reg. 273 (9/1/02)**

**7.0 RECIPROCITY** (24 Del. C. § 3309)

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in 24

Del. C. § 3309.

**See 6 DE Reg. 273 (9/1/02)**

**8.0 LICENSURE - RENEWAL** (24 Del.C. § 3311)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0.

**See 6 DE Reg. 273 (9/1/02)**

**9.0 CONTINUING EDUCATION** (24 Del.C. § 3311(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

**9.2 Continuing Education Requirements for Reinstatement of Lapsed License**

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 Lapse of 12 to 24 months. Twenty-four (24) hours of continuing education credits must be

completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 Lapse of over 24 months. Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 Compendium on Continuing Education for the Practicing Veterinarian; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

**See 6 DE Reg. 273 (9/1/02)**

## 10.0 VOLUNTARY TREATMENT OPTION

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately

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

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

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

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

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

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

10.6.1 Entry of the regulated professional into a

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

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

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

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

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

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

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

issue.

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

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

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

**See 5 DE Reg. 1962 (5/1/02)**

**See 6 DE Reg. 273 (9/1/02)**

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## **DEPARTMENT OF EDUCATION**

14 DE Admin. Code 525

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

### **Regulatory Implementing Order**

#### **525 Requirements for Vocational-Technical Education Programs**

#### **530 Cooperative Education**

#### **535 Diversified Occupations Programs**

### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend regulations 525 Requirements for Vocational-Technical Education Programs, 530 Cooperative Education and 535 Diversified Occupations Programs by adding regulations 530 and 535 to regulation 525 making one regulation instead of three. Other amendments include substituting the word "Career" for the word "Vocational" (including the word "Vocational" in the title of regulation 525) when applied to teachers and programs and correcting the names of three student organizations. Language was also removed from Sections 2.1 and 2.11 that could have restricted the approval of certain Career and Technical Programs in the regular high schools in the state (required as per Section 264 of the 2003 Budget

Epilogue). Additional amendments were made for clarity in 3.3. and 4.3 concerning the inclusion of training objectives in each student's training agreement and the ages and signatures required for the State Work Permit for Minors. Comments on the regulation were received from the Governor's Advisory Committee for Exceptional Citizens and the State Council for Persons with Disabilities concerning the impact of grade level requirements on the participation of Idea, Section 504 and ADA eligible students. In response to the concerns expressed additional statements were added to sections 3.0 and 4.0 to make it clear that the IEP team may, in concert with the Career-Technical Teacher Coordinator, authorize participation in these programs by the IDEA eligible students. Section 1.0 of the proposed regulation requires that Career-Technical Education Programs comply with the State Plan for Career-Technical Education. The State Plan requires compliance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act such that no further regulatory reference to these laws is necessary for students protected by them.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 21, 2002, in the form hereto attached as Exhibit A.

## II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to update the terminology, to place all Career-Vocational programs in the same regulation and to correct a reference to restrictions on Career and Technical Programs in regular high schools required by language in the 2003 Budget Epilogue.

## III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended 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 regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 525 in the *Regulations of the Department of Education*.

## V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122, in open session at the

said Board's regularly scheduled meeting on January 16, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16<sup>th</sup>. day of January 2003.

## DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education  
Approved this 16th day of January 2003

## STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert J. Gilsdorf  
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Dennis J. Savage  
Dr. Claibourne D. Smith

## 525 Requirements for ~~Vocational~~ Career-Technical Education Programs

1.0 All ~~Vocational~~ Career-Technical Education Programs shall meet the provisions of Delaware's State Plan for ~~Vocational Career and Technical Education~~ and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

2.0 All local school districts and charter schools offering that offer state approved ~~vocational-technical-education programs~~ Career-Technical Education Programs shall:

2.1 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.~~

2.2 Have adequate funding to support and sustain the instructional program.

2.3 Employ teachers certified in ~~vocational-technical education program~~ Career-Technical Education Program areas.

2.4 Make provisions for meeting the unique needs of all students.

2.5 Establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

2.6 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~~ Career-Technical Education Programs.

2.7 Survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

2.8 Survey the student population to determine their occupational interests and needs.

2.9 Organize and financially support ~~vocational~~ career-technical student organizations as integral components of ~~vocational technical education programs~~ Career-Technical Education Programs in public schools that complement and enrich instruction. The following ~~vocational~~ career-technical student organizations are affiliated in Delaware:

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

2.9.3 Distributive Education Clubs of America (DECA), an association of marketing students

2.9.4 ~~Future Homemakers of America (FHA/HERO)~~ Family, Career and Community Leaders of America (FCCLA)

2.9.5 The National ~~Future Farmers of America (FFA)~~ FFA Organization

2.9.6 ~~Vocational Industrial Clubs of America (VICA)~~ Skills USA/VICA

2.10 Integrate related academic content into individual ~~vocational technical~~ career-technical education 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.

2.11 Schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day 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.~~

2.12 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~~ Career-Technical Education Program in a ~~Vocational-Technical School District~~ career-technical school district.

2.13 Use equipment and facilities comparable to that used by local business and industry for which the ~~vocational technical program~~ Career-Technical Education Program is preparing students.

2.14 Schedule Department of Education and Delaware Advisory Council on Career and Vocational Education program review and monitoring visits upon request.

**See 1 DE Reg. 1196 (2/1/98)**

3.0 Cooperative Education Programs: Cooperative Education [Programs provides provide] senior Career-Technical Education Program students with coordinated on-

the-job training not ordinarily available in the classroom. During the student's senior year, employers may provide this on-the-job training in occupations directly related to the Career-Technical-Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one-half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

3.1 In order to qualify for Career-Technical Education funding units the Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

3.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum occupational competencies specified by the Career-Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career-technical education pathway and be supervised through on-site visits by an assigned Career-Technical Education Program Teacher Coordinator or Career Guidance Counselor.

3.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

**[3.4 For an IDEA eligible student, the student's IEP team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of senior year status if necessary to provide the student a free, appropriate public education.]**

**See 2 DE Reg. 111 (7/1/98)**

4.0 Diversified Occupations Programs: Diversified Occupations Programs provide students with coordinated on-the-job training not ordinarily available in the classroom. During the student's junior and senior year, employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one-half unit of credit shall be granted and that credit shall be counted

toward the units of credit necessary for graduation.

4.1 In order to qualify for Career-Technical Education funding units a Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make on-site visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

4.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum readiness competencies as specified by the Career-Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, be in their junior or senior year and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

4.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student: a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

**[4.4 For an IDEA eligible student, the student's IEP team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status if necessary to provide the student a free, appropriate public education.]**

See 2 DE Reg. 111 (7/1/98)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,  
Section 3204 (16 Del.C. §3204)

### ORDER

#### Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Cancer Registry Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 32 and 29 Delaware Code, Chapter 79.

On December 1, 2002 (Volume 6, Issue 6), DHSS

published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 3, 2003, or be presented at a public hearing on December 23, 2002, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

#### Findings Of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include minor modifications from those published in the December 1, 2002, Register of Regulations, based on format changes. These modifications are deemed not to be substantive in nature.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Cancer Registry Regulations are adopted and shall become effective May 1, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, 1.15.03

#### Summary Of Evidence

A public hearing was held December 23, 2002 at 10:00 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Cancer Registry Regulations. Announcements regarding the public hearing were published in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Dr. Leroy Hathcock from the Disease Prevention and Control (DP&C) Section of the Division of Public Health (DPH) made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and five letters were received commenting on the proposed regulations during the public comment period (December 1, 2002 through January 3, 2003). Organizations that commented on the proposed regulations included:

- Delaware Healthcare Association
- Christiana Care



- St. Francis Hospital
- Medical Society of Delaware
- State Council for Persons with Disabilities

All public comments and the DHSS (Agency) responses are as follows:

**Section 2.0, Definitions.** The proposed definition of "health care provider" appears inconsistent with that listed in the existing Cancer Registry Statute. In order to retain continuity with Titles 16 and 24 of the Delaware Code, recommend the definition of "health care provider" be modified to read: ". . . any physician, surgeon, dentist, podiatrist, or other healthcare practitioner licensed by the State pursuant to Title 24 of the Delaware Code who diagnoses or provides treatment for cancer or benign tumors. When a person acting as a health care provider is employed by a health care facility or clinical laboratory, the facility, or laboratory shall be considered the health care provider for purposes of these regulations."

**It is also recommended that a separate definition be included in the regulations for health care facility that references licensure pursuant to Title 16 of the Delaware Code.**

*Agency Response:* After review of this comment, the Department has determined that the definition of "health care provider" used in the +proposed regulations is consistent with the Cancer Registry Statute and comprehensive enough to preclude adding a definition of health care facilities licensed pursuant to Title 16 of the Delaware Code.

**Section 2.0, Definitions.** The definition of "clinical laboratory" should be broadened to include those health care facilities that perform the functions set forth in the definition. This would ensure that a health care facility that only performs clinical laboratory services for a patient and has no other contact with a patient is not required to collect and submit the Supplemental Data outlined in the regulations.

*Agency Response:* Section 4.0 of the proposed regulations already excludes clinical laboratories that do not have contact with the patient from anything but "reasonable efforts" to collect supplemental cancer data. The last sentence of this section reads, ". . . reasonable efforts by a clinical laboratory shall not include the interviewing of patients to obtain required information."

**Sections 3.0 and 5.0, Duty to Report/Retention of Required Information.** Based on the language used in these sections, it appears the Department will receive

duplicate information/reports from multiple health care providers regarding the same patient. This does not appear to efficiently utilize either the time of the Department's staff or the affected providers. Additionally, it will likely be confusing and in some cases frustrating to the cancer patient (or his/her family member) when requested to respond to the same questions for each provider that treats the same patient. It is suggested that the physician who is managing the care and treatment of the cancer patient is in the best position to obtain this supplemental information from the patient. The information will be more accurate and perhaps reported in a timelier manner if it is obtained from one source, rather than all providers that treat the same patient during his/her course of treatment. Member acute care hospitals are also willing to submit this information to the Cancer Registry if the treating physician provides it to them.

*Agency Response:* While the collection of Cancer Registry information from multiple provider points might seem duplicative, the Department is responsible for ensuring that the information is collected. Having ultimate accountability for the program, the Department retains these requirements as a way to ensure that the data collection system works.

