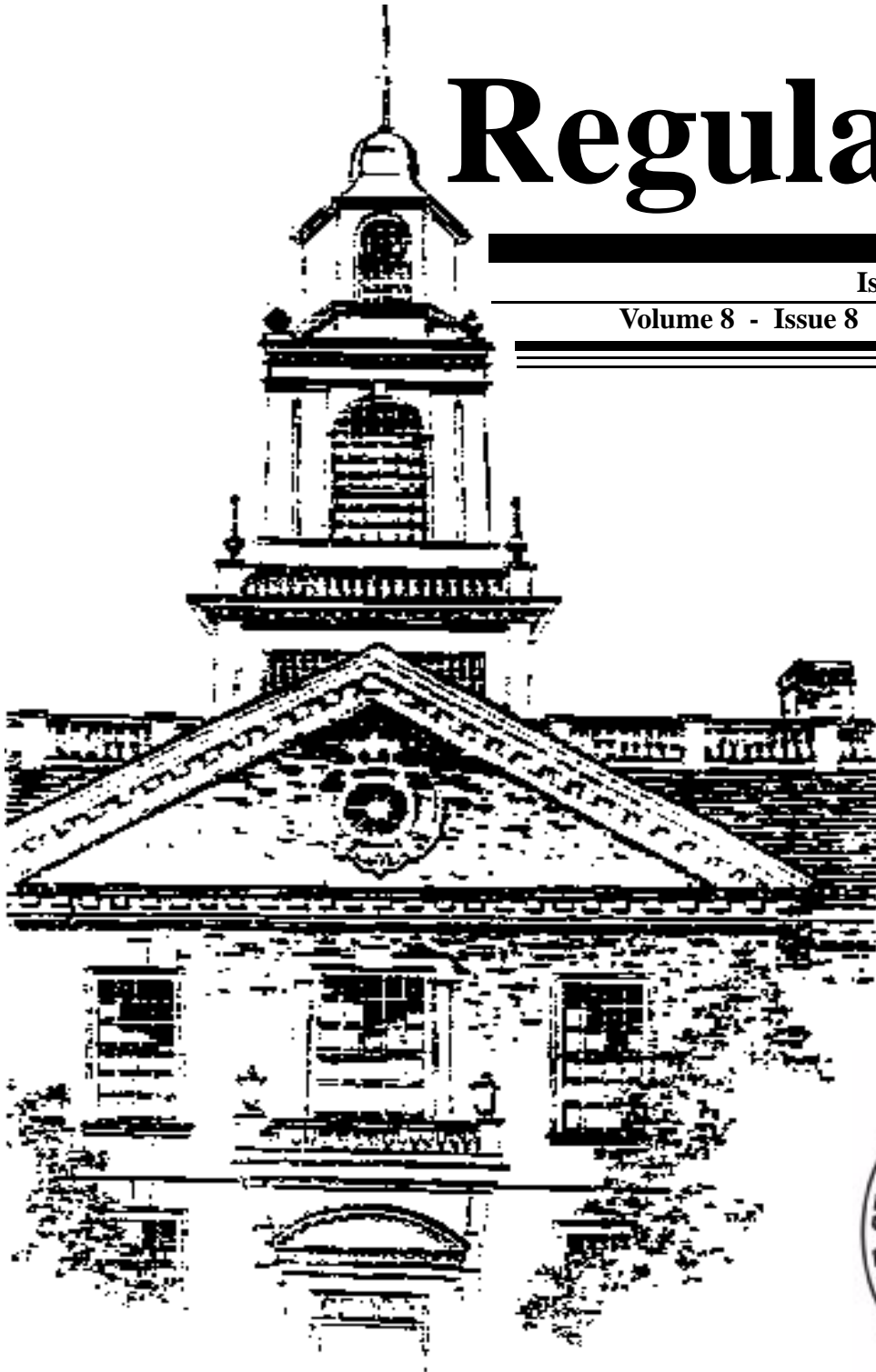

Delaware Register of Regulations



Issue Date: February 1, 2005

Volume 8 - Issue 8

Pages 1047 - 1203

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Appointments

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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, 2005.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

8 DE Reg. 757-772 (12/01/04)

Refers to Volume 8, pages 757-772 of the *Delaware Register* issued on December 1, 2004.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the *Registrar* for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

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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.).

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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 DENTAL EXAMINERS**

Statutory Authority: 24 Delaware Code,
Section 1106(1) (24 **Del.C.** §1106(1))
24 **DE Admin. Code** 1100

PUBLIC NOTICE

The Delaware Board of Dental Examiners in accordance with 24 **Del.C.** §1106(1) has proposed changes to its rules and regulations as mandated by Senate Bill # 229 (74 **Del. Laws** c. 262) to identify crimes that are substantially related to the provision of dentistry and dental hygiene. The change also clarifies who is eligible to take the practical (clinical) examination in dentistry or dental hygiene.

A public hearing will be held Thursday, March 10, 2005 in the second floor conference room A 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 Dental Examiners, 861 Silver Lake Boulevard, 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.

Proposed Rules and Regulations**10.0 Eligibility to Take the Practical (Clinical) Examination****Authority:**

Pursuant to Title 24, Section 1106(a)(1), The Board of Dental Examiners is empowered to formulate rules and regulations to implement or clarify Chapter 11 relating to dentistry and dental hygiene.

Purpose:

This regulation clarifies eligibility to take the practical (clinical) examination in dentistry and dental hygiene administered by the Board.

10.1 No person shall be eligible to take the practical (clinical) examination dentistry administered by the Delaware Board of Dental Examiners unless the applicant has received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association.

10.2 No person shall be eligible to take the practical (clinical) examination in dental hygiene administered by the Delaware Board of Dental Examiners unless the applicant has graduated from a dental hygiene college or university program of at least 2 academic years' duration or has graduated, prior to 1953, from a dental hygiene program of at least 1 year's duration which program had been approved by the Board at the time of the person's graduation.

10.3 The Board reserves the right to waive the requirement set forth above in sections 10.1 and 10.2 if the Applicant can establish to the satisfaction of the Board's Credentialing Committee that he or she is a student in good standing in an educational facility accredited by the Commission on Dental Accreditation of the American

Dental Association and will graduate within sixty (60) days of the administration of the practical (clinical) examination with a degree in dentistry or dental hygiene.

11.0 Crimes Substantially Related To The Practice Of Dentistry And Dental Hygiene.

Authority:

Pursuant to 74 **Del. Laws**, c.262, (Senate Bill No. 229 of the 142nd General Assembly, 2004, as amended), the Board was directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of dentistry and dental hygiene.

Purpose:

The Board of Dental Examiners believes that the State of Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals. Therefore, the Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Dentistry and Dental Hygiene in the State of Delaware without regard to the place of conviction:

Definitions.

"Conviction", unless otherwise defined by specific statute, means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the *Delaware Code* (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

"Substantially similar crimes in another state or jurisdiction" includes all crimes prohibited by or punishable

under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

11.1 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

Assaults and Related Offenses

11.1.1. §601. Offensive touching;

11.1.2. §602. Menacing;

11.1.3. §603. Reckless endangering in the second degree;

11.1.4. §604. Reckless endangering in the first degree;

11.1.5. §605. Abuse of a pregnant female in the second degree;

11.1.6. §606. Abuse of a pregnant female in the first degree;

11.1.7. §611. Assault in the third degree;

11.1.8. §612. Assault in the second degree;

11.1.9. §613. Assault in the first degree;

11.1.10. §614. Assault on a sports official;

11.1.11. §615. Assault by abuse or neglect;

11.1.12. §616. Gang Participation;

11.1.13. §621. Terroristic threatening;

11.1.14. §622. Hoax devices

11.1.15. §625. Unlawfully administering drugs;

11.1.16. §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

11.1.17. §627. Prohibited acts as to substances releasing vapors or fumes;

11.1.18. §628. Vehicular assault in the second degree;

11.1.19. §629. Vehicular assault in the first degree;

11.1.20. §630. Vehicular homicide in the second degree;

11.1.21. §630A. Vehicular homicide in the first degree;

11.1.22. §631. Criminally negligent homicide;

11.1.23. §632. Manslaughter;

11.1.24. §633. Murder by abuse or neglect in the second degree;

11.1.25. §634. Murder by abuse or neglect in the first degree;

11.1.26. §635. Murder in the second degree;

11.1.27. §636. Murder in the first degree;

11.1.28. §645. Promoting suicide;

Abortion and Related Offenses

11.1.29. §651. Abortion;

11.1.30. §653. Issuing abortifacient articles;

Sexual Offenses

11.1.31. §763. Sexual harassment;

11.1.32. §764. Indecent exposure in the second

degree:

11.1.33. §765. Indecent exposure in the first

degree:

11.1.34. §766. Incest;

11.1.35. §767. Unlawful sexual contact in the third

degree:

11.1.36. §768. Unlawful sexual contact in the

second degree:

11.1.37. §769. Unlawful sexual contact in the first

degree:

11.1.38. §770. Rape in the fourth degree;

11.1.39. §771. Rape in the third degree;

11.1.40. §772. Rape in the second degree;

11.1.41. §773. Rape in the first degree;

11.1.42. §776. Sexual extortion;

11.1.43. §777. Bestiality;

11.1.44. §778. Continuous sexual abuse of a child;

11.1.45. §780. Female genital mutilation;

Kidnapping and Related Offenses

11.1.46. §781. Unlawful imprisonment in the

second degree:

11.1.47. §782. Unlawful imprisonment in the first

degree:

11.1.48. §783. Kidnapping in the second degree;

11.1.49. §783A. Kidnapping in the first degree;

11.1.50. §785. Interference with custody;

Coercion

11.1.51. §791. Acts constituting coercion.

11.2. Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Arson and Related Offenses

11.2.1. §801. Arson in the third degree;

11.2.2. §802. Arson in the second degree;

11.2.3. §803. Arson in the first degree;

11.2.4. §804. Reckless burning or exploding;

11.2.5. §805. Cross or religious symbol burning;

11.2.6. §811. Criminal mischief;

Criminal Trespass and Burglary

11.2.7. §820. Trespassing with intent to peer or peep into a window or door of another;

11.2.8. §821. Criminal trespass in the third degree;

11.2.9. §822. Criminal trespass in the second degree;

11.2.10. §823. Criminal trespass in the first degree;

11.2.11. §824. Burglary in the third degree;

11.2.12. §825. Burglary in the second degree;

11.2.13. §826. Burglary in the first degree;

11.2.14. §828. Possession of burglar's tools or instruments facilitating theft;

Robbery

11.2.15. §831. Robbery in the second degree;

11.2.16. §832. Robbery in the first degree;

11.2.17. §835. Carjacking in the second degree;

11.2.18. §836. Carjacking in the first degree;

Theft and Related Offenses

11.2.19. §840. Shoplifting; class G felony;

11.2.20. §840A. Use of illegitimate retail sales receipt or Universal Product Code Label;

11.2.21. §841. Theft;

11.2.22. §842. Theft; lost or mislaid property; mistaken delivery;

11.2.23. §843. Theft; false pretense;

11.2.24. §844. Theft; false promise;

11.2.25. §845. Theft of services;

11.2.26. §846. Extortion;

11.2.27. §848. Misapplication of property;

11.2.28. §849. Theft of rented property;

11.2.29. §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices;

11.2.30. §851. Receiving stolen property;

11.2.31. §853. Unauthorized use of a vehicle;

11.2.32. §854. Identity theft;

11.2.33. §859. Larceny of livestock;

11.2.34. §860. Possession of shoplifter's tools or instruments facilitating theft;

Forgery and Related Offenses

11.2.35. §861. Forgery; class F felony;

11.2.36. §862. Possession of forgery devices;

Offenses Involving Falsification of Records

11.2.37. §871. Falsifying business records;

11.2.38. §872. Falsifying business records;

11.2.39. §873. Tampering with public records in the second degree;

11.2.40. §876. Tampering with public records in the first degree;

11.2.41. §877. Offering a false instrument for filing;

11.2.42. §878. Issuing a false certificate;

Bribery Not Involving Public Servants

11.2.43. §881. Bribery;

11.2.44. §882. Bribe receiving;

Frauds on Creditors

11.2.45. §891. Defrauding secured creditors;

11.2.46. §892. Fraud in insolvency;

11.2.47. §893. Interference with levied-upon property;

Other Frauds and Cheats

11.2.48. §900. Issuing a bad check;

11.2.49. §903. Unlawful use of credit card;

11.2.50. §903A. Reencoder and scanning devices;

11.2.51. §906. Deceptive business practices;

11.2.52. §907. Criminal impersonation;

11.2.53. §907A. Criminal impersonation, accident related;

11.2.54. §907B. Criminal impersonation of a police officer;

11.2.55. §908. Unlawfully concealing a will;

11.2.56. §909. Securing execution of documents by deception;

11.2.57. §910. Debt adjusting;

11.2.58. §911. Fraudulent conveyance of public lands;

11.2.59. §912. Fraudulent receipt of public lands;

11.2.60. §913. Insurance fraud;

11.2.61. §913A. Health care fraud;

11.2.62. §914. Use of consumer identification information;

11.2.63. §915. Use of credit card information;

11.2.64. §916. Home improvement fraud;

11.2.65. §917. New home construction fraud;

Offenses Relating to Recorded Devices

11.2.66. §920. Transfer of recorded sounds;

11.2.67. §921. Sale of transferred recorded sounds;

11.2.68. §922. Improper labeling;

Computer Related Offenses

11.2.69. §932. Unauthorized access;

11.2.70. §933. Theft of computer services;

11.2.71. §934. Interruption of computer services;

11.2.72. §935. Misuse of computer system information;

11.2.73. §936. Destruction of computer equipment;

11.2.74. §937. Unrequested or unauthorized electronic mail or use of network or software to cause same;

11.2.75. §938. Failure to promptly cease electronic communication upon request;

Offenses relating to marriage.

11.2.76. §1001. Bigamy;

11.2.77. §1003. Contracting a bigamous marriage outside of the State.

11.3. Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Child Welfare; Sexual Offenses, Animal Offenses

11.3.1. §1100. Dealing in children;

11.3.2. §1101. Abandonment of child;

11.3.3. §1102. Endangering the welfare of a child;

11.3.4. §1105. Endangering the welfare of an incompetent person;

11.3.5. §1106. Unlawfully dealing with a child;

11.3.6. §1107. Endangering children;

11.3.7. §1108. Sexual exploitation of a child;

11.3.8. §1109. Unlawfully dealing in child pornography;

11.3.9. §1111. Possession of child pornography;

11.3.10. §1112. Sexual offenders; prohibitions from school zones;

11.3.11. §1112A. Sexual solicitation of a child;

11.3.12. §1113. Criminal non-support and aggravated criminal non-support;

11.3.13. §1114. Body-piercing; tattooing or branding;

11.3.14. §1114A. Tongue-splitting;

11.3.15. §1116. Sale or distribution of tobacco products to minors;

11.3.16. §1325. Cruelty to animals;

11.3.17. §1326. Animals; fighting and baiting prohibited;

11.3.18. §1327. Maintaining a dangerous animal.

11.4. Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Bribery and Improper Influence

11.4.1. §1201. Bribery;

11.4.2. §1203. Receiving a bribe;

11.4.3. §1205. Giving unlawful gratuities;

11.4.4. §1206. Receiving unlawful gratuities;

11.4.5. §1207. Improper influence;

11.4.6. §1211. Official Misconduct;

11.4.7. §1212. Profiteering;

Perjury, Escape and related offenses

11.4.8. §1221. Perjury in the third degree;

11.4.9. §1222. Perjury in the second degree;

11.4.10. §1223. Perjury in the first degree;

11.4.11. §1233. Making a false written statement;

11.4.12. §1239. Wearing a disguise during commission of a felony;

11.4.13. §1240. Terroristic threatening of public officials or public servants;

11.4.14. §1244. Felony hindering prosecution;

11.4.15. §1245. Felony false reporting an incident

11.4.16. §1246. Compounding a crime;

11.4.17. §1248. Felony obstructing control and suppression of rabies;

11.4.18. §1249. Felony abetting violation of driver's license restrictions;

11.4.19. §1250. Offenses against law-enforcement animals;

11.4.20. §1252. Felony escape;

11.4.21. §1253. Escape after conviction.