**Section 4.0, Forms Supplied by Department.** Senate Bill 372 appears to contemplate data collection not addressed in the regulations. Specifically, the bill requires collection of the "patient's length of residency in Delaware", "primary residential address in Delaware", and "nature" of identified employment. This information is not included in regulatory Section 4.0. Assuming the aforementioned items of information are not included in the National Cancer Data Base reporting standards, recommend inclusion of this data in the regulations to conform with Senate Bill 372.

*Agency Response:* The Department finds the proposed regulations to be consistent with the intent of Title 16, Section 3204 which states that rules promulgated be consistent and necessary to achieve the purposes of the requirements of the Cancer Registry. Additionally, the Department has plans to work with the medical community to ensure the forms used to collect cancer data reflect relevant and meaningful information.

**Section 4.0, Forms Supplied by Department.** The Department will supply forms for health care providers that request all data that is included in the reporting requirements of the National Cancer Data Base established by the American College of Surgeons. The Department forms will also request the supplemental/

required information stated in SB 372. It is our opinion the use of one form for all health care providers promotes the submission of duplicate data. Recommend the Department utilize two separate existing forms for use by health care providers. The form currently used by the physician managing the care and treatment of the cancer patient will request all data specified in the reporting requirements of the National Cancer Data Base established by the American College of Surgeons as well as supplemental data required under SB 372. All health care facilities that provide inpatient or outpatient services, or those that perform laboratory services for patients diagnosed with cancer or benign tumors would use their existing form.

*Agency Response:* Before finalizing data collection forms, the Department intends to work with the medical community to design forms that will make cancer data collection efforts as effective and efficient as possible, within the parameters set out by Delaware law.

**Deadlines for Submission, Section 6.0.** This section would require all health care providers treating the patient for the illness to submit information. Recommend this section be modified to state: "within 180 days of the initial diagnosis or the initiation of the first course of treatment . . ." This would require either the health care provider managing the care and treatment of the patient or a health care facility that is providing outpatient services to the patient, to submit the information in a timely manner utilizing a consistent reporting standard.

*Agency Response:* After reviewing this comment and Section 6.0, the Departments maintains this section is consistent with the Cancer Registry Statute and will retain it as proposed.

**General Comments.** The state should ensure they have the proper infrastructure and funding in place to collect data. Additionally, the data collected must be statistically meaningful from which to draw accurate and valid scientific conclusions for it to have desired value. Finally, the data should be collected prospectively at the time of the new patient visit; requiring physicians to retrospectively retrieve the additional information from their entire patient base will create a tremendous burden and take time away from patient care.

*Agency Response:* The Department is confident that the necessary infrastructure and funding is in place to collect Cancer Registry data. Additionally, to ensure thorough and meaningful data is collected, the Division of Public Health will consult with the Medical Society before finalizing the

data collection forms. Finally, the Department has no plans to retrospectively enforce requirements of the regulations; they will apply only to incidents that occur after the effective date of the regulations.

Additionally, minor corrections were made to the proposed regulations based on format changes.

The public comment period was open from December 1, 2002 to January 3, 2003.

Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

### CANCER REGISTRY REGULATIONS

#### **1.0 Purpose**

These regulations are promulgated by the Department pursuant to Senate Bill 372 of the 141<sup>st</sup> General Assembly. These regulations are also independently authorized by 29 Del.C. §7903. The purpose of the regulations is to implement Title 16, Chapter 32 of the Delaware Code.

#### **2.0 Definitions**

"Benign tumor" means any nonmalignant neoplasm, regardless of the tissue or origin, that appears on the American College of Surgeons most recently published list of reportable cancers and benign tumors.

"Cancer" means any malignant neoplasm, regardless of the tissue origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

"Clinical laboratory" means a facility in which tests are performed identifying findings of anatomical changes, and/or specimens are interpreted and pathological diagnoses are made.

"The Department" means the Department of Health and Social Services.

"Health care provider" means: person, corporation, facility or institution licensed by this State pursuant to Titles 16 or 24 of the Delaware Code to perform any act to or on behalf of a patient during the patient's medical care, treatment, or confinement, or a clinical laboratory. When a person acting as a health care provider is working for a corporation, facility, or institution, the corporation, facility, or institution shall be considered the health care provider for purposes of these regulations.

#### **3.0 Duty to Report**

Each health care provider shall complete and submit to the Department the forms described in Section [3] 4] with respect to (a) each patient whom it diagnoses with cancer or

a benign tumor, and (b) each patient for whom it renders any care after the individual is diagnosed with cancer or a benign tumor. Compliance by one health care provider with this Section with respect to an individual patient shall not obviate compliance by other health care providers with respect to the same patient.

#### **4.0 Forms Supplied by Department**

Forms prepared by the Department for use by health care providers in complying with Section [2 3] shall request all data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons. Forms prepared under this section shall also request disclosure of the address at which the patient has lived for the longest period of time, the occupation at which the patient has worked for the longest period of time, and the name and address of the employer at the occupation where the patient has worked for the longest period of time, if such information is available to the health care provider. A health care provider shall make reasonable efforts to obtain all information requested by the form prepared under this Section. However, reasonable efforts by a clinical laboratory shall not include the interviewing of patients to obtain required information.

#### **5.0 Retention of Required Information**

A health care provider who is treating a patient who has been diagnosed with cancer or a benign tumor shall ask that patient to fill out a form requesting disclosure of the address at which the patient has lived for the longest period of time in his or her life, the occupation at which the patient has worked for the longest period of time in his or her life, and the name and address of the employer at the occupation where the patient has worked for the longest period of time. The health care provider shall retain the form required by this Section with the patient's medical records pursuant to generally accepted protocol for the retention of patient medical records. The health care provider shall include the information from the form required by this Section with information it submits pursuant to Section [2 3] of these regulations. The Department shall provide a form for use in complying with this Section.

#### **6.0 Deadlines for Submission**

A health care provider shall provide the information required by Section [2 3] within 180 days of the initiation of treatment of a patient or diagnosis of that patient with a cancer or benign tumor, whichever is earlier.

#### **7.0 Failure to Submit Required Information**

A health care provider that fails to comply with Section 5 shall permit the Department to audit its records and abstract information that should have been provided under Section [5 6]. The health care provider shall reimburse the

Department for the cost of said audit. If the audit does not identify a compliance failure by the health care facility or provider, the cost of such audit shall not be assessed against the facility or provider.

#### **8.0 Voluntary Audit**

A health care provider may voluntarily request that an audit be performed if it does not intend to submit the information required by Section [5 6]. The Department shall determine if the request for an audit will be honored. The health care provider shall reimburse the Department for the cost of said audit if the Department honors the request. The Department shall determine whether said costs shall be prepaid, or paid upon completion of the audit.

#### **9.0 Fines**

Failure to comply with Section [5 6] of these regulations may result in a \$100 fine against the health care provider that has failed to comply. Each failure to comply shall constitute a separate violation and shall subject the health care provider to a separate \$100 fine.

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### **DIVISION OF SOCIAL SERVICES**

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

### **ORDER**

#### **Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan to change drug-pricing methodology, effective January 1, 2003. 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 December 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **Summary Of Proposed Revisions**

Currently, Delaware reimburses pharmaceuticals using the lower of:

- the usual and customary charge to the general public for the product,
- the Average Wholesale Price (AWP) minus 12.9% plus a dispensing fee, or
- a State-specific maximum allowable cost (DMAC) and, in some cases, the federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

The proposed State Plan Amendment (SPA) changes the AWP methodology as follows:

- Brand name drugs:
- for traditional chain pharmacies and independent pharmacies: AWP minus 16.32% plus a dispensing fee per prescription
- for non-traditional pharmacies: AWP minus 24.32% plus a dispensing fee per prescription.
- Generic drugs for all pharmacies: Average of the Average Wholesale Price (AAWP) minus 58% plus a dispensing fee per prescription.

There will be no dispensing fee increase.

The SPA also:

- clarifies terms used in the methodology process by revising the definition of the Delaware Maximum Allowable Cost (DMAC);
- provides definitions of traditional and non-traditional pharmacies; and,
- revises reimbursement limits and exceptions.

#### **Summary of Comments Received with Agency Response and Explanation of Change:**

Delaware Developmental Disabilities Council (DDDC), Delaware Healthcare Association (DHA), Governor's Council For Exceptional Citizens (GACEC), National Association of Chain Drug Stores (NACDS), and State Council for Persons with Disabilities (SCPD) submitted comments strongly opposing the Medicaid pharmacy reimbursement rate for the Delaware Medical Assistance Program, effective January 1, 2003. Comments are arranged by subject matter and summarized. Staff analysis of the public comments is provided and given a consolidated response below:

#### **DHA comments:**

- No comment period and prior notification.
- Providers did not participate in the change process.
- Recommend delay in the cuts until further discussion and negotiations occur between affected providers.

#### **NACDS comments:**

- Question the size of the audit sample and some of the audit methodology and state that Delaware dis-

penses fewer generics as a percentage of total prescriptions than other states.

- The pharmacy dispensing fee remains inadequate.
- Cost utilization must be addressed.

#### **DDDC, GACEC and SCPD provided the following similar observations and concerns:**

- Reductions are dramatic. Recommend DSS reconsider the drastic reductions and review other options with pharmacies.
- Discuss other cost-cutting alternatives adopted by other states.
- Limits on physician authorization for a name-brand drug.
- Recommend that DSS solicit the Delaware Health Fund Advisory Committee to determine if "tobacco funds" can be used to offset the proposed cost-cutting approaches in order to reach a compromise with the pharmacies.

*DSS Response: In response to comments received, the proposed amendment has been revised and the pharmacy policies and rate plans changed and clarified as follows:*

- Brand name drugs:
- for traditional pharmacies: AWP-14% plus dispensing fee per prescription;
- for non-traditional pharmacies: AWP-16% plus dispensing fee per prescription.
- Generic drugs:
- for traditional pharmacies: AWP-14% plus dispensing fee per prescription;
- for non-traditional pharmacies: AWP-16% plus dispensing fee per prescription.

The dispensing fee will remain at \$3.65.

#### **Findings Of Fact:**

The Department finds that the proposed changes as set forth in the December 2002 Register of Regulations should be adopted, as herein, revised.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Medicaid/Medical Assistance Programs to amend the Title XIX Medicaid State Plan related to the reimbursement of pharmaceuticals be adopted, as herein revised, and shall be final effective February 10, 2003.