11.4.22. §1254. Assault in a detention facility;

11.4.23. §1256. Felony promoting prison contraband;

11.4.24. §1257A. Felony use of an animal to avoid capture;

11.4.25. §1259. Sexual relations in a detention facility;

11.4.26. §1260. Felony misuse of prisoner mail; Offenses Relating to Judicial and Similar Proceedings

- 11.4.27. §1261. Bribing a witness;
- 11.4.28. §1262. Bribe receiving by a witness;
- 11.4.29. §1263. Tampering with a witness;
- 11.4.30. §1263A Interfering with child witness;
- 11.4.31. §1264. Bribing a juror;
- 11.4.32. §1265. Bribe receiving by a juror;
- 11.4.33. §1266. Tampering with a juror;
- 11.4.34. §1267. Misconduct by a juror;
- 11.4.35. §1269. Tampering with physical evidence.

11.5. Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the Delaware Code Annotated which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

- 11.5.1. §1302. Riot;
- 11.5.2. §1304. Hate crimes;
- 11.5.3. §1312A Felony Stalking;
- 11.5.4. §1313. Malicious interference with emergency communications;
- 11.5.5. §1325. Felony Cruelty to Animals;
- 11.5.6. §1326. Animals, fighting and baiting prohibited.
- 11.5.7. §1327. Felony maintaining a dangerous animal;
- 11.5.8. §1332. Abusing a corpse;
- 11.5.9. §1333. Trading in human remains and associated funerary objects
- 11.5.10. §1335. Felony violation of privacy;
- 11.5.11. §1336. Wiretapping and electronic surveillance;
- 11.5.12. §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;
- 11.5.13. §1339. Adulteration;
- Offenses Involving Public Indecency
- 11.5.14. §1351. Promoting prostitution in the third degree;
- 11.5.15. §1352. Promoting prostitution in the second degree;
- 11.5.16. §1353. Promoting prostitution in the first degree;

Obscenity

- 11.5.17. §1361. Obscenity; acts constituting.

11.6. Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and

shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

- 11.6.1. §4751. Prohibited acts A;
 - 11.6.2. §4752. Prohibited acts B;
 - 11.6.3. §4752A Unlawful delivery of noncontrolled substance;
 - 11.6.4. §4753. Prohibited acts C;
 - 11.6.5. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs;
 - 11.6.6. §4754. Prohibited acts D;
 - 11.6.7. §4754A Possession and delivery of noncontrolled prescription drug.
 - 11.6.8. §4755. Prohibited acts E;
 - 11.6.9. §4756. Prohibited acts;
 - 11.6.10. §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;
 - 11.6.11. §4758. Keeping drugs in original containers;
 - 11.6.12. §4761. Distribution to persons under 21 years of age;
 - 11.6.13. §4761A Purchase of drugs from minors;
 - 11.6.14. §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
 - 11.6.15. §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;
 - 11.6.16. §4774. Drug paraphernalia.
- 11.7. Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:
- Offenses Involving Deadly Weapons and Dangerous Instruments
- 11.7.1. §1442. Carrying a concealed deadly weapon;
 - 11.7.2. §1443. Carrying a concealed dangerous instrument;
 - 11.7.3. §1444. Possessing a destructive weapon;
 - 11.7.4. §1445. Felony unlawfully dealing with a dangerous weapon;
 - 11.7.5. §1447. Possession of a deadly weapon during commission of a felony;
 - 11.7.6. §1447A Possession of a firearm during commission of a felony;
 - 11.7.7. §1448. Possession and purchase of deadly weapons by persons prohibited;
 - 11.7.8. §1448A Criminal history record checks for sales of firearms;
 - 11.7.9. §1449. Wearing body armor during commission of felony;

11.7.10. §1450. Receiving a stolen firearm;
11.7.11. §1451. Theft of a firearm;
11.7.12. §1452. Unlawfully dealing with knuckles-combination knife;
11.7.13. §1453. Unlawfully dealing with martial arts throwing star;
11.7.14. §1454. Giving a firearm to person prohibited;
11.7.15. §1455. Engaging in a firearms transaction on behalf of another;
11.7.16. §1456. Unlawfully permitting a minor access to a firearm;
11.7.17. §1457. Felony Possession of a weapon in a Safe School and Recreation Zone;
11.7.18. §1458. Removing a firearm from the possession of a law enforcement officer;
11.7.19. §1459. Possession of a weapon with a removed, obliterated or altered serial number;
11.7.20. §1471. Prohibited Acts; Offenses Involving Organized Crime and Racketeering
11.7.21. §1504. Criminal Penalties for Organized Crime & Racketeering;
Offenses Involving Intimidation of Victims or Witnesses
11.7.22. §3533. Aggravated act of intimidation;
11.8 Other Crimes
Title 16 Health and Safety
11.8.1 §1136. Abuse or neglect of a patient or resident of a nursing facility;
11.8.2 §4751. Prohibited acts A;
11.8.3 §4752. Prohibited acts B;
11.8.4 §4752A Unlawful Delivery of Noncontrolled Substance;
11.8.5 §4753. Prohibited acts C;
11.8.6 §4753A Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamines, Lysergic Acid Diethylamide, Designer Drugs or 3,4-Methylenedioxymethamphetamine
11.8.7 §4754. Prohibited acts D
11.8.8 §4754A Possession and Delivery of NonControlled Prescription Drug.
11.8.9 §4755. Prohibited Acts
11.8.10 §4756. Prohibited Acts
11.8.11 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties
11.8.12 §4758. Keeping drugs in original containers;
11.8.13 §4761. Distribution to persons under 21 years of age; penalties;
11.8.14 §4761A Purchase of drugs from minors; penalties;
11.8.15 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses;

11.8.16 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses;
11.8.17 §4771. Drug paraphernalia;
11.8.18 §4774. Penalties;
Title 23 Navigation and Waters
11.8.19 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;
11.8.20 §2305. Second, Third and Fourth Offense Penalties; jurisdiction;
Title 30 State Taxes
11.8.21 §571. Attempt to evade or defeat tax; class E felony;
11.8.22 §572. Failure to collect or pay over tax; class E felony;
11.8.23 §573. Failure to file return, supply information or pay tax; class A misdemeanor;
11.8.24 §574. Fraud and false statements; class E felony;
Title 31 Welfare
11.8.25 §1007. Felony Penalties;
Title 21 – Motor Vehicles
11.8.26 §2118A Unlawful possession or manufacture of proof of insurance, penalties;
11.8.27 §2133. Penalties; jurisdiction of justices of the peace;
11.8.28 §2315. False statements; penalty;
11.8.29 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate
11.8.30 §2620. False statements; incorrect or incomplete information;
11.8.31 §2751. Unlawful application for or use of license or identification card;
11.8.32 §2752. False statements;
11.8.33 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards;
11.8.34 §2814. Additional penalty when convicted of an offense which would render an individual a habitual offender;
11.8.35 §3107. False statements;
11.8.36 §4177. Felony Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties;
11.8.37 §4177M Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;
11.8.38 §4202. Felony Duty of driver involved in accident resulting in injury or death to any person; penalty;
11.8.39 §4601. Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties;

11.8.40 §4603. Reporting of keys; penalties;
11.8.41 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires; penalty; class E felony;
11.8.42 §6704. Receiving or transferring stolen vehicle; penalty;
11.8.43 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty;
11.8.44 §6708. Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card; class E felony; penalty;
11.8.45 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty; class E felony;
11.8.46 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty; class E felony;
Title 3 – Agriculture
11.8.47 §1224. Unlawful Acts **(Only to include crimes related to fraud and conspiracy);**
11.8.48 §8713. Felony offenses
11.8.49 §10049 Fraudulent Written Statements;
11.8.50 §10050 Fraudulent Certificate of Registration or Eligibility Documents;
11.8.51 §904. Offenses Concerning Certain Persons;
Title 6 – Commerce and Trade
11.8.52 §4619. Felony Prohibition of Intimidation;
Title 7 – Conservation
11.8.53 §1717. Unauthorized Acts against a Service Guide or Seeing Eye Dog;
11.8.54 §6003. Felony Permits Required;
Title 11 – Crimes
11.8.55 §2402. Felony Interception of Communications Generally; Divulging Contents of Communications;
11.8.56 §2403. Manufacture, Possession or Sale of Intercepting Device;
11.8.57 §2410. Breaking and Entering, Etc. to Place or Remove Equipment;
11.8.58 §2412. Obstruction, Impediment or Prevention of Interception;
11.8.59 §2422. Divulging Contents of Communications;
11.8.60 §3534. Attempt to Intimidate;
11.8.61 §8523. Felony Violation of Reporting Provision;
11.8.62 §8562. Felony Failure of Child Care Provider to Obtain Information or Providing False

Information;
11.8.63 §8572. Penalties for Providing False Information when Seeking School Employment;
11.8.64 §9016. Filing False Claim under Victims' Compensation Fund
Title 12 – Descendants' Estates
11.8.65 §210. Alteration, Theft or Destruction of Will
Title 16 – Health & Safety
11.8.66 §2513. Felony Penalties Relating To Improper Health-Care Decisions;
11.8.67 §7112. Felony Penalties for Violations of Chapter;
11.8.68 §7416. Penalties for Violating Statute Governing Radiation Control;
Title 24 – Professions and Occupations
11.8.69 §903. Deadly Weapons Dealers – Sale to Persons under 21 or Intoxicated Persons;
Title 31 – Welfare
11.8.70 §3913. Felony Violations – Knowing or Reckless Abuse of an Infirm Adult.
11.9. Any crime which is a violation of either Title 24, Chapter 11 (Board of Dental Examiners) as it may be amended from time to time or of any other statute which requires the reporting of a medical/dental situation or condition to state, federal or local authorities or a crime which constitutes a violation of the dental or hygiene practice act of the state in which the conviction occurred or in which the dentist or dental hygienist is licensed.
11.10. The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Dentistry is available at:**

<http://dpr.delaware.gov/boards/dental/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF OCCUPATIONAL THERAPISTS**

Statutory Authority: 24 Delaware Code,
Section 2006(b) (24 Del.C. §2006(b))
24 DE Admin. Code 2000

PUBLIC NOTICE

The State Board of Occupational Therapy Practice in accordance with 24 Del.C. §2006(b) has proposed changes

to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of occupational therapy.

A public hearing was held on November 17, 2004 after which the Board decided to review its propose. A revised list of related crimes was developed on January 12, 2005 which includes deletions, additions and clarifications that are substantive. Changes from the proposal originally published in the *Register of Regulations* on October 1, 2004 are noted.

A second public hearing will be held on March 16, 2005 at 4:30 p.m. in the second floor conference room A 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 State Board of Occupational Therapy Practice, 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.

7.0 Crimes substantially related to practice of occupational therapy

7.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:

7.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 Del.C. §1717

7.1.2 Aggravated meancing. 11 Del.C. §602(b)

7.1.3 Reckless endangering. 11 Del.C. §604

7.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605

7.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606

7.1.6 Assault in the second degree. 11 Del.C. §612

7.1.7 Assault in the first degree. 11 Del.C. §613

7.1.8 Felony abuse of a sports official. 11 Del.C. §614

7.1.9 Assault by abuse of neglect. 11 Del.C. §615

7.1.10 Felony Terroristic threatening. 11 Del.C. §621

7.1.11 Unlawful administering drugs. 11 Del.C. §625

7.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626

7.1.13 Vehicular assault in the first degree. 11 Del.C. §629

7.1.14 Criminally negligent homicide. 11 Del.C. §631

7.1.15 Manslaughter. 11 Del.C. §632

7.1.16 Murder by abuse or neglect in the second degree. 11 Del.C. §633

7.1.17 Murder by abuse or neglect in the first degree. 11 Del.C. §634

7.1.18 Murder in the second degree. 11 Del.C. §635

7.1.19 Murder in the first degree. 11 Del.C. §636

7.1.20 Sexual harassment. 11 Del.C. §763

7.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768

7.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769

7.1.23 Rape in the fourth degree. 11 Del.C. §770

7.1.24 Rape in the third degree. 11 Del.C. §771

7.1.25 Rape in the second degree. 11 Del.C. §772

7.1.26 Rape in the first degree. 11 Del.C. §773

7.1.27 Sexual extortion. 11 Del.C. §776

7.1.28 Bestiality. 11 Del.C. §777

7.1.29 Continuous sexual abuse of a child. 11 Del.C. §778

7.1.30 Dangerous crime against a child. 11 Del.C. §779

7.1.31 Unlawful imprisonment in the first degree. 11 Del.C. §782

7.1.32 Kidnapping in the second degree. 11 Del.C. §783

7.1.33 Kidnapping in the first degree. 11 Del.C. §783A

7.1.34 Acts constituting coercion. 11 Del.C. §791

7.1.35 Burglary in the second degree. 11 Del.C. §825

7.1.36 Burglary in the first degree. 11 Del.C. §826

7.1.37 Robbery in the second degree. 11 Del.C. §831

7.1.38 Robbery in the first degree. 11 Del.C. §832

7.1.39 Carjacking in the second degree. 11 Del.C. §835

7.1.40 Carjacking in the first degree. 11 Del.C. §836

7.1.41 Extortion. 11 Del.C. §846

7.1.42 Identity theft. 11 Del.C. §854

7.1.43 Felony forgery. 11 Del.C. §861

7.1.44 Falsifying business records. 11 Del.C. §871

7.1.45 Felony unlawful use of a credit card. 11

Del.C. §903

- 7.1.46 Insurance fraud. 11 Del.C. §913
- 7.1.47 Health care fraud. 11 Del.C. §913A
- 7.1.48 Dealing in children. 11 Del.C. §1100
- 7.1.49 Endangering the welfare of a child. 11

Del.C. §1102

7.1.50 Endangering the welfare of an incompetent person. 11 Del.C. §1105

- 7.1.51 Unlawfully dealing with a child. 11

Del.C. §1106

- 7.1.52 Sexual exploitation of a child. 11 Del.C.

§1108

- 7.1.53 Unlawful dealing in child pornography. 11

Del.C. §1109

- 7.1.54 Possession of child pornography 11 Del.C.

§1111

7.1.55 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112

- 7.1.56 Sexual solicitation of a child. 11 Del.C.

§1112A

7.1.57 Terroristic threatening of public officials or public servants. 11 Del.C. §1240

7.1.58 Felony abetting the violation of driver's license restrictions. 11 Del.C. §1249

7.1.59 Felony offenses against law enforcement animals. 11 Del.C. §1250

- 7.1.60 Felony hate crimes. 11 Del.C. §1304

- 7.1.61 Felony stalking. 11 Del.C. §1312A

- 7.1.62 Felony cruelty to animals. 11 Del.C.

§1325

7.1.63 Felony maintaining a dangerous animal. 11 Del.C. §1327(a)

7.1.64 Felony violation of privacy. 11 Del.C. §1335(a)

- 7.1.65 Adulteration. 11 Del.C. §1339

7.1.66 Promoting prostitution in the second degree. 11 Del. C. § 1352

7.1.67 Promoting prostitution in the first degree. 11 Del.C. §1353

- 7.1.68 Obscenity. 11 Del.C. §1361

- 7.1.69 Carrying a concealed deadly weapon. 11

Del.C. §1442

7.1.70 Felony unlawful dealing with a dangerous weapon. 11 Del.C. §1445(a)

7.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 Del.C. §1447

7.1.72 Possession of a firearm during a commission of a felony. 11 Del.C. §1447A

7.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448

7.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457

7.1.75 Duty to report child abuse or neglect. 16 Del.C. §903

7.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 Del.C. §1136

7.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 Del.C. §2513

7.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 Del.C. §4751

7.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 Del.C. §4752

7.1.80 Unlawful delivery or noncontrolled substances. 16 Del.C. §4752A.

7.1.81 Possession, consumption, or use of controlled substances. 16 Del.C. §4753.

7.1.82 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A

7.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 Del. C. § 4754

7.1.84 Crimes related to controlled substances. 16 Del.C. §4756

7.1.85 Distribution of controlled substances to persons under 21 years of age. 16 Del.C. §4761

7.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 Del.C. §4767

7.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768

7.1.88 Felony obtaining benefit under false representation. 31 Del.C. §1003

7.1.89 Felony falsification of reports, statements, or documents. 31 Del.C. §1004

7.1.90 Kickback schemes and solicitation. 31 Del.C. §1005

7.1.91 Conversion of benefit payment. 31 Del.C. §1006

7.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 Del.C. §3913

7.2 Crimes substantially related to the practice of occupational therapy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Occupational Therapy is available at:**

<http://dpr.delaware.gov/boards/occupationaltherapy/index.shtml>

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 262

Education Impact Analysis Pursuant To
14 Del.C. §122(d)

PUBLIC NOTICE

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) - Fiscal Action

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to adopt a new regulation **14 DE Admin. Code 262** General Administrative Appeal Procedures for the National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) - Fiscal Action in order to comply with the requirements in the federal statute for an appeal procedure.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses the appeal procedure for the National School Lunch, Breakfast and Snack Programs not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses the appeal procedure for the National School Lunch, Breakfast and Snack Programs not equitable education issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses the appeal procedure for the National School Lunch, Breakfast and Snack Programs not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses the appeal procedure for the National School

Lunch, Breakfast and Snack Programs not students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place 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 new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal statute requires the Department to have an appeal procedure in regulation.

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

262 General Administrative Appeal Procedures for the National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) – Fiscal Action

1.0 Institutions participating in the Delaware NSLP, SBP and ASSP may request an Administrative Appeal of the following fiscal actions:

1.1 Denial of all or a part of an institution's claim for reimbursement or withholding payment arising from a Coordinated Review Effort (CRE) or follow-up review activity conducted by the Delaware State Agency under Volume 7 of the Code of Federal Regulations (7 CFR) 210.18; and,

1.2 Withholding of program payments resulting from a CRE.

2.0 Administrative Appeal shall apply as set forth below, and will be conducted as follows:

2.1 The Department of Education (“Department”) shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the school food authority (SFA) may request an appeal of the action. Notice shall be given to the SFA individuals by certified mail, return receipt requested. As used herein, “Petitioner” means an SFA or its responsible individuals, as appropriate under the circumstances.

2.2 A request for administrative appeal shall be submitted to the Department in writing, postmarked within 10 calendar days after the date the notice of action is received. The Department shall acknowledge receipt of the request for appeal within 10 calendar days.

2.3 Any information on which the Department’s action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal; if alterations or adjustments can be developed that are agreeable to both the petitioner and the Department, such procedure shall be followed.

2.4 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department’s review official. In order to be considered, written documentation must be submitted to the review official not later than 30 days after the petitioner submitted the appeal, shall clearly identify the State agency (SA) action being appealed, and shall include a photocopy of the notice of action issued by the SA.

2.5 A hearing must be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner’s testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

2.6 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

2.7 The administrative appeal official shall be independent and impartial, other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the

administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.

2.8 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the NSBP and NSLP.

2.9 The decision of the administrative appeal official shall be issued to the Department and petitioner within 60 days of the Department’s receipt of the request for review, by written notice, sent by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, constitute grounds for reversing the Department’s action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner, unless the CRE or review included USDA officials. When USDA officials participate in the CRE or review leading to the fiscal actions taken, then an appeal may be made to the USDA as specified under 4.0 below.

2.10 The Department’s action shall remain in effect during the appeal process.

2.11 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department’s compliance with these regulations and shall include the basis for its decision.

3.0 When the CRE or follow-up activity is conducted by the State agency only, the appeal shall be made to the: Secretary of Education, Delaware Department of Education, P.O. Box 1402, Dover, DE 19903

4.0 When the CRE is performed as a State-Assisted CRE with participation of USDA officials, at the discretion of the petitioner, the appeal may also be made to the: Chief, Administrative Review Branch, USDA-FNS, 3101 Park Center Drive, Alexandria, VA 22302

4.1 Any appeal correspondence should be marked “Request for Review”. The USDA Administrative Review Branch conducting an appeal will make a determination based on information provided by the Food and Nutrition Service, the appellant and the Program regulations.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 264

**Education Impact Analysis Pursuant To
14 Del.C. §122(d)**

PUBLIC NOTICE

264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to adopt a new regulation 14 DE Admin. Code 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA in order to comply with the requirements in the federal statute for an appeal procedure.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses the appeal procedures for the Summer Food Service Program not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses appeal procedures for the Summer Food Service Program not equity issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses appeal procedures for the Summer Food Service Program not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses appeal procedures for the Summer Food Service Program not students' legal rights.

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

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

makers at the local board and school levels.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal statute requires the Department to have an appeal procedure in regulation.

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

264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

1.0 Institutions participating in the Delaware SFSP may request an Administrative Appeal of the following actions:

1.1 Denial of a new or renewing institution's application for participation;

1.2 Denial of a sponsor's request for an advance payment;

1.3 Denial of all or a part of a sponsor's claim for reimbursement (except for a denial based on a late submission under 7 CFR § 225.9(d)(5));

1.4 Refusal to forward to FNS an exception request by the sponsor for payment of a late claim or request for an upward adjustment to a claim;

1.5 A claim against a sponsor for remittance of a payment;

1.6 Termination of the sponsor or site; and,

1.7 Denial of a sponsor's application for a site;

2.0 Notwithstanding the provisions of Section 1.0 above, institutions participating in the Delaware SFSP may not request an Administrative Review of the following action:

2.1 decisions made by FNS with respect to late claims or upward adjustments under S 225.9(d)(5).

3.0 Administrative appeal procedures shall apply as set forth below, and will be conducted as follows:

3.1 The Department of Education (“Department”) shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the sponsor or food service management company may request an appeal of the action. Notice shall be given to the institution’s executive director or other responsible individuals by certified mail, return receipt requested. As used herein, “Petitioner” means a participating institution or agency, or its responsible individuals, as appropriate under the circumstances.

3.2 A request for administrative appeal shall be submitted to the Department in writing not later than 15 days after the date the notice of action is received and the appeal shall meet the requirements specified in 3.5 below.

3.3 The petitioner shall make an appeal within ten (10) working days from the date on which the notice of action is received.

3.4 Any information on which the Department’s action was based shall be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal.

3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department’s review official. In order to be considered, written documentation shall be submitted to the review official not later than seven (7) days after the petitioner submitted the appeal, must clearly identify the Department action being appealed, and must include a photocopy of the notice of action issued by the Department.

3.6 A hearing shall be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner’s testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

3.7 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

3.8 The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant’s written documentation is received in accordance with paragraphs 3.4–3.7 above.

3.9 The administrative appeal official shall be independent and impartial. The administrative appeal official

may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.

3.10 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the SFSP.

3.11 The decision of the administrative appeal official shall be issued to the Department and petitioner within five (5) days of the petitioner’s hearing, or within five (5) working days after receipt of the written documentation if no hearing is held, the appeal official shall make a determination based upon a full review of the administrative record and inform the petitioner of the determination of the review by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not constitute grounds for reversing the Department’s action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner.

3.12 The Department’s action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the Department’s decision, reimbursement shall be paid for meals during the appeal process. However, such continued Program operation shall not be allowed if the Department’s action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the Department shall so specify in its notice of action.

3.13 The Department shall send written notification of the complete appeal procedures and of the actions which can be appealed, as specified in sections 1.1–1.7 above, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).

3.14 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department’s compliance with these regulations and shall include the basis for its decision.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 701

**Education Impact Analysis Pursuant To
14 Del.C. §122(d)**

PUBLIC NOTICE

701 Unit Count

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 701 Unit Count in order to clarify issues in 4.1.1 concerning the Delaware Adolescent Program, in 4.1.6 concerning Alternative Education Programs, in 4.1.7 concerning gifted kindergarten students, in 4.1.13 concerning Vocational Programs, in 5.1.6 concerning students enrolled in a Homeschool and in 7.1.2 concerning Charter Schools. Editorial corrections have also been made.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not affect student achievement as measured against state achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation ensures that students identified as gifted in those districts and charter schools which choose to have an early admissions policy for kindergarten are treated equitably for purposes of enrollment.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the unit count and not health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the unit count and does clarify the legal rights of the types of students referenced in the amendment.

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

administrative requirements or mandates upon decision makers at the local board or school level.

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 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 regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation may have an impact on the unit funding and or the assessment costs for school districts and charter schools.

701 Unit Count

1.0 Forms and Record Keeping

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide identified as special education students as per 14 DE Admin. Code 925.

2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow-up letter to the previous ~~district central office~~ unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving ~~district's district or charter school's~~ enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving ~~district's district or charter school's~~ enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 ~~Delaware Adolescent Program, Inc.~~

~~(DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If the student received special education services the previous year in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.~~

~~4.1.1 Delaware Adolescent Program, Inc. (DAPI):~~

~~4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.~~

~~4.1.1.2 Students shall be reported for the level of special education service as defined by the current IEP.~~

~~4.1.1.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.~~

4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.

4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.

4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a full-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for at least ~~12 1/2~~ 12.5 hours per week.

4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a part-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for less than ~~12 1/2~~ 12.5 hours per week.

~~4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If the student received special education services the previous year in the reporting school, the student may continue to be reported~~

~~for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.~~

4.1.6 Consortium Discipline Alternative Program:

4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school. (see 14 DE Admin. Code 611)

4.1.6.2 Students shall be reported for the level of special education service as defined by the current IEP.

4.1.6.3 If a student was enrolled in the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

~~4.1.7 Gifted or talented students as defined in 14 Del.C. §3101 beginning with the chronological age of 4 inclusive, who have been identified by professionally qualified persons (14 Del.C. §3101), are recorded in the grade level enrollment group to which they are assigned. These students should be evaluated using standardized assessment instruments.~~

4.1.7 Students enrolled in kindergarten pursuant to 14 DE Admin. Code 940 shall be counted in the grade level enrollment group to which they are assigned.

4.1.8 Except as provided in section 5.0 and 7.2 of this regulation, all pre-kindergarten children with disabilities shall be counted as full-time in the appropriate eligibility category.

4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.10 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.11 Full-time Special Education Services - Students who have been properly identified, and receive instruction from a certified special education teacher for at least ~~12 1/2~~ 12.5 hours per week. Children with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 DE Admin. Code 925.

4.1.12 Part Time Special Education Services - Students who have been properly identified and receive instruction from a certified special education teacher for less than ~~4 1/2~~ 4.5 hours per week. These children with disabilities must meet all other criteria for full-time special education services. For unit count computation, they will

have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.12.1 The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ($11.5/15 = .77$) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ($.77 + .23 = 1.0$).

4.1.13 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. ~~Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed. However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.~~

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

5.1.5 Children eligible for special education under Developmentally Delayed Three Year Old Children and Pre-School Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 Del.C. §1703).

5.1.6 Students enrolled in a Homeschool as defined in 14 Del.C 2703A.

6.0 Nontraditional High School Schedules:

For unit count purposes if a ~~special education student~~ student receiving special education services or a vocational student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing

however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

6.1 The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall/Spring Vocational = 300 minutes per week
Spring/Fall Vocational = 1500 minutes per week
1800 / 2 = 900 minutes
per week

Fall/Spring Special Education = 7.5 hours per week
Spring/Fall Special Education = 17.5 hours per week
= 25.0 / 2 = 12.5 hours
per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or

7.1.2 ~~Adding the fractional units in each category and using the major fraction unit rounding rule on the total.~~ Adding the fractional units in each category, fractional units will be funded

7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any pre-k students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll pre-k students.

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. ~~An other~~ Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

2 DE Reg. 382 (9/1/98)

5 De Reg. 627 (9/1/01)

6 DE Reg. 74 (7/1/02)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 712

Education Impact Analysis Pursuant To
14 Del.C. §122(d)

PUBLIC NOTICE

712 Employee Leave

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 712 Employee Leave in order to add school districts to Sections 1.0 and 2.0 and to change the reference to "vacation time" to "annual leave". The statement that "if there is a break in service the transfer of annual leave can only occur if the break is less than six (6) months" has also been added to Section 1.0.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses employee leave issues not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses employee leave issues not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses employee leave not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses employee leave 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 regulation? There is no less burdensome method for addressing the purpose of the regulation.

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

712 Employee Leave

1.0 Sick Leave.

Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in service the transfer can only occur if the break was for less than six (6) months.

1.1 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

2.0 ~~Vacation~~ Annual Leave.

Subject to any limitation imposed by statute, accumulated ~~vacation~~ annual leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all ~~vacation~~ time annual leave is exhausted, or a lump sum payment ~~may be made~~ for all unused ~~vacation~~ time annual leave on the employee's final paycheck. The vacated position may be filled at any time provided that the two employees do not receive compensation for the same pay period. Accumulated ~~vacation~~ time annual leave shall not be transferred between different employing state agencies or school districts.

3 DE Reg. 1392 (4/1/00)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 940

**Education Impact Analysis Pursuant To
14 Del.C. §122(d)**

PUBLIC NOTICE

940 Early Admission to Kindergarten for Gifted Students

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the approval of the State Board of Education to adopt a new regulation 14 DE Admin. Code 940 Early Admission to Kindergarten for Gifted Students in order to clarify what a school must do if they choose to admit gifted students to kindergarten before they are five years of age.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation may have an effect on student achievement as a fairness issue for gifted four year olds.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation may have an effect on issues of an equitable education as a fairness issue for gifted four year olds.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation may have an effect on issues of health and safety of the gifted four olds.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation will help to clarify the rights of gifted four olds.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Early entry kindergarteners add to the cost of the unit count.

940 Early Admission to Kindergarten for Gifted Students

1.0 When providing early enrollment into kindergarten of children who are gifted pursuant to the provisions of 14 **Del.C.** §3103(a) or (b), local school districts and charter schools shall comply with the following requirements:

1.1 At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 **Del.C.** §202 (f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine the child's outstanding mental/cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age.

1.2 The evaluation shall be conducted at no cost to the parent, guardian or caregiver. In order to qualify for early enrollment, the results of the evaluation must indicate that the child achieved a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's outstanding mental/cognitive abilities, and that the child possesses the social emotional and physical maturity to successfully participate in kindergarten.

1.3 Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or caregiver to discuss the evaluation results.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

Statutory Authority: 29 Delaware Code,
Section 6087(e) (29 **Del.C.** §6087(e))

PUBLIC NOTICE

Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.C. Ch. 60(d)

The Division of Revenue proposes to adopt the following regulation concerning **Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.C. Ch. 60(d)**. Written comments or other written materials concerning the proposed regulation must be received by the Division of Revenue no later than 4:30 p.m., Tuesday, March 15, 2005, and should be addressed to Deputy Attorney General Drue Chichi, Esquire, c/o Department of Finance, Division of Revenue, 820 North French Street, Wilmington, DE 19899-8911 or sent by fax to (302) 577-8202 or Email to drue.chichi@state.de.us.

Authority

These regulations are issued pursuant to the authority given the Department of Finance for the State of Delaware (the Department) pursuant to Title 29 of the *Delaware Code* Relating To the Tobacco Settlement Act of 1999, Chapter 60D, Section 6087(e).

Quarterly Escrow Installments

The Department may require Non Participating Tobacco Product Manufacturers subject to the requirements of subsection 3(a)(2) to make escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Department may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

Regulation

Quarterly Escrow Installments shall be required in the case of nonparticipating tobacco manufacturers who meet the following criteria:

(a) No Previous Escrow Deposit. Nonparticipating tobacco manufacturer that have not previously established and funded a qualified escrow fund in Delaware;

(b) No Escrow Deposit For More Than One Year. Nonparticipating tobacco manufacturer that have not made any escrow deposits for more than one year.

(c) Untimely or Incomplete Deposits.