Vincent P. Meconi, Secretary, DHSS, January 15, 2003

ATTACHMENT 4.19-B  
PAGE 14

## Reimbursement for Pharmaceuticals:

### Overview

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the lower of

- the usual and customary charge to the general public for the product,
- the Average Wholesale Price (AWP) minus 12.9% plus a dispensing fee, or
- Brand name drugs:
  - for traditional ~~[chain and independent]~~ pharmacies: AWP- ~~[16.32% 14%]~~ plus dispensing fee per prescription
  - for non-traditional pharmacies: AWP- ~~[24.32% 16%]~~ plus dispensing fee per prescription
- Generic drugs [for all pharmacies: AWP- 58% plus dispensing fee per prescription]
  - [for traditional pharmacies: AWP- 14% plus dispensing fee per prescription
  - for non-traditional pharmacies: AWP- 16% plus dispensing fee per prescription]
- a State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

### Definitions:

~~**Delaware Maximum Allowable Cost (DMAC)**—The DMAC payment limits will be calculated, for drugs selected by the DMAP, by First Data Bank (FDB) under contract with Delaware Medicaid using the following protocol—~~

- ~~All DMACs will be based on the direct prices.~~
- ~~FDB will use the lowest of either Geneva Generic or Rugby prices. These are national generic labelers/manufacturers that sell directly to pharmacies.~~
- ~~Prices for solid dosing forms will be based on a package size of 100. If that size is not available, the next largest package size will be used.~~
- ~~Prices for liquid products will be based on 120 ml for over the counter (OTC) medications and 473–480 ml for legend products.~~
- ~~All unit dose packaging calculations will be eliminated.~~

- ~~If neither identified labeler markets the product, the median of all other HCFA rebate participating sources will be used to establish a price.~~

~~Drugs are selected based on experience with charges from pharmacies, which indicates that the product cost is less than or equal to AWP minus 20%.~~

~~Additional medications will be added to the DMAC program after general provider notification.~~

**Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement[:**

- **for generics available from three (3) or more approved sources, or**
- **when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated; , or]**
- **[A DMAC will also be established] if a single provider agrees to a special price.**

Any willing provider can dispense the product.

**Federal Upper Limit (FUL) -** The FUL is a federally defined price and constitutes the upper limit of reimbursement where a DMAC limit does not exist.

ATTACHMENT 4.19B  
Page 14a

~~[Limits—the maximum allowed using any of the state methods for calculation ingredient costs.]~~

**Non-Traditional Pharmacy -** long term care and specialty pharmacies.

**Traditional Pharmacy -** retail independent and retail chain pharmacies.

### Reimbursement Policy:

- Pharmacy providers are free to dispense any product they wish (within the limits of State and federal laws governing pharmacies), but the DMAP payment will not exceed the limits identified above.
- The limits apply to all drugs listed in Appendix B (FUL/MAC listing containing the generic name and upper limit/unit source) of the Pharmacy Provider Manual, including brand and substitutes/generics.
- State DMAC/FUL limits do not apply to drugs in unit dose packages
- **[The limits apply to all drugs that have a FUL or DMAC.]**
- Medicaid reimbursement is limited to only those drugs supplied from manufacturers that have a signed national agreement or an approved existing agreement under Section 1927(a) of the Social

Security Act. Restrictions in drug coverage are listed on Page 5 Addendum of Attachment 3.1-A of this Plan.

**Exceptions:**

- Exceptions to the reimbursement ~~limits of FUL and DMAC~~ can be made if a physician certifies in his/her their own handwriting that a specific brand is medically necessary, ~~for a particular recipient. The medical necessity must be documented on a FDA Med-Watch form based on the client experiencing an adverse reaction.~~
- A check-off box is NOT acceptable.
- A notation of intent in the prescribing physician's own handwriting (such as, "brand necessary", "brand only", dispense as written") IS acceptable (42 CFR §447.331).
- Phone-in prescriptions which qualify for an exception must be followed by the proper certification written by the prescriber.
- Faxed prescriptions must follow Board of Pharmacy regulations.
- [Other exceptions will be made if documentation provided demonstrate that the product can only be obtained a higher rate.]

~~[When an exception exists and a pharmacist wishes to override the limit due to the medical necessity of using the brand name product, refer to the billing section of the Provider Manual for instructions on the proper coding of the claim.]~~

If the pharmacist is not willing to accept the DMAP's DMAC/FUL payment when a prescription is received for a brand name product with no substitutions permitted AND the physician has not indicated that the brand is medically necessary according to the above instructions, the pharmacist should:

- contact the physician to obtain proper written documentation, or
- refer the recipient to another pharmacy that may be willing to fill the prescription for the DMAC price, or, as a last resort,
- request full payment from the recipient for the product.

**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan to change the number of nursing home patient health assessments for four times to twice a year. 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 December 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary Of Information Submitted/with Agency Response:**

Similar Public Comments were received from the Delaware Healthcare Association (DHA) and the State Council for Persons with Disabilities (SCPD). Comments are grouped together and given a consolidated response.

- **DHA:** We feel the proposed change will better utilize staff time as well as aid in the reduction of excess Medicaid spending. **SCPD:** The amendment essentially requires that nursing home residents be assessed every 6 months instead of every 3 months. The rationale appears to be cost containment.

*Agency Response: The Division's approach to necessary cost containment is to use strategies with the most modest impact on the user.*

- **DHA:** We are concerned that a patient in a long-term facility can deteriorate quickly and therefore may need a more intensive level of care prior to the next assessment. **SCPD:** The amended regulation may undermine Olmstead implementation since residents may be ready for discharge but remain in nursing homes based on "stale" level of care assess-

ments. Moreover, less frequent reviews may actually increase Medicaid costs if "recovered" residents have longer stays in nursing homes based on infrequent reassessment. SCPD lacks statistics on "turnover" in nursing homes. However, if "turnover" is low, less frequent reassessment should result in cost savings. If "turnover" is high, less frequent reassessment may result in cost increases.

*Agency Response: A review does not determine if a person stays or leaves the facility. It is a decision for the patient and family to make after consulting the attending physician. The Division of Social Services (DSS) review for reimbursement or Level of Care (LOC) does not determine if a resident stays or leaves the facility. As in the past, if a person's condition changes, they wish to leave, and are medically discharged, they can leave. Division of Social Services' Level of Care determination does not prevent a person from leaving, if they improve in a week, a month, or a year. The resident's physician can discharge them at anytime, or they can sign out against medical advice if they so desire. Nursing home placement is always optional. There are many people who are living outside nursing facilities that would have a nursing facility Level of Care but choose to live in the community. The patient or facility does not ask for a reimbursement or level of care review to enable a discharge.*

- **DHA:** We propose the addition of language to the regulation that would put in place a mechanism whereby if a patient's condition changes, the provider can contact the Division regarding the change. The provider may then request a new assessment be conducted on a timely basis, resulting in an increase in the Medicaid payment for that patient. **SCPD:** We recommend that language be added to the regulation which allows the resident or a family member to request a more frequent reassessment based on changed circumstance.

*Agency Response: DSS will review residents in the following situations prior to the scheduled review: Facilities were notified in writing that they can request a review for: (1) New Medicaid residents who were not reviewed during the previous review at their facility; (2) Medicaid residents who relinquished Hospice since the facility's last review; and, (3) Residents whose level of care has changed from Skilled Nursing Facility (SNF) to Intermediate Care Facility (ICF) or vice versa, since the facilities last review.*

**Findings Of Fact:**

The Department finds that the proposed changes as set

forth in the December 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the nursing home patient health assessments is adopted and shall be final effective February 10, 2003.

Vincent P. Meconi, Secretary, DHSS, January 15, 2003

**REVISION:**

ATTACHMENT 4.19-D  
PAGE 4

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed ~~on an ongoing 90-day basis~~ twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

- 0 - Independent
- 1 - Supervision (includes verbal cueing and occasional staff standby)
- 2 - Moderate assistance (requires staff standby/physical presence)
- 3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classifications based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75<sup>th</sup> percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional 10 percent of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care



programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

## DEPARTMENT OF INSURANCE

18 DE Admin Code 905

Statutory Authority: 18 Delaware Code,  
Sections 311, 2312 (18 Del.C. §§311, 2312)

### ORDER

A public hearing was held on December 3, 2002, to receive comments on proposed Regulation 86 relating to establishing standards for the safeguarding of customer information. By my order of October 7, 2002, Michael F. Kirchenbauer was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearing and publication of Proposed Regulation 86 in the Register of Regulations on November 1, 2002, was in conformity with Delaware law.

### Summary Of The Evidence And The Information Submitted

The need to promulgate regulations relating to the privacy of non-public financial information arises from the passage of the Gramm-Leach-Bliley Act ("GLBA"), Public Law 102-106 by the U.S. Congress. As a result of GLBA, Regulation 84 relating to the privacy of consumer financial information was promulgated and put into effect on July 11, 2001. Proposed regulation 86 relating to the insurers' obligation to assure appropriate internal security standards for safeguarding that customer information substantially tracks the model regulation approved by the National Association of Insurance Commissioners ("NAIC model"). The authority of the Commissioner to adopt this regulation is found in 18 *Del. C.* Chapter 3. The summary of the evidence and the information submitted as set forth in the Report and Recommendation of the Hearing Officer is incorporated into this Order.

The Alliance of American Insurers, a trade association representing some 340 property and casualty insurers nationwide, submitted a written response noting its objection to enforcement actions under the Delaware Unfair Trade Practices Act, 18 *Del. C.* Ch. 23. It also requested a 60 day delay in the effective date as to service contracts citing federal banking regulations as persuasive. Aside from that submission and the evidence submitted by the Delaware

Insurance Department at the public hearing, there was no public comment received by the hearing officer.

### Findings Of Fact With Respect To The Evidence And Information

I adopt the findings of fact with respect to the evidence and information contained in the Report and Recommendation of the Hearing Officer dated December 20, 2002. Given the fact that GLBA applies nationally and that there has been significant lead time on this issue for the industry, I am not persuaded that there should be any delay in the implementation of this regulation.