Nonparticipating tobacco manufacturer that have failed to make a timely and complete escrow deposit for any prior calendar year;

(d) Outstanding Judgments. Nonparticipating tobacco manufacturer that have failed to pay any judgment, including any civil penalty;

(e) Large Sales Volume. Nonparticipating tobacco manufacturer that have more than 500,000 of their cigarettes sold in Delaware during a quarter; and

(f) Other Reasonable Cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a Nonparticipating tobacco manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

Deadline for Quarterly Escrow Deposits

Nonparticipating tobacco manufacturer who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales that occurred during the first quarter of the year (Jan-Mar) is April 30 of the same year.

Deadline for Submitting Quarterly Certification and Notice to Attorney General

Nonparticipating tobacco manufacturer who are required to make quarterly escrow deposits must provide the Attorney General with their quarterly certifications and official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred during the first quarter of the year (Jan-Mar) is May 10 of the same year.

Quarterly Periods Defined

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Notice to Nonparticipating Tobacco Manufacturers

Any nonparticipating tobacco manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.

Decertification

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the Nonparticipating tobacco manufacturer and its brand families may be decertified and removed from Delaware's Directory of Cigarette Brands and Brand Families Approved for Stamping and Sale in Delaware.

Patrick Carter
Director of Revenue

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY,

Drue Chichi, Esquire
Deputy Attorney General

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the *Delaware Code*) 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 is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to joint application processing.

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, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 2, 2005.

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

Summary Of Proposed Changes

Citations

- 7 CFR 273.2(j): PA, GA and Categorically Eligible Households
- Federal Final Rules of Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33, and 105-185.

The changes require DSS to notify TANF/GA/RCA households:

- that time limits or other requirements that apply to the receipt of TANF/GA/RCA benefits do not apply to the receipt of food stamp benefits; and
- that households no longer receiving TANF/GA/RCA may still be eligible for food stamp benefits.

Additionally, the proposed changes:

- encourage applicants to continue to apply for food stamp benefits even if the household determines not to apply for TANF/GA/RCA; and
- inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

DSS PROPOSED REGULATION #05-01**REVISIONS:****9028.1 Joint Application Processing**

Notify households applying TANF/GA/RCA of their right to apply for food stamp benefits at the same time and permit them to do so. DSS will notify such households that time limits or other requirements that apply to the receipt of TANF/GA/RCA benefits do not apply to the receipt of food stamp benefits. DSS will also notify such households, which cease receiving TANF/GA/RCA because they have reached a time limit, have begun working, or were closed for other reasons, that they may still be eligible for food stamp benefits. DSS will encourage applicants to continue to apply for food stamp benefits even if household determines not to apply for TANF/GA/RCA due to the requirements or disadvantages of that program. DSS will inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients

of TANF/GA/RCA and/or SSI benefits are to be considered eligible for food stamps because of the TANF/GA/RCA/SSI status in accordance with DSSM 9042.2.

Recipients include individuals authorized to receive TANF/GA/RCA and or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the TANF/GA/RCA or SSI benefits are suspended or recouped. Persons entitled to TANF/GA/RCA benefits because the grant is less than \$10 are also considered TANF/GA/RCA recipients.

Households, whether jointly processed and/or eligible because of their TANF/GA/RCA/SSI status, will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311, 2304(16) and 2312
(18 Del.C. §§311, 2034(16) and 2312)

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday, March 3, 2005 at 10:00 a.m. in Room 112 of the Tatnall Building, William Penn St., Dover, Delaware. The hearing is to consider amending **Regulation 1310** relating to **Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services**.

The purpose for amending Regulation 1310 is to speed resolution of health care providers' claims and simplify the current process for resolution of those claims. The proposed amendments provide for a 30 day time period for insurers to process all clean claims and limits the number of times an insurer can request additional information from a provider. The proposed amendment also redefines a clean claim and changes the penalty provisions for violations of the regulation. The hearing officer shall also consider any non-substantive technical changes that may be presented at the time of the hearing.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday March 2, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to

302.739.5566 or email to michael.rich@state.de.us.

1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services [Formerly Regulation 80]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 2304(16), and 2312. It is promulgated in accordance with 29 Del.C. Ch. 101.

7 DE Reg. 100 (7/1/03)

2.0 Definitions

2.1 For the purpose of this regulation, the following definitions shall apply:

~~“Carrier” or “Health Insurer” shall have the same meaning applied to it by 18 Del. C. 3343(a)(1).~~

~~“Clean Claim” shall mean a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.~~

~~“Health Care Provider” shall mean any entity or individual licensed, certified or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.~~

~~“Policyholder,” “Insured” or “Subscriber” shall be a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.~~

3.0 Scope

This regulation shall apply to all health insurers as defined in Section 2, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long-term care insurance.

7 DE Reg. 100 (7/1/03)

4.0 Purpose

The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under ~~18 Del. C. 2304(16)~~.

7 DE Reg. 100 (7/1/03)

5.0 Prompt Payment of Claims

~~5.1 A health insurer shall pay the benefit due under a clean claim to a policyholder or covered person, or make payment to a health care provider no later than 30 calendar days after receipt of clean claim for services.~~

~~5.2 A claim is not a clean claim as defined in section 2.2 if any of the following circumstances exist:~~

~~5.2.1 Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.~~

~~5.2.2 Where there exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.~~

~~5.2.3 For claims properly disputed or litigated and subsequently paid.~~

~~5.3 In those cases covered by section 5.2.1, a health insurer shall pay all portions of a claim meeting the definition of clean claim in accordance with section 5.1. Additionally, a health insurer shall notify the policyholder in writing within 30 days of the receipt of the claim:~~

~~5.3.1 that such carrier is not obligated to pay the claim or make the medical payment, in whole or in part, stating the specific reasons why it is not liable; or~~

~~5.3.2 that additional information is needed and is being sought to determine liability to pay the claim or make the health care payment.~~

~~5.4 Upon receipt of the information required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the benefit due under the claim or make medical payment, a health insurer shall make payment as required by section 5.1.~~

7 DE Reg. 100 (7/1/03)

6.0 General Business Practice

~~6.1 Within a 36 month period, three instances of a health insurer's failure to pay a Claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 Del.C. 2304 (16)(f). In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeline standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.~~

~~6.2 The 36 month time period established in section 6.1 shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an “instance” as~~

described in section 6.1.

7-DE Reg. 100 (7/1/03)

7.0 Penalties

In addition to the imposition of penalties in accordance with ~~18 Del.C. 2312(b)~~, the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under ~~6 Del.C. 2301(a)~~. Such interest shall be computed from the date the claim or bill for services first became due.

7-DE Reg. 100 (7/1/03)

8.0 Causes of Action

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of ~~18 Del. C. 2304 (16)~~.

7-DE Reg. 100 (7/1/03)

9.0 Separability

If any provision of this regulation or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

7-DE Reg. 100 (7/1/03)

10.0 Effective Date

This regulation, as amended, shall become effective on August 1, 2003.

7-DE Reg. 100 (7/1/03)

2.0 Scope

This regulation shall apply to all carriers as defined herein. Exempted from the provisions of this regulation are policies of insurance that provide coverage for accident-only, credit, Medicaid plans, Medicare supplement plans, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance or automobile medical payment insurance.

3.0 Definitions

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

“Carrier” means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits

subject to state insurance regulation. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

“Institutional Provider” means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care for other coverage which may be provided in a health insurance policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

“Policyholder,” “Insured,” or “Subscriber” means a person covered under a health insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

“Provider” means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.

4.0 Clean Claim Defined

4.1 A nonelectronic claim by a provider, other than an institutional provider, is a clean claim if the claim is submitted using the Centers for Medicare and Medicaid Services (CMS) Form 1500 or, if approved by the Commissioner or CMS, a successor to that form. Data for all relevant fields must be provided in the format called for by the form in order for the claim to constitute a clean claim.

4.2 A nonelectronic claim submitted by an institutional provider is a clean claim if the claim is submitted using the CMS Form UB-92, or, if approved by the Commissioner or CMS, a successor to that form. Data for all relevant fields must be provided in the format called for by the form in order for the claim to constitute a clean claim.

4.3 An electronic claim by a provider, including an institutional provider, is a clean claim if the claim is submitted using the Professional 837 (ASC X12N 837) format or, if approved by the Commissioner, a successor to that format. Data for all relevant fields must be provided in the format called for by the format in order for the claim to constitute a clean claim.

4.4 An insurer and provider may agree by contract to use fewer data elements than are required by the relevant form or format.

4.5 An otherwise clean claim submitted by a provider that includes additional fields, data elements, or other information not required by this Regulation is considered to be a clean claim for the purposes of this Regulation.

4.6 A claim by a policyholder that is submitted in the carrier's standard form using information called for by said forms, with all of the required fields completed, is a clean claim.

5.0 Means of Submission of Clean Claim

5.1 A provider or policyholder may, as appropriate, make delivery of a claim to an insurer as follows:

5.1.1 mail a claim by United States mail, first class;

5.1.2 submit a claim by delivery service;

5.1.3 submit a claim electronically;

5.1.4 fax a claim; or

5.1.5 hand deliver a claim to an insurer.

6.0 Processing of Clean Claim

6.1 No more than 30 days after receipt of a clean claim from a provider or policyholder, an insurer shall take one of the following four actions:

6.1.1 if the entire claim is deemed payable, pay the total amount of the claim;

6.1.2 if a portion of the claim is deemed payable, pay the portion of the claim that is deemed payable and specifically notify the provider or policyholder in writing why the remaining portion of the claim will not be paid;

6.1.3 if the entire claim is deemed not payable, specifically notify the provider or policyholder in writing why the claim will not be paid;

6.1.4 if the insurer needs additional information from a provider or policyholder to determine the propriety of payment of a claim, the insurer shall request in writing that the provider or policyholder provide documentation that is relevant and necessary for clarification of the claim. The request must describe with specificity the clinical information requested and relate only to information the insurer can demonstrate is specific to the claim or the claim's related episode of care. A policyholder or provider is not required to provide information that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by the provider whose services are the subject of inquiry. An insurer may make only one request under this subsection in connection with a claim. An insurer who requests information under this subsection shall take action under subsections (a) through (c) of this Section within 15 days of receiving properly requested information.

7.0 Bad Faith

Within a 36 month period, three instances of a carrier's failure to comply with Section 6 of this Regulation shall give rise to a rebuttable presumption that the insurer has engaged in bad faith practices in violation of 18 Del.C. §2304.

8.0 Interest

The Commissioner may order a carrier found to have violated Section 6 of this Regulation to pay to a provider or policyholder the amount of the claim or bill plus interest at the maximum rate allowable to lenders under Delaware law. Such interest shall be computed from the date the claim or bill for services first came due. The remedy permitted by this Section is in addition to, and does not supplant, any

other remedies available to the Commissioner or the provider.

9.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

10.0 Causes of Action

This regulation shall not create a private cause of action in addition to any recognized by statute in the State of Delaware.

11.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

12.0 Effective Date

This regulation, as amended shall become effective for all claims submitted for payment on or after July 1, 2005. All claims for payment submitted for payment prior to July 1, 2005 shall be governed by this regulation amended effective August 1, 2003.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. §6010)

REGISTER NOTICE

SAN#2005-01

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 2005 are a 12.0 inch minimum size length with a 25 fish creel limit and no closed season. Delaware currently has a twelve (12) inch minimum size limit, a 25 fish creel limit and a closed season during September 8 through September 21 and December 1 through December 31. It is proposed to amend Tidal Finfish Regulation No. 3507 to eliminate the

current closed season in order to be in compliance with the Atlantic States Marine Fisheries Commission's FMP.

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 2005. Delaware is obligated to cap the summer flounder recreational harvest at 150,000 fish for 2005. This is 29,000 more fish than were estimated to have been landed in 2004. 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 2005; it is unadvisable to significantly alter the management measures that were in place for 2004. However, landings information suggests that by increasing the season to adjust for the eight percent increase in the harvest cap projected landings will continue to remain below the 2005 limit. As such, it is proposed that the eight management options that were presented for the 2004 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. Options one through six, which have seasonal closures, are being adjusted to include additional days in order to compensate for the eight percent increase in the harvest cap. The adopted management approach for 2004 included a 17.5 inch minimum size, and 4 fish creel limit. It is anticipated that the minimum size limit of 17.5 inches will once again be an effective restraining factor in 2005.

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, 2005 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 4, 2005.

7. Prepared By:
Richard Cole, (302) 739-4782, January 10, 2005

3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

6 DE Reg. 1358 (4/1/03)

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

6 DE Reg. 1230 (3/1/03)

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history

only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6 DE Reg. 1230 (3/1/03)

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg. 1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1665 (4/1/01)

4 DE Reg 1859 (5/1/01)

5 DE Reg 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

6 DE Reg. 1230 (3/1/03)

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

6 DE Reg. 1230 (3/1/03)

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

6 DE Reg. 1230 (3/1/03)

10.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

6 DE Reg. 1230 (3/1/03)

11.0 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.

6 DE Reg. 1230 (3/1/03)

~~**12.0** 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 8, 2004 and ending at midnight on September 21, 2004 and beginning at 12:01 AM on December 1, 2004 and ending at midnight on December 31, 2004.~~

(Note: Seasonal measures were eliminated by SASMFC for the 2005 season)

7 DE Reg. 1575 (5/1/04)

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 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.)

6 DE Reg. 1358 (4/1/03)

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one half~~ (17.5) inches between the tip of the snout and the furthest tip of the tail.

(Note: size limit to be determined in combination with seasonal closure and creel limit.)

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

3.0 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) 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.

(Note: size limit to be determined in combination with seasonal closure and creel limit.)

6 DE Reg. 1358 (4/1/03)

4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of

summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

4.1 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;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

4.3 A bill of lading while transporting fresh or frozen summer flounder.

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

6 DE Reg. 1358 (4/1/03)

5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

6 DE Reg. 1358 (4/1/03)

6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

6 DE Reg. 1358 (4/1/03)

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four~~ (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

(Note: Creel limit to be determined in combination with seasonal closure and size limit.)

1 DE Reg 1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1552 (3/1/01)

5 DE Reg 462 (8/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware in ~~2004~~ 2005.

<u>Opening Option</u>	<u>Final Day</u>	<u>Number of Bag Open Days</u>	<u>Minimum Limit</u>	<u>Size</u>	
<u>1</u>	<u>01-Jan</u>	<u>08-Sep</u>	<u>220</u>	<u>7</u>	<u>16"</u>
<u>2</u>	<u>01-Jan</u>	<u>14-Aug</u>	<u>226</u>	<u>5</u>	<u>16.5"</u>
<u>3</u>	<u>01-Jan</u>	<u>6-Sep</u>	<u>249</u>	<u>5</u>	<u>17"</u>
<u>4</u>	<u>25-May</u>	<u>10-Aug</u>	<u>78</u>	<u>7</u>	<u>16"</u>
<u>5</u>	<u>25-May</u>	<u>18-Aug</u>	<u>86</u>	<u>5</u>	<u>16.5"</u>
<u>6</u>	<u>01-Jan</u>	<u>31-Dec</u>	<u>365</u>	<u>4</u>	<u>17.5"</u>
<u>8</u>	<u>01-Jan</u>	<u>31-Dec</u>	<u>365</u>	<u>6</u>	<u>17.5"</u>

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 83 (21 Del.C. §83)

PUBLIC NOTICE

Notice is hereby given that the Department of Transportation, Division of Motor Vehicles, in accordance with 21 Del.C. 83 proposes the following changes to the current chapter to the Rules and Regulations Governing the Licensing of Commercial Motor Vehicle Training Schools and Instructors for those schools offering motorcycle training titled Motorcycle Rider Education Courses Provider Requirements.

The public comment period will be open until March 2, 2005. Any persons wishing to present views may submit them in writing, by March 2, 2005, to Coordinator Delaware Motorcycle Rider Education Program, P.O. Box 698, Dover, DE 19903

Motorcycle Rider Education Courses Provider Requirements

1.0 Definitions

“Application for Commercial Driver Training School License (Motorcycle)” refers to the document which the Provider must sign and present to the Department of Public Safety, Division of Motor Vehicles to teach the motorcycle rider education courses for the State as required by 21 Del. C. Sections 8303 and 8304.

“Audit” means an official examination and verification of all accounts, records, books and documents pertaining to the conduct of motorcycle rider education courses by a Provider for the Department under the Program per the Delaware Code.

“Basic Rider Course” (BRC) is a motorcycle rider education course for novice or potential riders developed by the Motorcycle Safety Foundation (MSF), National Resource Office, 2 Jenner St., Suite 150, Irvine, CA 92718.

“Experienced Rider Course” (ERC) is a motorcycle rider education course for experienced riders with at least 6 months or 3000 miles of recent riding time, developed by the Motorcycle Safety Foundation (MSF), National Resource Office, 2 Jenner St., Suite 150, Irvine, CA 92718.

“Course Section” means a complete, scheduled set of BRC training modules, including both classroom and range sessions, presented to a class in order for them to satisfactorily complete a specific BRC.

“Class Participant” means a person enrolled in a BRC or ERC selection under the Program.

“Motorcycle Rider Education” means education for novice and experienced motorcycle riders practicing street riding techniques in a safe environment.

“Program” means the Motorcycle Rider Education Program which was created pursuant to 21 Del.C. Section 2726 and 2727 for the purpose of reducing motorcycle accidents, injuries and fatalities in the State of Delaware.

“Provider” means a private instructional service related to the Program they will conduct.

“Range” means a paved area set aside for the operations of motorcycles and marked and/or otherwise delineated per the BRC/ERC curricula guidelines for use on a permanent/temporary basis.

2.0 Department Of ~~Public Safety~~ Transportation, Division Of Motor Vehicle

2.1 In the interest of providing excellent customer service, promoting a safe driving environment, and protecting consumer interests, the Department hereby allows providers of instructional services to conduct motorcycle rider education courses once they meet the requirements of this document and pay the appropriate fees. This promotes excellent customer service by enhancing the Department’s ability to meet public demand for motorcycle safety training. By authorizing and working with independent training centers to deliver motorcycle safety training, the Department is promoting a safe driving environment by adding to the number of riders with heightened knowledge and skills. This also protects the consumer’s interests by ensuring that the training opportunity at independent centers maintains the same high level of quality that is found in State sponsored courses.

2.2 The Division of Motor Vehicles (DMV) will provide Chief Instructors / RiderCoach Trainers or Certified Drivers License Examiners to monitor independent motorcycle safety training center’s program and to conduct end-of-course testing when feasible. Budget constraints and staff levels may require the students to be given a knowledge and riding skill test at a DMV location. However, when possible, all tests will be conducted at the Provider’s location when the class graduates.

2.3 DMV will provide the following positions with listed responsibilities:

2.3.1 Coordinator of the Delaware Motorcycle Safety Program:

- Oversee the application of, and adherence to, these requirements.
- Serve as the main DMV point of contact for independent centers.
- Evaluate all Program applications.
- Monitor all provider programs to ensure they met Division requirements.
- Provide Motorcycle Operator Manuals.

2.3.2. Chief Instructors / RiderCoach Trainers or Certified Drivers License Examiners:

- Before monitoring and conducting end-of-course testing, ensure that students have completed all classes and exercises required under the Department’s approved curriculum.
- Administer the end-of-course written knowledge test and record results at the training location unless budget or staff limitation prevent on-site testing.
- Conduct the end-of-course riding skill test and record results.
- Issue completion certificates to students who have successfully completed their coursework and passed both the end-of-course written knowledge and riding skill tests.

3.0 Provider

3.1 Primary requirements include the following:

- Complete license requirements for Commercial Driver Training Schools and Instructors per Chapter 83 of Title 21.
- Administer the Program.
- Select site area.
- Advertise and select qualified instructor candidates for the Program.
- Provide Instructor candidate’s names and driver’s license numbers to Coordinator, Motorcycle Rider Education Program. If candidate is licensed out of state provide a 5-year driving record.
- Ensure that appropriate equipment is available for use in each course section.
- Assure that proper insurance coverage is maintained.
- Schedule and advertise course dates.
- Teach the Department’s approved rider education curriculum and comply with all related requirements.
- Provide course applicants names and drivers license numbers to Coordinator, Motorcycle Rider Education Program.
- Coordinate with the State to provide a Chief Instructor/RiderCoach Trainer or Certified

Drivers License Examiner to administer the end-of-course written knowledge test and the riding skill test.

- Provide DMV with course and testing schedules in advance. Notify the DMV at least 48 hours in advance of any changes, cancellations, etc. to scheduled test dates and times.
- Allow the State to monitor the independent training center operations.
- Provide information to the DMV as required for DMV quality assurance, e.g., incident reports, course surveys, test score sheets, etc.
- Obtain training motorcycles through dealer loan agreement programs or other sources.
- Promote BRC courses throughout the State.

3.2 Other responsibilities include:

- Layout of all range areas
- Maintenance of miscellaneous range equipment and materials
- Scheduling all training sessions
- Supervising instructors
- Ensuring provider instructors teach minimum of 3 State Program Novice classes annually.
- Fill out all program reports completely and accurately.
- Set-up appropriate record keeping for evaluation of the program.
- Send monthly course participation updates to:
Coordinator

Motorcycle Rider Education Program
Division of Motor Vehicles
P O Box 698
Dover, DE 19903

4.0 Instructors

4.1 Instructor shall have a high school diploma or the equivalent. Instructor must be at least 18 years of age hold a valid driver's license with a valid motorcycle endorsement and have had at least 2 years of motorcycle riding experience.

4.2 Instructor's driver's license shall not have been suspended or revoked any time during the immediately preceding 2 years. Instructor's shall have no convictions for driving under the influence of alcohol or of drugs during the immediately preceding 5 years, nor have been subject to first offenders election in lieu of trial during the immediately preceding 5 years.

4.3 Instructor shall not have any convictions for moving traffic violations with a total of 4 or more points during the immediately preceding 2 years.

4.4 An Instructor who is licensed to drive in another state must furnish certified copies of their driving record to the Coordinator, Motorcycle Rider Education Program

Division of Motor Vehicles. An applicant shall not be eligible for instructor status until the instructor's driving record for the immediately preceding 5 years is furnished.

4.5 All of the Provider's instructors must be state licensed per 21 Del.C. Section 8304

4.6 An Instructor is responsible for conducting classroom sessions and for demonstrating and conducting range exercises, including evaluating rider performance. Only an MSF certified instructor trained or re-certified in the BRC/ERC, after completing the State update, is authorized to teach the course.

5.0 Enrollment Eligibility

5.1 Basic Rider Course – Persons enrolling in a BRC must:

- Possess a current, valid driver license issued by Delaware or another jurisdiction.
- Applicant's holding a level one learner's permit (Graduated Driver License) are not eligible to attend the program.
- Be licensed driver of the U.S. Armed Forces stationed in Delaware and/or his or her family members.
- Delaware can not issue a motorcycle endorsement unless the applicant holds a Delaware license. However, the Delaware DMV will send a letter certifying course completion to include students name, driver license number, course dates and location, skills and written test scores, to another state if they agree to upgrade the participant's license.
- Possess the physical ability to operate a motorcycle.
- Have the ability to balance a two-wheeled vehicle.
- Provide written parental permission if under the age of eighteen (18).
- Be at least sixteen (16) years of age.

5.2 Experienced Rider Course – Persons enrolling in an ERC must:

- Possess a current, valid driver license with an endorsement to operate a motorcycle issued by Delaware or another jurisdiction.
- Possess the physical ability to operate a motorcycle.

6.0 Enrollment

6.1 Class Participants shall be considered enrolled in a BRC once they have completed the registration process and have been accepted into a specific class. If an applicant is not accepted into any class, the registration fee collected shall either be refunded or applied toward a future class if the class applicant so desires.

6.2 Basic Rider Course – The number of students that

can be enrolled in any one BRC class is restricted to the following schedule:

1. Classroom 1 instructor - 24 students
2. Range 2 instructors - 12 students

6.3 During on-cycle instruction no more than six (6) students may be under the supervision of any one (1) instructor at any one time and no more than twelve (12) students may operate motorcycles on the same range area at the same time. If the number of enrolled students is less than six (6), the class shall be canceled.

7.0 Registration

7.1 All persons enrolling in a BRC or ERC must be registered. Registration shall consist of:

- Completing the Student Registration Form
- Submitting all required written permissions, as applicable
- Completing a Release, Waiver and Indemnification Statement
- Payment of student registration fee

7.2 Participants must be registered prior to engaging in any training activities.

8.0 Course Registration

8.1 Registration will be the responsibility of the Provider. All fees should include all insurances deemed necessary to run the program. It is the responsibility of the Provider to maintain the required insurances.

9.0 Student Registration Fees

9.1 Each person enrolling in a BRC or ERC who resides in the State of Delaware, shall pay a student registration fee of not less than that paid by State Program registered students (currently fifty dollars \$50.00 for the BRC and \$35.00 for the ERC).

9.2 Each person enrolling in a BRC or ERC who does not reside in the State of Delaware shall pay a student registration fee of not less than that currently paid by State Program registered students (currently two hundred dollars \$200.00 for the BRC and \$100.00 for the ERC).

9.3 In State registration fees apply to those who:

- Possesses a current, valid Delaware Motor Vehicle Operator's License, or who is eligible for a motorcycle learner's permit.
- ~~Are~~ Is a member of the U.S. Armed Forces stationed in Delaware or a member of their family.
- Permanently resides at an address within the political boundaries of the State of Delaware.
- Are full time student at a College or University within the State of Delaware.

9.4 These fees are non-refundable with the following exceptions:

- The registrant is not accepted into the class of their choice. (However, the fee may be applied towards another class if the student desires.)
- The class is canceled.
- The registrant gives notice of withdrawal no later than seventy-two (72) hours prior to the start of the course.

10.0 Rate Of Pay

10.1 Instructors are hired by the selected Provider; the rate of pay will be commensurate with the level for instructors in the State program. The contractual agreement between Provider and Instructors will be the sole responsibility of the Provider.

11.0 ~~Basic Rider Course (BRC)~~ Curriculum

11.1 ~~Curriculum~~ Basic Rider Course (BRC) – The curriculum used to train novice riders shall be the most current version of the BRC developed by the Motorcycle Safety Foundation (MSF). Each participant enrolled in any BRC shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current BRC curriculum guidelines adopted by the Delaware Motorcycle Rider Education Program. Experienced riders may also be enrolled in the program if they so desire.

11.2 Experienced Rider Course (ERC) – The curriculum used to train experienced riders shall be the most current version of the ERC developed by the Motorcycle Safety Foundation (MSF). Each participant enrolled in any ERC shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current ERC curriculum guidelines adopted by the Delaware Motorcycle Rider Education Program.

12.0 Facilities And Equipment

12.1 The following facilities and equipment must be available for use during each BRC or ERC course:

12.1.1 A classroom for the presentation of the off-cycle instructional portion of the BRC and the written test portion of the ERC located as close to the range area as possible. It must be able to comfortably accommodate the number of students enrolled and possess the following:

- One (1) classroom chair for each student with writing surface.
- One (1) teacher's desk or podium with chair.
- Capabilities for utilizing audio-visual aids.

12.1.2 A paved range area for the on-cycle portion of the BRC or ERC located as close to the classroom as possible. The following are recommended guidelines for selecting an appropriate area to accommodate the students engaged in range activities:

- The minimum riding area pf 120' X 220', with sufficient buffer space for safety

considerations. Generally, a minimum size for the overall range is 160' X 260'. If ranges are sub-standard, they must be approved by MSF. The surface must be as flat as possible. Provide a copy of MSF certification to Coordinator Motorcycle Rider Education Program.

- No other traffic, including bicyclists and pedestrians, or cars are permitted on the range during on-cycle activities. If a parking lot is used, it must be free of parked cars and entrances should be blocked during use.
- The range should be free of potholes, sewer gratings, trash, sand, gravel, light poles, parking barriers, athletic equipment and any other surface hazards or obstacles.
- It should have grass edges without curbing. If the perimeter of the range is fenced, or curbed, there should be at least a twenty (20) foot buffer zone from the range area.
- The specific range layouts to be utilized are those listed in the current version of the Motorcycle Safety Foundation BRC Instructor's Guide and ERC Suite.
- Portable toilets should be provided, depending on the distance to classroom

12.1.3 Miscellaneous equipment and accessories as follows:

- Class B type fire extinguisher,
- 6/12 volt, 1 amp battery charger,
- First aid kit,
- Stopwatch,
- One (1) or two (2) - five (5) gallon gas containers, (depending on need),
- Metric tool kit is provided on each loan motorcycle,
- Tire pressure gauge,
- One-hundred (100) foot tape measure and chalk line,
- Fifty (50) - four (4) inch traffic cones,
- BRC or ERC Course Package,

12.1.4 Training Motorcycles used for BRC courses:

12.1.4.1 Any motorcycle model manufactured for on-highway use that meets two (2) of the following three (3) criteria (as published by the original equipment manufacture/distributor) may be used.

- An engine displacement of 500cc or less
- An un-laden weight of 400 pounds or less
- A seat height of 30" or less

12.1.4.2 Provide one of the above for each participant taking part in the on-cycle sessions of the BRC.

A minimum of six (6) motorcycles is required per training program. It is recommended that one additional motorcycle be available for use in demonstrations and as a replacement.

12.1.4.3 No motorcycle with a defect which could impair handling or control will be permitted in the program. Off-road motorcycles or extensively modified "choppers" will not be permitted.

12.1.5 Training Motorcycles used for ERC courses:

12.1.5.1 Students in the ERC provide their own motorcycle which must be:

- Properly insured. Students are required to show proof of insurance prior to participating in the riding portions of the class.
- Legally registered and inspected.
- Pass instructor's pre-ride check. To include checking tires, controls, lights, oil levels, chassis and side stand. Motorcycles with defects that could impair handling or control will not be permitted in the class.

13.0 Supplies

13.1 The following supplies must be provided for or be available for use in each BRC or ERC section as specified:

- Appropriate range layout materials as described in the BRC Instructor's Guide or ERC Suite
- Sufficient quantities of the State of Delaware Motorcycle Operator's Manual (MOM) to provide one to each participant
- Adequate amounts of spark plugs, oil, chain lube and gasoline for the motorcycles utilized in the BRC
- Sufficient quantities of BRC or ERC student activity workbooks to provide one to each student

14.0 Insurance

14.1 Contractor recognizes that they are operating as an independent Contractor and that they are liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Contractor's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this Contract.

14.2 The Contractor shall maintain such insurance as will protect against claims under Worker's Compensation

Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The Contractor is an independent contractor and is not an employee of the State.

14.3 The Contractor shall, at its expense, carry insurance of minimum limits as follows:

Comprehensive General Liability	\$1,000,000
Medical/Professional Liability	\$1,000,000/ \$3,000,000

14.4 If the contractual service requires the transportation of Departmental clients or staff, the contractor shall, in addition to the above coverage's, secure the following coverage:

Automotive Liability(Bodily Injury)	\$100,000\ \$300,000
Automotive Property Damage (to others)	\$25,000

14.5 Medical Insurance coverage of at least five hundred dollars (\$500.00) for each student, range aide, primary and assistant instructor participating in any BRC course section.

14.6 Comprehensive and Collision Insurance coverage providing for a total limit of not less than the value of each motorcycle utilized in any Motorcycle Rider Education Program course section less deductibles for damage or loss due to fire, theft and collision.

14.7 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, which may result from the Contractor's performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

14.8 The policies for Liability and Property Damage must be so written to include Professional Liability and Comprehensive General Liability, which includes Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract.

14.9 The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance or a letter indicating a program of self insurance and its limits and availability of funds sufficient to meet the claims.