### Decision And Effective Date

I hereby adopt Regulation 86 as originally proposed to become effective February 11, 2003.

### Text And Citation

The text of Regulation 86 appears in the Register of Regulations Vol. 6, Issue 5, Page 595, dated November 1, 2002.

Donna Lee H. Williams, Insurance Commissioner  
December 31, 2002

### 905 (Formerly Regulation 86) Standards For Safeguarding Customer Information

#### Table of Contents

<u>1.0</u>	<u>Authority</u>
<u>2.0</u>	<u>Definitions</u>
<u>3.0</u>	<u>Information Security Program</u>
<u>4.0</u>	<u>Objectives of Information Security Program</u>
<u>5.0</u>	<u>Examples of Methods of Development and Implementation</u>
<u>6.0</u>	<u>Assess Risk</u>
<u>7.0</u>	<u>Manage and Control Risk</u>
<u>8.0</u>	<u>Oversee Service Provider Arrangements</u>
<u>9.0</u>	<u>Adjust the Program</u>
<u>10.0</u>	<u>Determined Violation</u>
<u>11.0</u>	<u>Effective Date</u>

#### **1.0 Authority**

1.1 This regulation is promulgated pursuant to 18 Del.C. §§ 311, 535.

1.2 This regulation establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at



15 U.S.C. 6801, 6805(b) and 6807.

1.2.1 Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its Customers and to protect the security and confidentiality of those customers' nonpublic personal information.

1.2.2 Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

1.2.2.1 to ensure the security and confidentiality of customer records and information;

1.2.2.2 to protect against any anticipated threats or hazards to the security or integrity of such records; and

1.2.2.3 to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

1.2.3 Section 505(b)(2) calls on state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation with respect to persons engaged in providing insurance.

1.2.4 Section 507 provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. This regulation requires that the safeguards established pursuant to this regulation shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

## **2.0 Definitions**

For purposes of this regulation, the following definitions apply:

2.1 "Customer" means a customer of the licensee as the term customer is defined in Delaware Insurance Department Regulation 84 Section 4.

2.2 "Customer information" means nonpublic personal information as defined in Delaware Insurance Department Regulation 84 section 4.16 and 4.17 about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

2.3 "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

2.4 "Licensee" means a licensee as that term is defined in Delaware Insurance Department Regulation 84 section 4.17, except that "licensee" shall not include: a purchasing group pursuant to 18 *Del.C.* Chapter 80, or an unauthorized insurer in regard to the excess line business conducted pursuant to 18 *Del. C.* Chapter 19.

*Drafting Note: Although service contract providers and extended warranty providers are "licensees" under the insurance laws of many states, they are not so defined under*

Delaware law.

2.5 "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

## **3.0 Information Security Program**

Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

## **4.0 Objectives of Information Security Program**

A licensee's information security program shall be designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information; and protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

## **5.0 Examples of Methods of Development and Implementation**

The actions and procedures described in Sections 6 through 9 of this regulation are examples of methods of implementation of the requirements of Sections 3 and 4 of this regulation. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement Sections 3 and 4 of this regulation.

## **6.0 Assess Risk**

The licensee:

6.1 Identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;

6.2 Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

6.3 Assesses the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

## **7.0 Manage and Control Risk**

The licensee:

7.1 Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

7.2 Trains staff, as appropriate, to implement the licensee's information security program; and

7.3 Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

#### **8.0 Oversee Service Provider Arrangements**

The licensee:

8.1 Exercises appropriate due diligence in selecting its service providers; and

8.2 Requires its service providers to implement appropriate measures designed to meet the objectives of this regulation, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

#### **9.0 Adjust the Program**

The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

#### **10.0 Determined Violation**

Repeated failure to comply with this Regulation will be grounds for investigation and enforcement as an unfair practice in the insurance business pursuant to 18 *Del. C.* Chapter 23.

#### **11.0 Severability**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

#### **12.0 Effective Date**

This regulation shall become effective on February 4 [11], 2003.

Adopted and Signed by The Commissioner  
December 31, 2002

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 **Del.C.** §6010)

**Secretary's Order No.: 2003-A-003**

Date of Issuance: January 13, 2003  
Effective Date of the Amendment: February 11, 2003

#### **I. Background**

On Tuesday, November 26, 2002, a public hearing was held in the Priscilla Building Conference Room of DNREC, 156 S. State Street, Dover to receive comment on proposed amendments to Regulation 3, Section 11 – PM<sub>10</sub> and PM<sub>2.5</sub> Particulates of the Delaware Regulations Governing the Control of Air Pollution. With respect to Delaware's Air Quality Standards referenced in this particular Regulation, the Department proposes to revise the same by reverting them back to their pre-November 1999 form. This action is necessary in response to the March 26, 2002 Court of Appeals decisions that vacated EPA's standards that were set forth in the 62 FR 38711, dated July 18, 1997. That decision resulted in the standard contained in DNREC's November 3, 1999 State Implementation Plan (SIP) submittal being less restrictive than the current PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS). As a result, EPA cannot approve Delaware's SIP revision containing a less restrictive PM<sub>10</sub> NAAQS standard than the 1987 standard. The impacts of proposed amendments are minimal. Further, the proposed changes will not change the annual and 24-hour average concentration standards of 50 g/m<sup>3</sup> and 150 g/m<sup>3</sup>, respectively. The changes are primarily a technical, procedural change in the Department's methodology of determining concentrations from monitored data.

With respect to comments received by the Department concerning this proposed amendment, there was written correspondence received from Judith M. Katz, Director, Air Protection Division, at Region III of the EPA, confirming that EPA cannot process a SIP revision which contains a less restrictive PM<sub>10</sub> standard than the 1987 standard. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated January 8, 2003, and that memorandum is expressly incorporated herein by reference.



MW is molecular weight of the contaminant being measured.

**02/01/81**

**Section 2 - General Restrictions**

2.1 No person shall cause the Air Quality Standards specified in this Regulation to be exceeded.

**02/01/81**

**Section 3 - Suspended Particulates**

3.1 The Primary Ambient Air Quality Standards for Particulate Matter are:

a. An annual geometric mean of 75 micrograms per cubic meter not to be exceeded, based upon twenty-four hour average concentrations.

b. A value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations.

3.2 The Secondary Ambient Air Quality Standards for Particulate Matter are:

a. An annual geometric mean of 60 micrograms per cubic meter as a guideline for achieving the secondary standard based upon twenty-four hour average concentrations.

b. A value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations.

**02/01/81**

**Section 4 - Sulfur Dioxide**

4.1 The Primary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:

a. An annual arithmetic average value of 80  $\mu\text{g}/\text{m}^3$ , (0.03 ppm) not to be exceeded, based upon twenty-four hour average concentrations.

b. A twenty-four average value of 365  $\mu\text{g}/\text{m}^3$  (0.14 ppm) not to be exceeded more than once per year based upon twenty-four hour average concentrations.

4.2 The Secondary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:

a. A three-hour average value of 1300 micrograms per cubic meter (0.5 ppm), not to be exceeded more than once per year.

**02/01/81**

**Section 5 - Carbon Monoxide**

5.1 The average concentration of carbon monoxide taken over any consecutive eight (8) hours shall not exceed a value of 10 milligrams per cubic meter (9 ppm) more than once per year.

5.2 The average concentration of carbon monoxide taken over any one (1) hour period shall not exceed 40 milligrams per cubic meter (35 ppm) more than once per

year.

**09/11/99**

**Section 6 - Ozone**

6.1 1-hour primary and secondary ambient air quality standards for ozone

The average number of days per calendar year with a maximum one hour average value exceeding 235  $\mu\text{g}/\text{m}^3$  (0.12 ppm) shall be equal to or less than one, averaged over three consecutive years. This standard shall be applicable to New Castle and Kent Counties.

6.2 8-hour primary and secondary ambient air quality standards for ozone

The average of the fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, averaged over three consecutive years. This standard applies to all Counties in Delaware.

**02/01/81**

**Section 7 - Hydrocarbons**

7.1 The hydrocarbons standard in subsection 7.2 is for use as a guide in devising implementation plans to achieve the ozone standard.

7.2 The average concentration of hydrocarbons, exclusive of methane, taken over a three (3) hour period from 6:00 to 9:00 a.m., local time, shall not exceed 160 micrograms per cubic meter (0.24 ppm) more than once per year.

**02/01/81**

**Section 8 - Nitrogen Dioxide**

8.1 The annual arithmetic mean concentration of nitrogen dioxide shall not exceed 100 micrograms per cubic meter (0.05 ppm).

**02/01/81**

**Section 9 - Hydrogen Sulfide**

9.1 The average concentration of hydrogen sulfide taken over any consecutive three (3) minutes shall not exceed 0.06 ppm.

9.2 The average concentration of hydrogen sulfide taken over any consecutive 60 minutes shall not exceed 0.03 ppm.

**02/01/81**

**Section 10 - Lead**

10.1 The 24 hour concentration of lead averaged over a calendar quarter shall not exceed 1.5 micrograms per cubic meter.

**09/11/99**

**Section 11 - PM<sub>10</sub> and PM<sub>2.5</sub> Particulates**

11.1 The Primary and Secondary Ambient Air

Quality Standards for Particulate Matter, measured as PM<sub>10</sub> are:

a. 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), 24 hour average concentration. The standards are attained when the ~~99<sup>th</sup> percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38759, is less than or equal to 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )~~ expected number of days per calendar year with a 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$ , as determined in accordance with 40 CFR, Part 50, Appendix K, is equal to or less than one.

b. 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix KN, ~~as found in the Federal Register dated July 18, 1997, on page 38759,~~ is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .

11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM<sub>2.5</sub> are:

a. 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) 24-hour average concentration. The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98<sup>th</sup> percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757 - 38758, is less than or equal to 65  $\mu\text{g}/\text{m}^3$

b. 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual arithmetic mean concentration. The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38756 - 38757, is less than or equal to 15.0  $\mu\text{g}/\text{m}^3$

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**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. §6010)

**Secretary's Order No.: 2003-A-002**

Date of Issuance: January 13, 2003  
Effective Date of the Amendment: February 11, 2003

## I. Background

On Tuesday, November 26, 2002, a public hearing was held in the Priscilla Building Conference Room of DNREC, 156 S. State Street, Dover to receive comment on the Department's proposed amendments to Regulation 24, Section 10 – Aerospace Coatings of the Delaware Regulations Governing the Control of Air Pollution. The Department proposes to revise this Regulation to correct an error found in the recently promulgated regulation. Based on the EPA's final Aerospace Manufacturing and Rework MACT standard and EPA's final Control Technique Guideline (CTG) document "Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations" issued December 1997, the current definition of "Fire-Resistant (interior) Coating" is not currently reflected in Regulation 24. The definition will be changed to correctly differentiate between civilian aircraft subject to FAA fire worthiness requirements, and military aircraft and space applications subject to other flammability requirements. No comments were received from any members of the public concerning this proposed amendment. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated January 8, 2003, and that memorandum is expressly incorporated herein by reference.

## II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed amendments to Regulation No. 24, Section 10.

## III. Order

It is hereby ordered that the proposed amendments to Regulation No. 24, Section 10 – **Aerospace Coatings**, be promulgated in final form in accordance with the customary statutory procedure.

## IV. Reasons

This amendment of Regulation 24, Section 10 – **Aerospace Coatings**, will rectify the previous error found in this recently promulgated regulation. Furthermore, this amended Regulation will continue to aid the State of Delaware in attaining compliance with the 1-hour ground-level ozone standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

### Section 10 - Aerospace Coatings

~~08/11/02~~ [02/11/03]

#### a. Applicability.

1. Except as provided for in (a)(2) and (a)(3), this Section applies to any owner or operator of any aerospace manufacturing or rework facility that conducts any of the following operation(s):

- i. hand-wipe cleaning;
- ii. spray gun cleaning;
- iii. flush cleaning;
- iv. primer, topcoat, self-priming topcoat, and specialty coating application;
- v. the depainting of the outer surface of aerospace vehicles (except for depainting parts or units normally removed during depainting);
- vi. Type I or Type II chemical milling maskant application; and
- vii. VOC handling and storage.

2. Except for the requirements in paragraph (c)(8), this Section does not apply to the following operations in any aerospace manufacturing or rework facility:

- i. Chemical milling;
- ii. Metal finishing;
- iii. Electrodeposition (except for the electro-deposition of paints); and
- iv. Composite processing operations (except for cleaning and coating of composite parts or components that become part of an Aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure).

3. The requirements of this Section do not apply to aerospace manufacturing or rework facilities whose plant-wide, actual emissions from the operations in paragraph (a)(1) without control devices are less than 6.8 kilograms (kg) (15 pounds [lbs]) of volatile organic compounds (VOCs) per day.

4. Existing sources affected by this Section shall comply with the provisions of this Section on and after the effective date of this Section, except for the requirements of paragraph (c)(6)(ii) and (c)(7). Existing sources affected by this Section shall comply with the requirements of paragraph (c)(6)(ii) and (c)(7) beginning as soon as practicable, but no later than the date one year after the effective date of this Section. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section on and after startup. Notwithstanding Section (1)(e) of Regulation 24, any owner or operator currently permitted under Regulation 2 and/or Regulation 30 to operate an aerospace manufacturing or rework facility shall submit to the Department an application to amend the current permit and to comply with the provisions of this Section, pursuant

to Regulation 2 and/or Regulation 30, as applicable.

5. Any facility that becomes or is currently subject to the provisions of this Section by exceeding the applicability threshold in paragraph (a)(3) of this Section shall remain subject to these provisions even if its emissions later fall below the applicability threshold.

6. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to these provisions, even if its throughput or emissions later fall below the applicability threshold.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24 of the State of Delaware "Regulations Governing the Control of Air Pollution".

"**Ablative coating**" means a specialty coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulation barrier, protecting adjacent components from the heat or open flame.

"**Adhesion promoter**" means a very thin specialty coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"**Adhesive bonding**" means the joining together of two or more metal parts, such as the parts of a honeycomb core. The surfaces to be bonded are first coated with an adhesive bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave.

"**Adhesive bonding primer**" means a specialty coating that is applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250oF or below and primers with a design cure above 250oF.

"**Aerospace manufacturing or rework facility**" means a commercial, civil, or military facility that produces in any amount an aerospace vehicle or component, or a commercial, civil, or military facility that reworks (or repairs) any aerospace vehicle or component.

"**Aerospace vehicle or component**" means any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

"**Aircraft fluid system**" means those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

"**Aircraft transparency**" means the aircraft windshield, canopy, passenger windows, lenses and other

components that are constructed of transparent materials.

**"Antichafe coating"** means a coating applied to areas of moving aerospace components that may rub during normal operations or installation.

**"Bearing coating"** means a specialty coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

**"Bonding maskant"** means a temporary specialty coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

**"Brush coating,"** means the application of a coating material to a substrate by means of a brush (this technique is commonly used for touch-up and maskant operations).

**"Caulking and smoothing compounds"** means semi-solid specialty coating materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

**"Chemical agent-resistant coating (CARC)"** means an exterior topcoat; specialty coating designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

**"Chemical milling"** means a process used to reduce the thickness of selected areas of metal parts in order to reduce weight by submerging the metal parts in an etchant.

**"Chemical milling maskant"** means a coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included.

**"Chemical milling maskant application"** means the use of spray equipment or a dip tank to apply a Chemical milling maskant, prior to chemically milling the component with a Type I or II etchant.

**"Cleaning operation"** means collectively spray gun, hand-wipe, and flush cleaning operations.

**"Cleaning solvent"** means a liquid VOC containing material used for hand-wipe, spray gun, or flush cleaning.

**"Clear coating"** means a transparent coating applied to any substrate.

**"Coating"** means a material that is applied to the

surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself.

**"Coating operation"** means the use of a spray booth, tank, or other enclosure or area, such as a hangar, for the application of a single type of coating (e.g., primer). The use of the same spray booth for the application of another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

**"Commercial exterior aerodynamic structure primer"** means a specialty coating primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

**"Commercial interior adhesive"** means specialty coating materials used in the bonding of passenger cabin interior components that meet the FAA fire worthiness requirements.

**"Compatible substrate primer"** means a specialty coating that is either a compatible epoxy primer or an adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that (1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or (2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

**"Composite processing operations"** include layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup means the process of assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming means the process of forming the layup in a mold, which usually takes place in an autoclave. Debulking means the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. Curing means the process of changing the resin into a solid material through a polymerization reaction. Break-out means the removal of the composite structure from the mold or curing fixtures. Compression molding means the process of filling one half of molds with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding means the use of a closed mold, where the molding compound is injected into the mold, maintained under pressure, and then cured by

applying heat.

**"Corrosion prevention system"** means a coating system that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

**"Critical use line and sealer maskant"** means a temporary specialty coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

**"Cryogenic flexible primer"** means a specialty coating primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275oF and below).

**"Cryoprotective coating"** means a specialty coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

**"Cyanoacrylate adhesive"** means a fast-setting, single component specialty coating adhesive that cures at room temperature. Also known as "super glue."

**"Depainting"** means the removal of any coating from the outer surface of an aerospace vehicle or component by either chemical or non-chemical means.

**"Depainting operation"** means the use of a chemical agent, media blasting, or any other technique to remove coatings from the outer surface of aerospace vehicles or components. The depainting operation includes washing of the aerospace vehicle or component to remove residual stripper and coating residue.

**"Dip coating"** means the application of a coating material to a substrate by dipping the part into a tank of the coating material.

**"Dry lubricative material"** means a specialty coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

**"Electric or radiation-effect coating"** means a specialty coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

**"Electrodeposition"** means an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electrodeposition typically used are electroplating and plasma arc spraying.

**"Electrostatic discharge and electromagnetic interference (EMI) coating"** means a specialty coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

**"Electrostatic spray"** means a method of applying a spray coating in which opposite electrical charges are applied to the substrate and the coating. The coating is attracted to the substrate by the electrostatic potential between them.

**"Elevated-temperature Skydrol-resistant commercial primer"** means a specialty coating primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150oF for 1,000 hours.

**"Epoxy polyamide topcoat"** means a specialty coating used where harder films are required or where engraving is accomplished in camouflage colors.

**"Etchant"** means a chemical used to mill a part or subassembly (e.g., sodium hydroxide for aluminum parts).

**"Exempt solvent"** means an organic compound that has been determined to have negligible photochemical reactivity, as specified, and is defined in Regulation 24, Section 2 under "exempt compounds."

**"Fire-resistant (interior) coating"** means for civilian aircraft, fire-resistant interior ~~specialty~~ coatings used on passenger cabin interior parts that are subject to the FAA fire worthiness requirements. For military aircraft, fire-resistant interior coatings means coatings that are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, fire-resistant interior coatings means coatings that ~~these specialty coatings~~ are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

**"Flexible primer"** means a specialty coating primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

**"Flow coating"** means the application of a coating



material to a substrate by pouring the coating over the suspended part.

**"Flush cleaning"** means the cleaning of an aerospace vehicle or component by passing solvent over, into, or through the vehicle or component. The solvent may simply be poured into the vehicle or component and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action is used are not flush cleaning operations.

**"Formulation"** means a specific coating made by a specific manufacturer. Each different color of a specific coating is considered a separate formulation.

**"Fuel tank adhesive"** means a specialty coating adhesive used to bond components exposed to fuel which shall be compatible with fuel tank coatings.

**"Fuel tank coating"** means a specialty coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition, and to assure sealant adhesion in extreme environmental conditions.

**"Hand-wipe cleaning operation"** means the removal of contaminants such as dirt, grease, oil, and coatings from aerospace vehicles or components by physically rubbing them with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

**"High temperature coating"** means a specialty coating designed to withstand temperatures of more than 350oF.

**"High volume low pressure (HVLP) spray equipment"** means spray equipment that is used to apply coatings using a spray gun that operates at equal to or less than 10.0 psig of atomized air pressure at the air cap.

**"Insulation covering"** means a specialty coating material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

**"Intermediate release coating"** means a thin specialty coating applied beneath topcoats to assist in removing the topcoat in depainting operations, which generally allows the use of less hazardous depainting methods.

**"Lacquer"** means a clear or pigmented specialty coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resolvable in their original solvent.

**"Leak"** means any visible leakage, including misting and clouding.

**"Limited access space"** means internal surfaces or passages of an aerospace vehicle or component that cannot be reached for the application of coatings without the aid of an airbrush or a spray gun extension.