15.0 Protective Clothing

15.1 All participants are required to wear the following protective gear during BRC or ERC on-cycle instruction:

- Full face or 3/4 helmet that meets US DOT, ANSI Z90.1 standards (no 1/2 helmets)
- Eye protection (Face shield recommended)
- Boots or heavy-soled shoes that cover the

ankles and have a low heel, or leather high-top sneakers

- Non-flared denim pants
- Long sleeved jacket or shirt
- A pair of sturdy gloves (no half-gloves)

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**
Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 Del.C. §1906(1))
24 DE Admin. Code 1900

ORDER

After due notice in the *Register of Regulations* and publication of notice in two Delaware Newspapers, (Board Exhibit No. 1), a public hearing was held on Tuesday, January 12, 2005 by the Delaware Board of Nursing to receive and consider public comment concerning proposed Regulation No. 15. This proposed Regulation provides a list of crimes which the Board of Nursing believes are substantially related to the practice of nursing. The proposed Regulation was published in the Register of Regulations in Volume 8, Issue 6, on Wednesday, December 1, 2004. The Proposed Regulations as published in the *Register of Regulations* also addressed erroneously Regulation 8.7.16 concerning authorization to insert and remove epidural catheters. This proposed regulation as it was published in the Register incorrectly indicated that the Board was proposing to include the insertion and removal of epidural catheters within the functions of the Advanced Practice Nurse. This matter will be the subject of a future rulemaking procedure

by the Board and is not being considered at this time.

Background

The 142nd General Assembly of the State of Delaware passed Senate Bill No. 229 which, among other things, directed various Boards, Agencies and Commissions including the Board of Nursing to adopt a regulation specifically identifying and setting forth crimes which were deemed to be substantially related to the practice of nursing. (See Section 35, Senate Bill No. 229, Del. Code Ann., §1906(b) (June 30, 2004)) The Governor signed this legislation into law.

In this legislation, the term “substantially related to” is defined to mean that the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the provision of the particular professional services.

Summary Of The Evidence And Information Submitted

The Board received no written comments concerning the proposed regulation and there were no comments presented at the hearing beyond the comments from the Board’s Executive Director, Iva J. Boardman, R.N., M.S.N. Ms. Boardman, in sworn testimony, stated that the Board of Nursing looked at, among other things, the legal standards for licensees as defined in Section 7 of the Rules and

Regulations of the Board to guide them in determining which crimes were substantially related to the practice of nursing. These standards include practice without discrimination as to age, race, religion, sex, sexual orientation, national origin or disability; respect for the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems; respect for the client's right to privacy by protecting confidentiality unless obligated by law to disclose information; and respect for the property of clients, their families and significant others. Members of the Board of nursing determined that the crimes identified included behavior that does not uphold the legal expected standards of nursing practice.

In proposing the Regulation, the Board of Nursing considered a compilation of crimes extracted from the Delaware Code and included federal criminal offenses (Title 18, U.S.C.A.) to include Federal Health Care offenses as being substantially related to the fitness of an individual to provide nursing services in the State of Delaware. Also included are any crimes under other laws which are substantially similar to those crimes identified in the proposed regulation.

Findings And Conclusions Of The Board:

It is the view of the Board that the conviction of such crimes should form the basis for a proposal to deny certification to an applicant as a matter of public information and protection. It is problematic that the Board has been required to specify in advance a list of crimes which are deemed to be "substantially related to the practice of Nursing". In the view of the Board such determinations are more appropriately made after a review of the circumstances surrounding the crime and the particular facts leading to the conviction.

Presently, the Board has the statutory ability to waive such criminal convictions where the Board finds that the individual has made sufficient restitution. The presence of a waiver provision vesting appropriate discretion in the Board allows the Board to take into consideration things such as the circumstances surrounding the commission of the crime, time elapsed since the conviction, the extent to which restitution has been made, the age of the individual at the time of the conviction and any other circumstances bearing on the sufficiency of the restitution for the offense. This ability to waive such convictions in appropriate cases was part of the Boards consideration for the crimes selected.

Decision And Effective Date

The Board, by this order adopts the proposed Regulation No. 15 with the following corrections to be effective ten (10) days after the publication of this Order in the *Register of*

Regulations.

Text And Citation

The text of the Regulation No. 15 remains as published in the *Register of Regulation*, Volume No.8, Issue No. 6, Wednesday, December 1, 2004, with the exception of the erroneously published definition of "Jurisdiction" in Section 15.1 which is corrected to read: " 'Substantially similar crimes in another State or Jurisdiction' includes all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care Offenses". This is a non-substantive change. The proposed Regulation change published as a Regulation 8.7.16 relating to the insertion and removal of epidural catheters is not adopted as discussed above.

IT IS SO ORDERED this 19th day of January 2005.

Lucille Gambardella, RN, Ph.D. Vice Pres.
Robert Draine, Public member
Diana Padula, LPN
Robert Lawson, Public member
Irene Washabau, LPN
Carolyn Hill, RN
David Mangler, RN, MSN (Abstaining)
Pamela Zickafoose, RN, Ph.D.
Cheryl Richter, MSN, CRNA
Martha Hopkins, Public member
Margaret Ingram, LPN
Janet West, RN, MSN, President

Rules and Regulations

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 **Del.C.** §§1902(d), 1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20). The

Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/ or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse” as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Audit” The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

“Board” The Delaware Board of Nursing

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

“Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/ pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

3 DE Reg. 1373 (4/1/00)

“Collaborative Agreement” Written verification

of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

“Guidelines/ Protocols” Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/ protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

“National Certification” That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

American Academy of Nurse Practitioners
American Nurses Credentialing Center
American Association of Nurse Anesthetists
Council on Certification of Nurse Anesthetists
American Association of Nurse Anesthetists
Council on Recertification of Nurse Anesthetists

National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
National Certification Board of Pediatric Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.

“Nurse Practitioner (N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

“Post Basic Program”

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

“Scope of Specialized Practice” That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical

nursing specialty with national certification.

“Supervision” Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/ or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance

access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

~~8.7.16 Inserting and removing epidural catheters after specialized training.~~

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on

forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del.C. §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice

Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under

supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1 current employer reference,

8.10.5.1.2 supervision available,

8.10.5.1.3 job description,

8.10.5.1.4 letter outlining any extenuating circumstances,

8.10.5.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg. 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to

renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show

that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 **National Certification** - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 **Pharmacology/Pharmacotherapeutics** - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 **Prescription Order** - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of

documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/ or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APN's may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 Del.C. §2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APN's will be assigned a provider

identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APN's must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APN's must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 Del.C. §4732(a).

8.18.4 APN's may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 Del.C. §2536(C).

8.18.5 APN's may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 Del.C. §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 Del.C. Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del.C. §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

4 DE Reg. 296 (8/1/00)

5 DE Reg. 1606 (2/1/02)

15.0 The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Nursing in the State of Delaware without regard to the place of conviction:

15.1 For the purposes of this section the following definitions shall apply:

“Conviction” means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §4218 of Title 11 of the *Delaware Code* (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

“Jurisdiction” means substantially similar crimes in another state or jurisdiction ~~shall~~ include[s] all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

15.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the *Delaware Code Annotated*:

Inchoate Crimes

15.2.1 §501 Criminal solicitation in the third degree

15.2.2 §502 Criminal solicitation in the second degree

15.2.3 §503 Criminal solicitation in the first degree

15.2.4 §511 Conspiracy in the third degree

15.2.5 §512 Conspiracy in the second degree

15.2.6 §513 Conspiracy in the first degree

Assaults and Related Offenses

15.2.7 §601. Offensive touching;

15.2.8 §602. Menacing;

15.2.9 §603. Reckless endangering in the second degree;

15.2.10 §604. Reckless endangering in the first degree;

15.2.11 §605. Abuse of a pregnant female in the second degree;

15.2.12 §606. Abuse of a pregnant female in the first degree;

15.2.13 §611. Assault in the third degree;

15.2.14 §612. Assault in the second degree;

- 15.2.15 §613. Assault in the first degree;
- 15.2.16 §614. Assault on a sports official.
- 15.2.17 §615. Assault by abuse or neglect;
- 15.2.18 §621. Terroristic threatening;
- 15.2.19 §625. Unlawfully administering drugs;
- 15.2.20 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;
- 15.2.21 §627. Prohibited acts as to substances releasing vapors or fumes;
- 15.2.22 §629. Vehicular assault in the first degree;
- 15.2.23. §630. Vehicular homicide in the second degree;
- 15.2.24 §630A. Vehicular homicide in the first degree;
- 15.2.25 §631. Criminally negligent homicide;
- 15.2.26 §632. Manslaughter;
- 15.2.27 §633. Murder by abuse or neglect in the second degree;
- 15.2.28. §634. Murder by abuse or neglect in the first degree;
- 15.2.29 §635. Murder in the second degree;
- 15.2.30 §636. Murder in the first degree;
- 15.2.31 §645. Promoting suicide.
- Abortion and Related Offenses
- 15.2.32 §651. Abortion;
- 15.2.33 §652. Self-abortion;
- 15.2.34 §653. Issuing abortifacient articles.
- Sexual Offenses
- 15.2.35 §763. Sexual harassment;
- 15.2.36 §764. Indecent exposure in the second degree;
- 15.2.37 §765. Indecent exposure in the first degree;
- 15.2.38 §766. Incest;
- 15.2.39 §767. Unlawful sexual contact in the third degree;
- 15.2.40 §768. Unlawful sexual contact in the second degree;
- 15.2.41 §769. Unlawful sexual contact in the first degree;
- 15.2.42 §770. Rape in the fourth degree;
- 15.2.43 §771. Rape in the third degree;
- 15.2.44 §772. Rape in the second degree;
- 15.2.45 §773. Rape in the first degree;
- 15.2.46 §776. Sexual extortion;
- 15.2.47 §777. Bestiality;
- 15.2.48 §778. Continuous sexual abuse of a child;
- 15.2.49 §780. Female genital mutilation.
- Kidnapping and Related Offenses
- 15.2.50 §781. Unlawful imprisonment in the second degree;
- 15.2.51 §782. Unlawful imprisonment in the first degree;
- 15.2.52 §783. Kidnapping in the second degree;
- 15.2.53 §783A. Kidnapping in the first degree;
- 15.2.54 §785. Interference with custody;
- Coercion
- 15.2.55 §791. Acts constituting coercion;
- 15.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:
- Arson and Related Offenses
- 15.3.1 §801. Arson in the third degree;
- 15.3.2 §802. Arson in the second degree;
- 15.3.3 §803. Arson in the first degree;
- 15.3.4 §804. Reckless burning or exploding;
- 15.3.5 §805. Cross or religious symbol burning;
- 15.3.6 §811. Criminal mischief
- Criminal Trespass and Burglary
- 15.3.7 §820. Trespassing with intent to peer or peep into a window or door of another;
- 15.3.8 §824. Burglary in the third degree;
- 15.3.9 §825. Burglary in the second degree;
- 15.3.10 §826. Burglary in the first degree;
- 15.3.11 §828. Possession of burglar's tools or instruments facilitating theft;
- Robbery
- 15.3.12 §831. Robbery in the second degree;
- 15.3.13 §832. Robbery in the first degree.
- 15.3.14 §835. Carjacking in the second degree;
- 15.3.15 §836. Carjacking in the first degree;
- Theft and Related Offenses
- 15.3.16 §840. Shoplifting
- 15.3.17 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.
- 15.3.18 §841. Theft;
- 15.3.19 §842. Theft; lost or mislaid property; mistaken delivery.
- 15.3.20 §843. Theft; false pretense.
- 15.3.21 §844. Theft; false promise.
- 15.3.22 §845. Theft of services.
- 15.3.23 §846. Extortion;
- 15.3.24 §848. Misapplication of property;
- 15.3.25 §849. Theft of rented property;
- 15.3.26 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.
- 15.3.27 §851. Receiving stolen property;
- 15.3.28 §853. Unauthorized use of a vehicle;
- 15.3.29 §854. Identity theft;
- 15.3.30 §859. Larceny of livestock;
- 15.3.31 §860. Possession of shoplifter's tools or instruments facilitating theft;
- Forgery and Related Offenses
- 15.3.32 §861. Forgery
- 15.3.33 §862. Possession of forgery devices;
- Offenses Involving Falsification of Records

15.3.34 §871. Falsifying business records;
 15.3.35 §873. Tampering with public records in the second degree;
 15.3.36 §876. Tampering with public records in the first degree;
 15.3.37 §877. Offering a false instrument for filing;
 15.3.38 §878. Issuing a false certificate;
Bribery Not Involving Public Servants
 15.3.39 §881. Bribery;
 15.3.40 §882. Bribe receiving;
Frauds on Creditors
 15.3.41 §891. Defrauding secured creditors;
 15.3.42 §892. Fraud in insolvency;
 15.3.43 §893. Interference with levied-upon property;
Other Frauds and Cheats
 15.3.44 §900. Issuing a bad check;
 15.3.45 §903. Unlawful use of credit card;
 15.3.46 §903. A Re-encoder and scanning devices;
 15.3.47 §906. Deceptive business practices;
 15.3.48 §907. Criminal impersonation;
 15.3.49 §907A. Criminal impersonation, accident related;
 15.3.50 §907B. Criminal impersonation of a police officer;
 15.3.51 §908. Unlawfully concealing a will;
 15.3.52 §909. Securing execution of documents by deception;
 15.3.53 §913. Insurance fraud;
 15.3.54 §913A. Health care fraud;
 15.3.55 §916. Home improvement fraud;
 15.3.56 §917. New home construction fraud;
Computer Related Offenses
 15.3.57 §932. Unauthorized access.
 15.3.58 §933. Theft of computer services.
 15.3.59 §934. Interruption of computer services.
 15.3.60 §935. Misuse of computer system information.
 15.3.61 §936. Destruction of computer equipment.
 15.3.62 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.
 15.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:
Child Welfare; Sexual Offenses, Animal Offenses
 15.4.1 §1100. Dealing in children;
 15.4.2 §1101. Abandonment of child;
 15.4.3 §1102. Endangering the welfare of a child;
 15.4.4 §1105. Endangering the welfare of an incompetent person;
 15.4.5 §1106. Unlawfully dealing with a child;
 15.4.6 §1107. Endangering children;

15.4.7 §1108. Sexual exploitation of a child;
 15.4.8 §1109. Unlawfully dealing in child pornography;
 15.4.9 §1111. Possession of child pornography;
 15.4.10 §1112. Sexual offenders; prohibitions from school zones.
 15.4.11 §1112A. Sexual solicitation of a child;
 15.4.12 §1113. Criminal non-support and aggravated criminal non-support.
 15.4.13 §1114. Body-piercing; tattooing or branding;
 15.4.14 §1114A. Tongue splitting;
 15.4.15 §1116. Sale or distribution of tobacco to minors;
 15.4.16 §1117. Notice;
 15.4.17 §1118. Distribution of samples to minors;
 15.4.18 §1124. Purchase or receipt of tobacco products to minors.
 15.4.19 §1325. Cruelty to animals;
 15.4.20 §1325A. The unlawful trade in dog or cat by-products;
 15.4.21 §1326. Animals; fighting and baiting prohibited;
 15.4.22 §1327. Maintaining a dangerous animal;
 15.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:
Bribery and Improper Influence
 15.5.1 §1201. Bribery;
 15.5.2 §1203. Receiving a bribe;
 15.5.3 §1205. Giving unlawful gratuities;
 15.5.4 §1206. Receiving unlawful gratuities;
 15.5.5 §1207. Improper influence;
 15.5.6 §1211. Official misconduct
 15.5.7 §1212. Profiteering
Perjury and related offenses
 15.5.8 §1221. Perjury in the third degree;
 15.5.9 §1222. Perjury in the second degree;
 15.5.10 §1223. Perjury in the first degree;
 15.5.11 §1233. Making a false written statement;
 class
 15.5.12 §1239. Wearing a disguise during commission of a felony
 15.5.13 §1240. Terroristic threatening of public officials or public servants
 15.5.14 §1243. Obstructing fire-fighting operations;
 15.5.15 §1244. Hindering prosecution;
 15.5.16 §1245. Falsely reporting an incident;
 15.5.17 §1246. Compounding a crime;

15.5.18 §1249. Abetting the violation of driver's license restrictions;

15.5.19 §1250. Offenses against law-enforcement animals;

15.5.20 §1253. Escape after conviction;

15.5.21 §1254. Assault in a detention facility;

15.5.22 §1256. Promoting prison contraband;

15.5.23 §1257. Resisting arrest;

15.5.24 §1257A. Use of an animal to avoid capture;

15.5.25 §1259. Sexual relations in detention facility;

15.5.26 §1260a. Misuse of prisoner mail;

Offenses Relating to Judicial and Similar Proceedings

15.5.27 §1261. Bribing a witness;

15.5.28 §1262. Bribe receiving by a witness;

15.5.29 §1263. Tampering with a witness;

15.5.30 §1263A. Interfering with child witness;

15.5.31 §1264. Bribing a juror;

15.5.32 §1265. Bribe receiving by a juror;

15.5.33 §1266. Tampering with a juror;

15.5.34 §1267. Misconduct by a juror;

15.5.35 §1269. Tampering with physical evidence;

15.5.36 §1271. Criminal contempt;

15.5.37 §1271A. Criminal contempt of a domestic violence protective order;

15.5.37 §1273. Unlawful grand jury disclosure;

15.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the *Delaware Code Annotated* which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

15.6.1 §1302. Riot;

15.6.2 §1304. Hate crimes;

15.6.3 §1311. Harassment;

15.6.4 §1312. Aggravated harassment;

15.6.5 §1312A. Stalking;

15.6.6 §1313. Malicious interference with emergency communications;

15.6.7 §1315. Public intoxication;

15.6.8 §1321. Loitering;

15.6.9 §1322. Criminal nuisance;

15.6.10 §1323. Obstructing public passages;

15.6.11 §1324. Obstructing ingress to or egress from public buildings;

15.6.12 §1331. Desecration;

15.6.13 §1332. Abusing a corpse;

15.6.14 §1333. Trading in human remains and

associated funerary objects.