**"Metal finishing"** means conversion coating, anodizing, desmutting, descaling, and any operation that chemically affect the surface layer of a part, and is used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance.

**"Metalized epoxy coating"** means a specialty coating

that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

**"Mold release"** means a specialty coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

**"Non-chemical-based depainting equipment"** means any depainting equipment or technique that does not rely on a chemical stripper to depaint an aerospace vehicle or component (e.g., media blasting equipment).

**"Nonstructural adhesive"** means a specialty coating adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

**"Part marking coating"** means a specialty coating or ink used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

**"Pretreatment coating"** means an organic specialty coating that contains at least 0.5 percent acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

**"Primer"** means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, environment protection, functional fluid resistance, and adhesion promotion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

**"Radome"** means the non-metallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

**"Rain erosion-resistant coating"** means a specialty coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

**"Research and development"** means an operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

**"Rocket motor bonding adhesive"** means a specialty coating adhesive used in rocket motor bonding applications.

**"Rocket motor nozzle coating"** means a catalyzed epoxy specialty coating system used in elevated temperature applications on rocket motor nozzles.

**"Rubber-based adhesive"** means a quick setting, specialty coating contact cement that provides a strong, yet flexible bond between two mating surfaces that may be of dissimilar materials.

**"Scale inhibitor"** means a specialty coating that is applied to the surface of a part prior to thermal processing to

inhibit the formation of scale.

**"Screen print ink"** means a specialty coating ink used in screen printing processes during fabrication of decorative laminates and decals.

**"Sealant"** means a specialty coating material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

**"Seal coat maskant"** means a specialty coating overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

**"Self-priming topcoat"** means a coating that is applied directly to an Aerospace vehicle or component for purposes of corrosion protection, environmental protection, and functional fluid resistance and that is not subsequently topcoated. More than one layer of identical coating formulation may be applied to the aerospace vehicle or component. Self-priming topcoats that are defined as specialty coatings are not included under this definition.

**"Silicone insulation material"** means an insulating specialty coating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

**"Solids"** means the nonvolatile portion of the coating that after drying makes up the dry film.

**"Solid film lubricant"** means a very thin specialty coating consisting of a binder system containing as its main pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

**"Space vehicle"** means a man-made device, either manned or unmanned, designed for operation prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage that through contamination can compromise the space vehicle performance.

**"Specialty coating"** means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection. A specialty coating is any coating listed in Table 7-1 and defined in paragraph (b) of this Section.

**"Specialized function coating"** means a specialty coating that fulfills extremely specific engineering requirements that are limited in application and are

characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

**"Spray gun"** means a device that uses air pressure or air flow to atomize a coating or other material, and to project the atomized coating particulates or other material onto a component.

**"Stripper"** means a liquid that is applied to an aerospace vehicle or component to remove primer, topcoat, self-priming topcoat, or coating residue.

**"Structural autoclavable adhesive"** means a specialty coating adhesive used to bond load-carrying aerospace components that are cured by heat and pressure in an autoclave.

**"Structural nonautoclavable adhesive"** means a specialty coating adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

**"Surface preparation"** means the removal of contaminants from the surface of an aerospace vehicle or component, or the activation or reactivation of the surface in preparation for the application of a coating.

**"Temporary protective coating"** means a specialty coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

**"Thermal control coating"** means a specialty coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

**"Topcoat"** means a coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

**"Touch-up and repair coating"** means a coating used to cover minor coating imperfections appearing after the main coating operation.

**"Touch-up and repair operation"** means that portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating. Touch-up and repair operations are not to exceed an area of 4 square feet per aerospace vehicle.

**"Type II etchant"** or **"Type II chemical milling etchant"** means a Chemical milling etchant that is a strong sodium hydroxide solution containing amines (Type I etchants do not contain amines).

**"Volatile Organic Compound (VOC)"** means any compound defined as VOC in Regulation 24, Section 2 -

Definitions.

"**VOC composite vapor pressure**" means the sum of the partial pressures of the compounds defined as VOC's and is determined by the following calculation:

$$PP_c = \frac{\sum_{i=1}^n \frac{(W_i)(VP_i)}{MW_i}}{\frac{W_w}{MW_w} + \sum_{e=1}^n \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

- Wi = Weight of the "i"th VOC compound, grams
- Ww = Weight of water, grams
- We = Weight of nonwater, non-VOC compound, grams
- MWi = Molecular weight of the "i"th VOC compound, g/g-mole
- MWw = Molecular weight of water, g/g-mole
- MWe = Molecular weight of exempt compound, g/g-mole
- PPc = VOC composite partial pressure at 20oC, mm Hg
- VPi = Vapor pressure of the "i"th VOC compound at 20oC, mm Hg

"**Wet fastener installation coating**" means a specialty coating primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"**Wing coating**" means a corrosion-resistant specialty coating topcoat that is resilient enough to withstand the flexing of the wings.

c. Standards.

1. Hand-Wipe Cleaning Operations.

i. Except as exempted in paragraph (c)(1)(ii), no person subject to this Section shall cause or allow on any day the use of any cleaning solvent in any hand-wipe cleaning operation that does not comply with one of the following limits:

A. VOC composite vapor pressure should be less than 45 millimeters (mm) mercury (Hg) (1.8 inches [in] Hg) at 20 degrees Celsius ((C) (68 degrees Fahrenheit [(F)]).

B. Cleaning solvent shall be an aqueous cleaning solvent (i.e., a solvent in which water is at least 80 percent of the solvent, as applied).

ii. The requirements of paragraphs (c)(1)(i) of this Section shall not apply to the following hand-wipe cleaning operations:

A. Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to

the breathing oxygen.

B. Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, and hydrazine).

C. Cleaning and surface activation prior to adhesive bonding.

D. Cleaning of electronics and assemblies containing electronics.

E. Cleaning of aircraft fluid system and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

F. Cleaning of fuel cells, fuel tanks, and limited-access spaces.

G. Surface cleaning of solar cells, coated optics, and thermal control surfaces.

H. Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

I. Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

J. Cleaning of aircraft transparencies.

K. Cleaning associated with research and development, quality control, and laboratory testing.

2. Spray Gun Cleaning Operations.

i. No person subject to this Section shall cause or allow on any day the use of any spray gun cleaning techniques that does not comply with one of the following:

A. Use of an enclosed spray gun cleaning system that is kept closed when not in use.

B. Non-atomized discharge of solvent into a waste container that is kept closed when not in use.

C. Disassembly of the spray gun and placing the parts for cleaning in a vat that is kept closed when not in use.

D. Atomized spray into a waste container that is fitted with a device that captures atomized solvent emissions.

E. Any alternative technique that has been demonstrated to, and accepted by the Department as producing emissions that are equal to or less than the emissions from the techniques specified in paragraph (c)(2)(i)(A) through (D) of this Section. Emissions from any alternative technique shall be demonstrated pursuant to test protocols that are approved in advance by the Department.

ii. Any enclosed spray gun cleaner shall be visually inspected for leaks at least once per month. Such inspection shall occur while the enclosed spray gun cleaner is in operation.

iii. Leaks from any enclosed spray gun cleaner shall be repaired as soon as practicable, but no later than 15 days from when the leak is first discovered.

iv. If any leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired.

3. Flush Cleaning. Any cleaning solvents used during flush cleaning operations shall be handled pursuant to paragraph (c)(8) of this Section.

4. Primer, Topcoat, and Self-Priming Topcoat Application.

i. Except as provided for in paragraph (c)(4)(ii), (d) and (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any primer, topcoat, and/or self-priming topcoat with a VOC content that does not comply with the following limits:

A. Primers shall have a VOC content equal to or less than 350 g/L (2.9 lb/gal), excluding water and exempt compounds, as applied.

B. Topcoats and self-priming topcoats shall have a VOC content equal to or less than 420 g/L (3.5 lb/gal), excluding water and exempt compounds, as applied.

ii. The requirements of paragraphs (c)(4)(i)(B) of this Section shall not apply to facilities that use less than 50 gallons per consecutive rolling 12-month period of a particular formulation of topcoat, or self-priming topcoat provided:

A. Each topcoat and self-priming topcoat shall have a VOC content equal to or less than 720 g/L (6.0 lb/gal), excluding water and exempt compounds as applied.

B. A total of not more than 200 gallons per consecutive rolling 12-month period of all such high VOC coatings are used at the facility.

iii. Except as provided for in paragraph (c)(4)(iv) of this Section, no person subject to this Section shall cause or allow on any day the use of any application technique to apply any primer, topcoat, or self-priming topcoat other than the following:

A. flow/curtain coat, roll coat, brush coat, dip coat, cotton-tip swab application, electrostatic spray, electrodeposition, or high volume low pressure (HVLP) spray guns;

B. Any alternate technique that has been demonstrated to and accepted by the Department as providing emissions that are less than or equal to the emissions from HVLP or electrostatic spray application techniques. Emissions from any alternate techniques shall be demonstrated pursuant to test protocols that are approved in advance by the Department. Such tests shall, at a minimum, compare the emission levels determined using an initial 90-day period of HVLP or electrostatic spray attraction techniques with the emission levels determined using the alternate technique for a period of time necessary to coat the equivalent amount of parts with the same

coatings.

iv. The equipment standards and application techniques in paragraph (c)(4)(iii) of this Section shall not apply to the following primer, topcoat and self-priming topcoat application operations:

A. The application of coatings in any limited access space.

B. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

C. The application of coatings that normally have a dried film thickness of less than 0.0005 inches and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

D. The use of airbrush application methods for stenciling, lettering, and other identification markings.

E. Any touch-up and repair operation.

v. All application equipment shall be operated according to the manufacturer's specifications at all times, even if it is exempt from the equipment standards specified in paragraph (c)(4)(iii) of this Section.

5. Depainting Operation. No person subject to this Section shall cause or allow on any day the use of any stripper that does not comply with one of the following limits:

i. VOC composite vapor pressure shall be less than 10 mm Hg (0.4 in. Hg) at 20°C (68°F).

ii. VOC content shall be less than 400 g/L (3.3 lb/gal), excluding water and exempt compounds, as applied.

6. Chemical Milling Maskant Application.

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any chemical milling maskant with a VOC content that does not comply with the following emission limits:

i. For any Type I maskant, VOC content equal or less than 622 g/L (5.2 lbs/gal), excluding water and exempt compounds, shall be applied; or

ii. For any Type II maskant, VOC content equal or less than 160 g/L (1.3 lbs/gal), excluding water and exempt compounds, shall be applied.

7. Specialty Coatings

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any specialty coating that has a VOC content, excluding water and exempt compounds, as applied, that is greater than the limits specified in Table 7-1:

TABLE 7-1. VOC CONTENT LIMITS FOR SPECIALTY COATINGS (g/L)<sup>a</sup>

Coating Type	Limit	Coating Type	Limit
<i>Ablative Coating</i>	600	<i>Epoxy Polyamide Topcoat</i>	660
Adhesives:	760	<i>Fire-Resistant (interior) Coating</i>	800
<i>Commercial Interior Adhesive</i>	1,020	<i>Flexible Primer</i>	640
<i>Cyanoacrylate Adhesive</i>	620	<i>Flight-Test Coatings: Missile or Single Use Aircraft</i>	420
<i>Fuel Tank Adhesive</i>	360	All other	840
<i>Nonstructural Adhesive</i>	890	<i>Fuel-Tank Coating</i>	720
<i>Rocket Motor Bonding Adhesive</i>	850	<i>High-Temperature Coating</i>	850
<i>Rubber-based Adhesive</i>	60	<i>Insulation Covering</i>	740
<i>Structural Autoclavable Adhesive</i>	850	<i>Intermediate Release Coating</i>	750
<i>Structural Nonautoclavable Adhesive</i>		<i>Lacquer</i>	830
<i>Adhesion promoter</i>	890		
<i>Adhesive Bonding Primers:</i>	850		
Cured at 250°F or below	1,030		
Cured above 250°F			
<i>Antichafe coating</i>	660	Maskants (excluding Type I and Type II):	1,230
		<i>Bonding maskant</i>	1,020
		<i>Critical Use and Line Sealer Maskant</i>	1,230
		<i>Seal Coat Maskant</i>	
<i>Bearing coating</i>	620	<i>Pretreatment Coating</i>	780
<i>Caulking and smoothing compounds</i>	850	<i>Rain Erosion-Resistant Coating</i>	850
<i>Chemical Agent-Resistant Coating</i>	550	<i>Rocket Motor Nozzle Coating</i>	660
<i>Clear Coating</i>	720	<i>Scale Inhibitor</i>	880
<i>Commercial exterior aerodynamic structure primer</i>	650	<i>Screen Print Ink</i>	840
<i>Compatible Substrate Primer</i>	780	Sealants:	
		Extrudable/Rollable/Brushable Sealant	280
		Sprayable Sealant	600
<i>Corrosion Prevention Compound</i>	710	<i>Silicone Insulation Material</i>	850
<i>Cryogenic Flexible Primer</i>	645	<i>Solid Film Lubricant</i>	880
<i>Cryoprotective Coating</i>	600	<i>Specialized Function Coating</i>	890
<i>Dry Lubricative Material</i>	880	<i>Temporary Protective Coating</i>	320
<i>Electric or Radiation-Effect Coating</i>	800	<i>Thermal Control Coating</i>	800
<i>Electrostatic Discharge and Electromagnetic Interference (EMI) Coating</i>	800	<i>Wet Fastener Installation Coating</i>	675
<i>Elevated-Temperature Skydrol-Resistant Commercial Primer</i>	740	<i>Wing Coating</i>	850

<sup>a</sup> Coating limits expressed in terms of mass (grams) of VOC per volume (liters) of coating less water and less exempt solvent. To convert from g/L to lbs/gallon multiply by 0.00835.

8. VOC Handling and Storage.

i. Except as provided in paragraph (c)(8)(ii) of this Section, any person subject to this Section shall use good house keeping measures when handling any VOC and any VOC-containing material at the facility. Such measures shall include:

A. Handling and transferring all fresh and spent cleaning solvent and other VOC-containing material to or from any container, tank, vat, vessel, or piping system, etc. in such a manner that minimizes losses.

B. All fresh and spent solvents and

VOC-containing material shall be stored in closed containers at all times except during filling or emptying.

C. All solvent-laden cloths, papers, or other absorbent materials shall be placed in closed containers immediately after use.

ii. The requirements in paragraph (c)(8)(i) of this Section shall not apply to wastes that are determined to be hazardous wastes under the Resource Conservation and Recovery Act of 1976 (PL 94-580) (RCRA), as implemented by 40 Code of Federal Regulations (CFR) Parts 260 and 261, and that are subject to RCRA requirements, as implemented in 40 CFR Parts 262 through 268.

d. Daily-Weighted Average Limitations. As an alternative to complying with the individual limits specified in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, coatings in any primer, topcoat,

chemical milling maskant, or specialty coating application operation shall not be applied at the facility, during any day, whose daily-weighted average VOC content, calculated in accordance with the procedure specified in Appendix "C" of Regulation 24 and the provisions listed below, exceeds the applicable emission limits in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, as applicable.

1. Averaging between primers, topcoats, self-priming topcoats, chemical milling maskants and/or specialty coatings is prohibited.

2. Averaging between coatings used in operations where air emissions are not captured and controlled and coatings used in operations where air emissions are captured and controlled is prohibited.

e. Control Devices.

1. As an alternative to complying with the individual limits specified in paragraph (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7), any person subject to this Section shall, for any primer, topcoat, self-priming topcoat, chemical milling maskant, and/or specialty coating application operation:

i. Install, test, calibrate, operate, maintain, and monitor according to the manufacturer's specifications, as approved by the Department, an air pollution control device consisting of a capture and control system on that operation; and

ii. Demonstrate that the overall emission reduction efficiency achieved is equal to or greater than 81 weight percent.

2. The procedures in Appendix "D" and Appendix "E" of Regulation 24 shall be used to demonstrate compliance with paragraph (e)(1)(ii) of this Section. The method in Appendix "I" of Regulation 24 may be used to determine an alternative multi-day rolling period when calculating the efficiency of any carbon absorption system.

f. Test Methods.

1. The VOC composite vapor pressure specified in paragraph (c)(1)(i)(A) and paragraph (c)(5)(i) of this Section shall be determined either by using ASTM Method E 260-91, manufacturer's supplied data, or standard engineering reference text values.

2. The water content specified in paragraph (c)(1)(i)(B) of this Section shall be determined using the test methods found in Appendix "A" and Appendix "B" of Regulation 24.

3. The VOC content specified in paragraph (c)(4)(i)(A) and (c)(4)(i)(B) shall be determined by using the test method found in Appendix "A" and Appendix "B" of Regulation 24.

g. Record keeping. Any person subject to this Section

shall maintain at the facility for a minimum period of 5 years from the information's date of record, all of the following information. Such information shall be immediately submitted to the Department upon written or verbal request.

1. For any person subject to the requirements of paragraph (c)(1) of this Section (i.e., hand-wipe cleaning operations):

i. Identification of each hand-wipe cleaning solvent used at the facility;

ii. The composite vapor pressure of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(A), and all supporting documentation, to include any test reports and/or calculations.

iii. The water content of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(B), and all supporting documentation, to include any test reports and/or calculations.

iv. Identification of each hand-wipe cleaning solvent used at the facility pursuant to paragraph (c)(1)(ii) of this Section, and a list of the parts, assemblies, or subassemblies cleaned with each such hand-wipe cleaning solvent.

2. For any person subject to paragraph (c)(2) of this Section (i.e., spray gun cleaning):

i. A description of each method used to clean spray guns.

ii. Records of the inspections conducted pursuant to paragraph (c)(2)(ii)(A).

iii. For any leak found pursuant to paragraph (c)(2)(ii)(A), records indicating the source of the leak, the date the leak was discovered, and the date the leak was repaired.

3. For any person subject to paragraph (c)(4) of this Section (i.e., primer, topcoat, and self-priming topcoat application):

i. For each coating applied pursuant to paragraph (c)(4)(ii) of this Section.

A. Not later than the 5th day of each month, identification of each coating used at the facility pursuant to paragraph (c)(4)(ii) of this Section during the preceding month.

B. The volume used of each coating identified in paragraph (g)(3)(i)(A) of this Section.

C. The summation of the volumes recorded pursuant to paragraph (g)(3)(i)(B) for the preceding twelve (12) months.

D. The records required by paragraph (e) of Section 4 of Regulation 24.

ii. A description of the proper operation of all coating application equipment used at the facility.

iii. Documentation associated with any alternate coating application techniques approved pursuant to paragraph (c)(4)(iii)(B) of this Section.

4. For any person subject to paragraph (c)(4), (c)(6),

and (c)(8) of this Section (i.e., primer, topcoat, self-priming topcoat, chemical milling maskant, and specialty coating application):

i. Identification of the control strategy employed (i.e., the combination of complying coatings, daily-weighted averaging, and control devices used at the facility).

ii. Where complying coatings are used, the records required by paragraph (c) of Section 4 of Regulation 24.

iii. Where daily-weighted averaging pursuant to paragraph (d) of this Section is used, the records required by paragraph (d) of Section 4 of Regulation 24.

iv. Where a control device(s) pursuant to paragraph (e) of this Section is used, the records required by paragraph (e) of Section 4 of Regulation 24.

5. For any person subject to paragraph (c)(5) of this Section:

i. If complying with paragraph (c)(5)(i), the name, VOC composite vapor pressure, and method and supporting documentation used to determine the VOC composite vapor pressure of each stripper used at the facility.

ii. If complying with paragraph (c)(5)(ii), the name, VOC content, and method and supporting documentation used to determine the VOC content of each stripper used at the facility.

iii. A description of any non-chemical-based depainting equipment used at the facility, to include the name and type of equipment or technique.

iv. Records and a description of all malfunctions of non-chemical-based depainting equipment used at the facility, to include the dates and alternative depainting method(s) used.

v. A list of any parts, assemblies, or subassemblies normally removed during depainting operations.

6. For any person subject to paragraph (c)(8) of this Section, a description of the procedures used to ensure that containers are kept closed when not in use and that solvents and other VOC-containing materials are stored in closed containers.

h. Reporting. Notification of any non-compliance with any requirement of this Section shall be reported to the Department in accordance with Section 4 and 5 of Regulation 24, as applicable and any other applicable Federal or State reporting requirements.