15.6.15 §1335. Violation of privacy;

15.6.16 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;

15.6.17 §1339. Adulteration;

15.6.18 §1340. Desecration of burial place.

Offenses Involving Public Indecency

15.6.19 §1341. Lewdness;

15.6.20 §1342. Prostitution;

15.6.21 §1343. Patronizing a prostitute prohibited.

15.6.22 §1351. Promoting prostitution in the third degree;

15.6.23 §1352. Promoting prostitution in the second degree;

15.6.24 §1353. Promoting prostitution in the first degree;

15.6.25 §1355. Permitting prostitution;

Obscenity

15.6.26 §1361. Obscenity; acts constituting;

15.6.27 §1365. Obscene literature harmful to minors;

15.6.28 §1366. Outdoor motion picture theatres;

Offenses Involving Gambling

15.6.29 §1403. Advancing gambling in the first degree;

15.6.30 §1404. Providing premises for gambling;

15.6.31 §1405. Possessing a gambling device; class A misdemeanor.

15.6.32 §1406. Being concerned in interest in keeping any gambling device;

15.6.33 §1411. Unlawfully disseminating gambling information;

15.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the *Delaware Code Annotated*:

15.7.1 §4751. Prohibited acts A;

15.7.2 §4752. Prohibited acts B;

15.7.3 §4752A. Unlawful delivery of noncontrolled substance.

15.7.4 §4753. Prohibited acts C.

15.7.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

15.7.6 §4754. Prohibited acts D;

15.7.7 §4754A. Possession and delivery of noncontrolled prescription drug.

15.7.8 §4755. Prohibited acts E;

15.7.9 §4756. Prohibited acts;

15.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;

15.7.11 §4758. Keeping drugs in original containers.

15.7.12 §4761. Distribution to persons under 21 years of age;

15.7.13 §4761A. Purchase of drugs from minors;

15.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

15.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;

15.7.16 §4774. Penalties

15.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

15.8.1 §1442. Carrying a concealed deadly weapon;

15.8.2 §1443. Carrying a concealed dangerous instrument;

15.8.3 §1444. Possessing a destructive weapon;

15.8.4 §1445a. Unlawfully dealing with a dangerous weapon;

15.8.5 §1446. Unlawfully dealing with a switchblade knife;

15.8.6 §1447. Possession of a deadly weapon during commission of a felony;

15.8.7 §1447A. Possession of a firearm during commission of a felony;

15.8.8 §1448. Possession and purchase of deadly weapons by persons prohibited;

15.8.9 §1448A. Criminal history record checks for sales of firearms

15.8.10 §1449. Wearing body armor during commission of felony;

15.8.11 §1450. Receiving a stolen firearm;

15.8.12 §1451. Theft of a firearm;

15.8.13 §1452. Unlawfully dealing with knuckles-combination knife;

15.8.14 §1453. Unlawfully dealing with martial arts throwing star;

15.8.15 §1454. Giving a firearm to person prohibited;

15.8.16 §1455. Engaging in a firearms transaction on behalf of another;

15.8.17 §1456. Unlawfully permitting a minor access to a firearm;

15.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;

15.8.19 §1458. Removing a firearm from the

possession of a law enforcement officer;

15.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number.

15.8.21 §1471. Prohibited Acts
Offenses Involving Organized Crime and Racketeering

15.8.22 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

15.8.23 §3532. Acts of Intimidation: Class E felony

15.8.24 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

15.8.25 Title 16 §1136 Violations – neglect or abuse of patient or resident of nursing facilities

15.8.26 Title 23 §2305 Penalties; jurisdiction

15.8.27 Title 30 §571 Attempt to evade or defeat tax.

15.8.28 Title 30 §572 Failure to collect or pay over tax;

15.8.29 Title 30 §573 Failure to file return, supply information or pay tax;

15.8.30 Title 30 §574 Fraud and false statements; §576 Misdemeanors

15.8.31 Title 31 §1007 Penalties

15.8.32 Title 21 §2118A Unlawful possession or manufacture of proof of insurance, penalties

15.8.33 Title 21 §2133 Penalties' jurisdiction of justices of the peace

15.8.34 Title 21 §2315 False statements

15.8.35 Title 21 §2316 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate

15.8.36 Title 21 §2620 False statements; incorrect or incomplete information

15.8.37 Title 21 §2703 License to operate a motorcycle, motorbike, etc.

15.8.38 Title 21 §2710 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age

15.8.39 Title 21 §2722 Restricted licenses based on driver's physical limitations

15.8.40 Title 21 §2751 Unlawful application for or use of license or identification card

15.8.41 Title 21 §2752 False statements

15.8.42 Title 21 §2753 Operation of vehicle by unlicensed minor

15.8.43 Title 21 §2754 Employment of unlicensed person

15.8.44 Title 21 §2755 Authorizing or permitting the operation of a motor vehicle by another

15.8.45 Title 21 §2756 Driving vehicle while license is suspended or revoked;

15.8.46 Title 21 §2758 Driving during period of denial; penalties

15.8.47 Title 21 §2760 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards

15.8.48 Title 21 §2810 Driving after judgment prohibited; penalty; jurisdiction

15.8.49 Title 21 §2814 Additional penalty when convicted of an offense which would render an individual an habitual offender

15.8.50 Title 21 §3107 False statements

15.8.51 Title 21 §4103 Obedience to authorized person directing traffic

15.8.52 Title 21 §4112 Interference with official traffic-control devices or railroad signs or signals or other street signs

15.8.53 Title 21 §4127 Unlawful evasion of Delaware Turnpike and the Korean War Veterans Memorial Highway; harassment of toll collectors; penalty; appeal; jurisdiction; payment of minimum fine before trial

15.8.54 Title 21 §4166 Overtaking and passing school bus; stop signal devices

15.8.55 Title 21 §4172 Speed exhibitions; drag races and other speed contests

15.8.56 Title 21 §4172A Malicious mischief by motor vehicle

15.8.57 Title 21 §4175 Reckless driving

15.8.58 Title 21 §4175A Aggressive driving

15.8.59 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties

15.8.60 Title 21 §4177J Drinking while driving prohibited

15.8.61 Title 21 §4177L Driving by persons under the age of 21 after consumption of alcohol; penalties

15.8.62 Title 21 §4177M Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs

15.8.63 Title 21 §4183 Parking areas for vehicles being used by persons with disabilities

15.8.64 Title 21 §4198J Bicycling on highways under influence of drugs or alcohol

15.8.65 Title 21 §4198O Operation of electric personal assistive mobility devices (EPAMD)

15.8.66 Title 21 §4201 Duty of driver involved in accident resulting in property damage or injury

15.8.67 Title 21 §4202 Duty of driver involved in accident resulting in injury or death to any person

15.8.68 Title 21 §4203 Duty to report accidents; evidence

15.8.69 Title 21 §4601 Introduction, sale, distribution or advertisement for sale to public of motor

vehicle master keys; penalties

15.8.70 Title 21 §4604 Possession of motor vehicle masters keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires

15.8.71 Title 21 §6420 Penalties; jurisdiction

15.8.72 Title 21 §6701 Injuring vehicle or obstructing its operation

15.8.73 Title 21 §6703 Tampering with vehicle

15.8.74 Title 21 §6704 Receiving or transferring stolen vehicle

15.8.75 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify

15.8.76 Title 21 §6708 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card

15.8.77 Title 21 §6709 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers

15.8.78 Title 21 §6710 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers

Supplementary List of Offenses

Title 2

Transportation

15.8.79 §309 Dangerous Flying

15.8.80 §310 Hunting from Aircraft,

Title 3,

Agriculture

15.8.81 §1041 Willfully or maliciously starting fires

15.8.82 §1044 Obstructing person in performance of duty

15.8.83 §8713 Offenses – involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties

15.8.84 §8715 Penalties generally – misdemeanor; felony if offensive involves fraud or distribution or attempted distribution of adulterated article

Title 4

Alcoholic Liquors

15.8.85 §901 Offenses carrying penalty of imprisonment for 3 to 6 months – including peddling of alcoholic liquors, dispensing liquor from a disorderly house, selling alcoholic liquor without a license, claiming to have a license, keeping or selling for beverage purposes any solid or liquor containing alcohol not originally manufactured for use as a beverage

15.8.86 §903 Offenses carrying penalty of fine of not more than \$100.00 or imprisonment for 1 month on failure to pay fine – including selling beer to which other alcohol has been added or selling adulterated alcoholic

liquor; selling alcoholic liquor in time, manner or quantity not authorized by license; selling alcoholic beverage in dining room or bedroom not fitted equipped in manner prescribed by Commissioner/Division; selling alcoholic beverages without complying with specific provisions of statute; selling an alcoholic liquor at a time not authorized; selling alcoholic liquor to prohibited person; allowing alcoholic beverage to be consumed in liquor store; failing to post license conspicuously; keeping or transporting alcoholic liquor in contravention of the statute; selling a product containing alcoholic liquor as medicine after being notified by the Commissioner that a product is being used for beverage purposes; not having a license and inducing the public to believe person has license; buying or receiving alcoholic liquor from person not authorized to sell such liquor and keeping such liquor; obtaining during time when sale is forbidden any alcoholic liquor from a licensee for sale; causing a disturbance or bringing or drinking alcoholic liquor in a place where such is prohibited; buying alcoholic liquor from another person; being a licensee, failing to post conspicuously a sign warning against drinking during pregnancy

15.8.87 §904 Offenses Concerning Certain Persons [forbidding direct or indirect sales to and purchases by a person under age of 21] (classified misdemeanor)

15.8.88 §907 Interference with Officer or Inspector (classified misdemeanor)

Title 6

Commerce and Trade

15.8.89 §2581 Civil Penalty: Disposition of Funds [re: enhanced penalties assessed for prohibited trade practices against infirm or elderly] (unclassified misdemeanor)

15.8.90 §4619 Penalties [for improper sale of secondhand watches] (unclassified misdemeanor)

15.8.91 §4909A Enforcement and Remedies [providing for enhanced penalties for Auto Repair Fraud victimizing the infirm or elderly] (unclassified misdemeanor)

15.8.92 §5132 Hindering or Obstructing [DOA] Officer (unclassified misdemeanor)

15.8.93 §5133 Impersonation of [DOA] Officer (unclassified misdemeanor)

15.8.94 §5134 Offenses and Penalties [involving possession or use of false weights] (unclassified misdemeanor)

15.8.95 §7322 Criminal Penalties [for violation of the Securities Act] (class E, F, or G felony depending on the amount of investor loss)

Title 7

Conservation

15.8.96 §707 Hunting or Shooting from Motor Vehicle, Boats or Farm Machinery (class C or B environmental misdemeanor)

15.8.97 §710 Use of Silencer on Gun (class C environmental misdemeanor)

15.8.98 §711 Hunting with Automatic – Loading Gun (class C environmental misdemeanor)

15.8.99 §719 Discharge of Firearms on or near Public Roads and Public Rights-of-Way (class C misdemeanor)

15.8.100 §1710 Poisoning of Dogs (unclassified misdemeanor)

15.8.101 §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony)

15.8.102 §1739 Violations by Owners of Dangerous or Potentially Dangerous Dogs (unclassified misdemeanor)

15.8.103 §5409 Prohibited Acts [involving Disposition of Human Remains] (unclassified misdemeanor)

15.8.104 §6015 Interference with Department Personnel (unclassified misdemeanor)

15.8.105 §6025 [Improper Disposal of] Solid Waste (unclassified misdemeanor)

15.8.106 §6304 Prohibitions [relating to generation, storage, disposal, transportation, and treatment of hazardous waste] (unclassified misdemeanor)

15.8.107 §6315 Interference with Department [DNREC] Personnel (unclassified misdemeanor)

Title 11

Crimes

15.8.108 §2402 Interception of Communications Generally; Divulging Contents of Communications (class misdemeanor, class F felony, class D felony, depending on specifics of violation)

15.8.109 §2403 Manufacture, Possession or Sale of Intercepting Device (class F felony)

15.8.110 §2410 Breaking and Entering, Etc. to Place or Remove Equipment (class F felony)

15.8.111 §2412 Obstruction, Impediment or Prevention of Interception (class F felony)

15.8.112 §2421 Obtaining, Altering or Preventing Authorized Access (class B misdemeanor, class A misdemeanor for 2nd offense)

15.8.114 §2422 Divulging Contents of Communications (class F felony)

15.8.115 §2431 Installation and Use Generally [of pen trace and trap and trace devices] (class A misdemeanor)

15.8.116 §3532 Act of Intimidation [of victim of or witness to crime] (class E felony)

15.8.117 §3533 Aggravated Act of Intimidation (class D felony)

15.8.118 §3534 Attempt to Intimidate (class E felony, class D felony, depending on the nature of the act attempted)

15.8.119 §4374 Disclosure of Expunged

Records (class B misdemeanor)

15.8.120 §6562 Furnishing Contraband [to DOC prisoners] (unclassified misdemeanor)

15.8.121 §8523 Penalties [for violation of reporting provision re: SBI] (class A misdemeanor, class E felony, depending on the specifics of the offense)

15.8.122 §8562 Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information] (class A misdemeanor, class G felony depending on the specifics of the offense)

15.8.123 §8572 Penalties [for providing false information when seeking employment in a public school] (class G felony)

15.8.124 §9016 Filing False Claim [under Victims' Compensation Fund] (class A misdemeanor)

Title 12Decedents' Estates

15.8.125 §210 Alteration, Theft or Destruction of Will (class E felony)

Title 14Education

15.8.126 §9303 Hazing Prohibited (class B misdemeanor)

Title 16Health & Safety Nature of the Offense

15.8.127 §914 Penalty for Violation [of reporting requirements involving abuse under §903] (unclassified misdemeanor)

15.8.128 §2513 Penalties [relating to improper health-care decisions] (misdemeanor, class felony for falsification, destruction of a document to create a false impression that measures to prolong life have been authorized)

15.8.129 §3317 Treatment of Meats with Unlawful Drugs and Preparations [prior to sale] unclassified misdemeanor)

15.8.130 §7103 General Provisions [regarding sale, purchase, etc. of explosives] (unclassified misdemeanor)

15.8.131 §7112 Penalties [for violations of chapter other than §7103] (unclassified misdemeanor, felony depending on nature of the offense)

15.8.132 §7416 Penalties [for violating statute governing Radiation Control] (unclassified misdemeanor)

Title 23Navigation and Waters

15.8.133 §2202 Child Safety on Recreational Boats (unclassified misdemeanor)

15.8.134 §2303 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs (unclassified misdemeanor, class G felony, depending on number of offenses)

Title 24Professions and Occupations Deadly WeaponsDealers

15.8.135 §903 Sale to Persons under 21 or Intoxicated Persons (unclassified misdemeanor)

Title 30State Taxes Motor Carriers Fuel Purchase Law

15.8.136 §5215 False Statements (unclassified misdemeanor)

Title 31Welfare

15.8.137 §2117 [Interference] Relating to the Blind and "Seeing Eye Dogs" (unclassified misdemeanor)

15.8.138 §3913 Violations [knowing or reckless abuse of an infirm adult] (class A misdemeanor, class G felony for exploitation of infirm adult's resources valued at \$500 to \$5000, class E felony if resources are valued from \$5000 to \$10,000, class D felony if resources are valued over \$10,000 or if abuse or neglect results in bodily harm, class A felony if abuse or neglect results in death)

15.9 Any crime which is a violation of Title 24, Chapter 19 (Nurse Practices Act) as it may be amended from time to time.