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delaware Bicycle Council	Ms. Dana M. Levy	07/11/05
Delaware Economic and Financial Advisory Council	Hon. Jeffifer W. Davis	Pleasure of the Governor
	Mr. James A. Horthy, Jr.	Pleasure of the Governor
	Mr. Thomas J. Shopa	Pleasure of the Governor
Delaware Energy Task Force	Mr. Brian E. Grems	Pleasure of the Governor



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

**PLEASE TAKE NOTICE**, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0 and 11.0. The changes to Rule 1.0 relating to the national examinations make the rule consistent with the requirements of the National Association of Boards of Pharmacy (NABP). Regulation 11.0 is modified as it relates to stock medication, labeling, consultant pharmacist duties, and drug disposal. The changes to Rule 11 were made in response to public comment from an earlier proposal that was not enacted.

A public hearing will be held on March 12, 2003 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,  
AUDIOLOGISTS, AND HEARING AID DISPENSERS**

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 Del.C. §3706(a)(1) has proposed changes to its rules and regulations. The changes clarify the requirements for continuing education and the supervised clinical practicum that precedes the clinical fellowship year. An audit system will be used to monitor compliance with continuing education requirements.

A public hearing will be held at 2:00 p.m. on March 12, 2003 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed

regulations at its regularly scheduled meeting following the public hearing.

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

**PLEASE TAKE NOTICE**, that pursuant to 3 Del. C. §10005 and 29 Del. C. §10115, the Department proposes to enact a new Rule 8.8. The proposed rule would provide as follows:

1 permit Amicar as a race day medication and to establish the procedure for the administration of Amicar and to establish the procedure for a horse to be in the Amicar program and to be removed from the Amicar program.

The Commission will accept written comments from February 1, 2003 through March 3, 2003. The Commission will hold a public hearing on the proposed rule amendment on March 4, 2003 at 10:00 a.m. at Dover Downs, 1131 N. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

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**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, February 21, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

**PUBLIC NOTICE**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted seven revised or new proposed regulations pertaining to training and qualifications of nursing assistants and certified nursing assistants. These proposed regulations define nursing related services, specify the requirement for Delaware certification as a CNA, detail requirements for certification and recertification and clarify the responsibility of nursing facilities to pay the costs of training nursing assistants in accordance with federal regulations.

**INVITATION FOR PUBLIC COMMENT**

Public hearings will be held as follows:

Wednesday, March 12, 2003, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 North DuPont Highway  
New Castle

Thursday, March 13, 2003, 10:00 AM  
Department of Natural Resources &  
Environmental Control Auditorium  
89 Kings Highway  
Dover

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

Written comments are invited on these proposed regulations and should be sent to:

Elise MacEwen, RN  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19808

Written comments will be accepted until the conclusion of the March 13 public hearing.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services proposing to amend the Title XXI Delaware Healthy Children State Plan to expand the plan to cover more DSCYF (Department of Services to Children, Youth and their Families) services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by February 28, 2003.

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

**Summary Of Proposed Revisions**

Effective January 1, 2003, this regulation amends the Division of Social Services Title XXI Delaware Healthy Children Program (DHCP) State Plan to:

1 Remove the yearly limit of one bundled rate payment per 31 days in a calendar year. In this way, the DHCP Plan mirrors the Medicaid benefit which allows the bundled rate to be billed for up to 12 months per calendar year; and,

2 Remove the restriction that currently prevents DSCYF from billing any fee-for-service claims for children in Division of Youth and Rehabilitative Services (YRS) or Division of Family Services (DFS) who are not under the care of Child Mental Health (CMH) and do not have the bundled rate billed on their behalf.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT**

**REGISTER NOTICE**  
**SAN # 2001-22**

**Title Of The Regulations:**

DNREC Chronic Violator Regulations

**Brief Synopsis Of The Subject, Substance And Issues:**

These new regulations define criteria and establish a process for determining when a facility or regulated party should be declared a chronic violator by virtue of its inability to maintain compliance with the state's environmental permits, laws or regulations.

**Possible Terms Of The Agency Action:**

There is no sunset provision associated with 7 Del. C. Chapter 79 or these regulations.

**Notice Of Public Comment:**

DNREC will hold a public workshop on the newly proposed Chronic Violator Regulation on Tuesday, March 11, 2003, at 6:30 p.m. The workshop will be held in DNREC's Auditorium located at 89 Kings Highway, Dover, Delaware.

DNREC will hold a public hearing on the newly proposed Chronic Violator Regulation on Wednesday, March 19, 2003, at 6:30 p.m. The public hearing will be held in DNREC's Auditorium located at 89 Kings Highway, Dover, Delaware.

**Prepared By:**

Jennifer M. Bothell, DNREC Enforcement Coordinator,  
739-4403 January 15, 2003

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**DIVISION OF FISH & WILDLIFE**  
**REGISTER NOTICE**  
**SAN# 2002-23**

**Title Of The Regulations:**

Amendments To Shellfish Regulations

**Brief Synopsis Of The Subject, Substance And Issues:**

Oyster harvesting regulations need to be updated to cover the harvest season; the harvestable amount of oysters and areas where oysters may be landed in 2003. It is also proposed that it be unlawful for any oyster container that is empty or partially filled to have an oyster tag attached.

**Notice Of Public Comment:**

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 5 2003 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2003

**Prepared By:**

Richard Cole (302) 739-4782, January 10, 2003

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**DIVISION OF FISH & WILDLIFE**  
**REGISTER NOTICE**  
**SSN# 2002-24**

**Title Of The Regulations:**

Tidal Finfish Regulations

**Brief Synopsis of the Subject, Substance and Issues:**

The coast wide requirements for recreational black sea bass fishermen, as mandated by the Atlantic States Marine Fisheries Commission's Fishery Management Plan (FMP), in 2003 are a 12.0 inch minimum size length with a 25 fish creel limit and a closed season from September 2, 2003 through September 15, 2003 and December 1, 2003 through December 31, 2003. Delaware currently has an eleven and one half (11.5) inch minimum size limit, a 25 fish creel limit and no closed season. It is proposed to amend Tidal Finfish Regulation No. 23 to increase the minimum size limit for

black sea bass from 11.5 inches to 12.0 inches for recreational fishermen and establish a closed season for September 2, 2003 through September 15, 2003 and December 1, 2003 through December 31, 2003.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2003. Delaware is obligated to cap the summer flounder recreational harvest at 129,000 fish for 2003. This is only 22,271 more fish than were landed in 2002. Given that over one million marine recreational fishing trips occur annually in Delaware and that the 2000 year class of summer flounder was reported to be above average thus suggesting that more fish may be available for harvest in 2003; it is inadvisable to significantly alter the management measures that were in place for 2002. It is proposed that the seven management options that were presented for the 2002 fishing season, which included size ranges from 16 inches to 17.5 inches and creel limits ranging from 4 fish to 7 fish, and a variety of seasonal closures be presented again for public review and comment. The adopted management approach for 2002 included a 17.5 inch minimum size, 4 fish creel limit and closed season from January 1 through May 15. This particular option will be slightly adjusted by eliminating the closed season for the 2003 fishery. It is anticipated that the minimum size and bag limit will restrain the catch without the need for any additional reduction associated with the closures.

**Possible Terms Of The Agency Action**

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

**Notice Of Public Comment:**

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on February 24, 2003 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 3, 2003.

**Prepared By:**

Richard Cole, (302) 739-4782, January 13, 2003

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**EXECUTIVE DEPARTMENT**  
**DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Department Of Health And Social Services  
 Delaware Economic Development Office  
 Tax Appeal Board

**Notice Of Amendments To And Re-proposal Of  
 Proposed Regulation Governing Neighborhood  
 Assistance Act Tax Credit Program**

**Title Of Regulation**

Neighborhood Assistance Act Tax Credit Program  
 Regulation

**Nature Of Proceedings; Synopsis Of The Subject And  
 Substance Of The Re-proposed Regulation And Of  
 Public Comments On The Initial Proposal**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Secretary of DHSS, the Director of DEDO and the members of the TAB proposed to adopt a regulation pertaining to the tax credit set forth in the Neighborhood Assistance Act, 30 *Del. C.* §§2001 — 2007. The regulation sets forth certain definitions pertaining to the Act and the regulation and explains how to apply for approval of a Contribution or a Program and the procedures pertaining to the application process.

Notice of the public hearing to consider the proposed regulation appeared in the Delaware Register of Regulations on November 1, 2002, *see* 6 Del. Reg. 630 — 633 (November 1, 2002) and in Delaware newspapers of general circulation on November 17, 2002 and in the Delaware Register of Regulations on December 1, 2002, *see* 6 Del. Reg. 820 — 821 in accordance with 29 *Del. C.* §10115(b). An employee of DEDO designated by the Director of DEDO, the Secretary of DHSS and the members of the TAB in accordance with 29 *Del. C.* §10117(1) held the public hearing on the Regulation on December 9, 2002 at the offices of DEDO on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801, as duly noticed.

**How To Comment On The Re-proposed Regulation**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Mr. Alex Bradley, Delaware Economic Development Office, Carvel State Office Building, 10<sup>th</sup> Floor, 820 N. Market Street, Wilmington, DE, 19801, phone (302) 577-8477. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Alex Bradley at the address of the Delaware Economic Development Office set forth above. Written comments

must be received on or before Monday, March 3, 2003.

**STATE EMPLOYEE BENEFITS  
 COMMITTEE**

PLEASE TAKE NOTICE, pursuant to 29 *Del. C.* Chapter 101 and 29 *Del. C.* Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendment inserts a new sentence in Rule 7.01 that clarifies that coverage is retained under certain circumstances for public school or higher education employees through the end of the summer.

The public hearing originally scheduled and noticed for December 5, 2002 was canceled due to inclement weather. The public hearing on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules will be held on Friday, February 28, 2003 at 1:00 p.m., in Room 205, Second Floor Conference Room, of the Public Safety Building, 303 Transportation Circle, Dover, Delaware, 19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Brenda L. Lakeman at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be March 3, 2003. Anyone wishing to obtain a copy of the proposed Group Health Care Insurance Eligibility and Coverage Rules or to make comments at the public hearing should notify Brenda L. Lakeman at the above address by calling (302) 739-8331.

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

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