15.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure with regard to the temporal proximity of the crime or the conviction to the application and to determine whether the period of time involved has been so long as to negate any reasonable conclusion or determination that the crime for which the individual was convicted has a direct bearing on the individual's fitness or ability to perform one or more of the duties and responsibilities necessarily related to nursing or to otherwise determine that sufficient restitution has been made for the offense committed.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Nursing is available at: <http://dpr.delaware.gov/boards/nursing/index.shtml>**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE**

Statutory Authority: 24 Delaware Code,
Section 3306(a) (24 **Del.C.** §3306(a))
24 **DE Admin. Code** 3300

ORDER**Summary of the Evidence and Information Submitted**

The Delaware Board of Veterinary Medicine (the "Board") held a properly noticed, public hearing on December 14, 2004 to receive comment on proposed additions, revisions, deletions, modifications and reservations to Board Regulations (Attached to this Order as "Exhibit A").

Findings of Fact

Based upon the evidence received, the Board finds the following facts to be supported by the evidence.

1. There was no public comment received concerning the following proposed regulations.

Decision

The Board hereby adopts the Regulations as proposed and a copy of the Regulations as adopted is attached to this Order. The Board relies upon its expertise in this area.

IT IS SO ORDERED This 11th Day Of January, 2005.

DELAWARE BOARD OF VETERINARY MEDICINE
Sharon Little, DVM
William Cross, President
John Gross, VMD

*** Please note that no changes were made to the regulation as originally proposed and published in the November 2004 issue of the Register at page 645 (8 DE Reg. 645). Therefore, the final regulation is not being republished. Please refer to the November 2004 issue of the Register or contact the Board of Veterinary Medicine.**

A complete set of the rules and regulations for the Board of Veterinary Medicine available at:
<http://dpr.delaware.gov/boards/veterinarymedicine/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF GEOLOGISTS**

Statutory Authority: 24 Delaware Code,
Section 3606 (24 **Del.C.** §3606)
24 **DE Admin. Code** 3600

ORDER

After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on January 14, 2005 at a scheduled meeting of the Delaware Board of Geologists to receive comments regarding proposed Regulation 9.0. The proposed regulation identifies crimes substantially related to the practice of geology as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Under Title 24, Chapter 36, as amended by SB 229, one of the qualifications for licensure is that the applicant "shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of geology. Applicants who have criminal convictions records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of geology." 24 **Del.C.** §3608(a)(6). In addition, a licensee shall be subject to disciplinary action, if, after a hearing, the Board finds that the licensed practitioner "has been convicted of a crime that is substantially related the practice of geology." 24 **Del.C.** §3612(a)(3).

"Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of geology. 24 **Del.C.** §3602(7).

The Board is charged by SB 229 to "promulgate regulations specifically identifying those crimes, which are substantially related to the practice of geology." 24 **Del.C.** § 3606(b).

Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the *Delaware Code*. The overarching concern of the Board was the safety of the public. The “primary objective of the Board of Geologists, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of the services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.” 24 Del.C. §3601. The practice of geology is defined as including “consultation, research, investigation, evaluations, mapping, sampling, planning of geologic projects and embracing such geological services in connection with any public or private utilities, structures, roads, building, processes, works or projects.” 24 Del.C. §3602(5). A geologist interacts with clients and other individuals in any number of settings including but not limited to offices, research labs, schools, and field settings. Geologists also interact with regulatory officials. Geologists prepare reports and findings that are relied upon by private and government entities and have access to confidential information. Geologists may also be called upon to offer expert witness testimony.

The Board finds that the crimes in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of geologist in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children; offenses against the public administration including but not limited to bribery and perjury; and those drug offenses involving delivery, manufacture and trafficking which evidence a disregard for the safety of others.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 9.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004, as attached hereto.

SO ORDERED this 14th day of January, 2005.

STATE BOARD OF GEOLOGISTS

William S. Schenck, President, Professional Member

Steven Smailer, Vice-President, Professional Member

Erik Trinkle, Secretary, Professional Member

Jerome Cooper, Public Member

Dana Long, Public Member

Theodore Ressler, Public Member

Stephen Williams, Professional Member

* **Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 785 (8 DE Reg. 785). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Board of Geologist.**

A complete set of the rules and regulations for the Board of Geologists is available at: <http://www.professionallicensing.state.de.us/boards/geology/index.shtml>

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

Statutory Authority: 24 Delaware Code,

Section 3706(c) (24 Del.C. §3706(c))

24 DE Admin. Code 3700

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 12, 2005 at a scheduled meeting of the Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers (hereinafter Board) to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of speech/language pathology, audiology, and/or hearing aid dispensing as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Title 24 of the *Delaware Code* in §3708 (b)(4) provides that applicants for licensure “shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to their licensed practice. Applicants who have criminal convictions records or pending criminal charges shall request appropriate authorities to provide information about the convictions or charge directly to the Board in sufficient specificity to enable the Board to make a determination

whether the conviction or charge is substantially related to the applicant's area of practice."

Senate Bill 229 amended 24 Del.C. §3715(a)(3) to permit the Board to impose discipline on a licensee who has been convicted of a "crime that is substantially related to the practice for which the practitioner is licensed." "Substantially related" was defined in SB 229 as "the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of speech/language pathology, audiology, and/or the dispensing of hearing aids." The "practice of speech/language pathology," the "practice of audiology" and "hearing aid dispenser" are terms defined in 24 Del.C. §3702(7).

Summary of the Evidence and Information Submitted

No written or verbal comment was received.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board finds that the proposed changes implement SB 229.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 11.0 to be effective 10 days following publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

SO ORDERED this 12th day of January, 2005.

BOARD OF SPEECH/LANGUAGE PATHOLOGY,
AUDIOLOGY, AND HEARING AID DISPENSING

Gary Marencin, President
Regina Bilton
Illene Courtright
Elizabeth Daudt
Frank Divita
Carol Guilbert
Michael Michelli
Cynthia Parker

* Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 786 (8 DE Reg. 786). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers.

A complete set of the rules and regulations for the Board is available at:

<http://www.professionallicensing.state.de.us/boards/speechaudio/index.shtml>

DIVISION OF PROFESSIONAL REGULATION BOARD OF MASSAGE AND BODYWORKS

Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 Del.C. §5306(1))
24 DE Admin. Code 5300

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 20, 2005 at a scheduled meeting of the Delaware Board of Massage and Bodywork to receive comments regarding proposed Regulation 9.0. The proposed regulation identifies crimes substantially related to the practice of massage and bodywork as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Under Title 24, Chapter 53, one of the qualifications for licensure is that the applicant shall submit evidence that the applicant "has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; and, has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant has previously been or is currently licensed to practice massage and/or bodywork therapy." 24 Del.C. §5308(a)(4). 24 Del.C. §5313(a)(2), as amended by SB 229, provides that a licensee shall be subject to disciplinary action set forth in §5315 if, after a hearing the Board finds that the massage or body work therapist or massage technician "has been convicted of a crime that is substantially related to the practice of massage and bodywork. "'Substantially related' means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the

practice of massage and bodywork.” 24 Del.C. §5302(8).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 53 is set forth in 24 Del.C. §5306(a)(1). The specific mandate for this rule is set forth in 24 Del.C. §5306(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of massage and bodywork.

Summary Of The Evidence And Information Submitted

No written comments were received. No public comment was received at the January 20, 2005 hearing.

Findings Of Fact With Respect To The Evidence And Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the *Delaware Code*. The overarching concern of the Board was the safety of the public since the licensed practitioners work in close physical proximity, and have direct physical contact, with the individuals they treat while performing massage and bodywork services. Massage and bodywork clients may also include children and the elderly who are vulnerable to undue influence or other forms of abuse. The massage practitioner also has access to confidential client information concerning health and financial information.

The “primary objective of the Board of Massage and Bodywork, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 Del.C. §5301.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of a massage or body work therapist or massage technician in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 9.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of massage and bodywork services.

Decision And Effective Date

The Board hereby adopts the changes to Regulation 9.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text And Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

SO ORDERED this 20th day of January, 2005.

BOARD OF MASSAGE AND BODYWORK
Vivian Cebrick, President, Public Member
Suzie Stehle, Professional Member
Barbara Uniatowski, Professional Member
Mary Jo Verdery, Public Member
Clayton Yocum, Secretary, Public Member

*** Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 796 (8 DE Reg. 796). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Board of Massage and Bodywork.**

A complete set of the rules and regulations for the Board is available at:

<http://dpr.delaware.gov/boards/massagebodyworks/index.shtml>

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission’s Rules. Following notice and a public hearing on December 22, 2004, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the December 1, 2004 *Register of*

Regulations and for two consecutive weeks in the *Delaware Capital Review* and *Delaware State News*. The Commission proposed to enact a new Regulation 8.9 detailing the procedures and possible penalties for prerace testing by blood gas analyzer or similar equipment. The Commission further proposed to enact a new Regulation 8.10 to detail the quarantine procedure for horses that test positive for excessive carbon dioxide levels as a result of either a prerace or postrace test.

2. The Commission received no written comments during December, 2004. The Commission held a public hearing on December 22, 2004 and received public comments from Salvatore DiMario, Executive Director of the Delaware Standardbred Breeders Association, Charles Lockhardt of Dover Downs, and Dr. Odor of the Commission. Mr. DiMario comments were as follows: i) Rules 8.9.2 and 8.9.5 should provide that the testing will be done at random; ii) Rule 8.9.8 should replace the word "upon" with the word "at"; iii) Rule 8.9.12 should add the word "not" after the word "but"; iv) Rule 8.9.16 should require that the results of the testing be sent to the horsemen; v) Rule 8.10.3.11 should allow for a sick horse in the quarantine to be treated by a veterinarian other than the Commission veterinarian in emergency situations.

3. Mr. Lockhardt questioned whether Rule 8.9.16 would be subject to challenge if the prerace sample is not taken at the time of the race. Dr. Odor questioned the requirement in Rule 8.9.2 that the Presiding Judge announce the selected horses for testing since this was contrary to current practice.

Findings of Fact and Conclusions

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

5. The Commission has considered the public comments at the December 22, 2004 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that Rules 8.9.2 and 8.9.5 properly provide discretion to the Presiding Judge to select horses for prerace testing. There will be times when the selection may not be at random if for example, the Presiding Judge received information that a particular horse has been tubed or dosed prior to the race. In addition, the provisions of Rule 8.9.2 and 8.9.5 do not differ from the language currently in Rule 8.4.1.2 regarding selection of horses for postrace testing. The Commission finds that the proposed wording of 8.9.8 is correct and no further revision is necessary. The Commission agrees that Rule 8.9.12 should be amended to add the word "not". Since this is a stylistic change, the Rule does not need to be republished. The Commission would require under Rule

8.9.16 that test results be sent to the horsemen involved with the horse in question. The Commission finds that Rule 8.10.3.11 as drafted is sufficient to require the Commission Veterinarian to determine that a horse is too sick to continue in the quarantine. The Rule should be amended to change the delete the current reference to "State" Veterinarian and replace it with "Commission" Veterinarian. This has been the procedure used by the Commission for many years and the Commission is satisfied the Rule should be adopted. Regarding Rule 8.9.16, there is no requirement that the horse test high for CO2 at the time of the race. Under Rule 8.9.14, no horse on the grounds of the racetrack may carry a foreign substance in its body, which would include an excessive level of carbon dioxide. Finally, the Commission interprets Rule 8.9.2 to merely require the Presiding Judge to give notice of the selected horses and races for testing to the Commission Veterinarian, not to the general public.

6. The Commission concludes that the proposed amendments to the Rules are necessary for this agency to achieve its statutory duty to effectively regulate harness racing in the public interest under 3 **Del.C.** §10005 and should be adopted. The Commission makes the following two stylistic changes to the rules as proposed:

8.9.12 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.10.3.11 A sick horse must only be determined by the State Commission Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2005.

IT IS SO ORDERED this 4th day of January, 2005.

Beth Steele, Chair
Robert Everett, Commissioner
George Staats, Commissioner
Kenny Williamson, Commissioner

8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 Refusal-Failure or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 Exercise Prior to Testing-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.10 Post Race Testing-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.11 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.12 Trainer Observation of Testing-The trainer or other designated representative is permitted to observe the testing procedure, but [not] to question the technician or otherwise disrupt the testing.

8.9.13 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.14 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a

violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.15 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.15.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.15.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.15.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

A commission representative will notify the trainer or licensed designee and the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet.

8.9.16 With respect to a finding of a prohibited level of carbon dioxide in a blood sample obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample" by the licensee, provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing. In the event that the initial blood gas analyzer test result is confirmed by the test result of the official Commission laboratory, such test results shall be *prima facie* evidence that the prohibited drug was present in the horse at the time it was scheduled to participate in a race and is *prima facie* evidence.

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's

expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the [State Commission] Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer

may present such evidence at a hearing before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/research/AdminCode/title3/500/501/index.shtml>

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 250

REGULATORY IMPLEMENTING ORDER

250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 DE Admin. Code 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 DE Admin. Code 251 Family Education Rights and Privacy Act (FERPA) and 14 DE Admin. Code 252 Required Educational Records and Transfer and Maintenance of Educational Records. Regulation 251 is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations. Regulation 252 defines important terms, describes the education records that schools are required to maintain, describes the conditions for the transfer of records from school to school and provides for the proper maintenance and destruction of student records in connection with the requirements of the Delaware Public Archives.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 24, 2004 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

As per the Councils' recommendation, the Department has added phrases to 4.0 of Regulation 251 to clarify that the U.S. Department of Education's Family Policy Compliance

Office enforcement powers extend only to those agencies covered under federal law and language has been added to the reference to the "career area competence list" for better clarity.

In response to the concern about the Department holding hearings, the Department response is as follows; the Department concludes that hearings to challenge the content of an educational record are best conducted at the local level; adding a hearing requirement at the state level adds unnecessary complexity to record maintenance without appreciable additional benefit to students or their families. Finally, the Department recognizes that the Individuals with Disabilities Education Act may impose additional requirements concerning the educational records of children with disabilities. 14 DE Admin Code 925 reflects those requirements.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 DE Admin. Code 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 DE Admin. Code 251 Family Education Rights and Privacy Act (FERPA) and 14 DE Admin. Code 252 Required Educational Records and Transfer and Maintenance of Educational Records. The new regulations add clarity and more accurately reflect the federal statute.

III. Decision to Repeal the Regulation and Replace It with Two Separate Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 DE Admin. Code 250. and replace it with 14 DE Admin. Code 251 Family Education Rights and Privacy Act (FERPA) and 14 DE Admin. Code 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 250 is hereby repealed and regulations 251 and 252 attached hereto as *Exhibit "B"* are hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 251 and 252 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 251 and 252 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 DE Admin. Code 251 and 14 DE Admin. Code 252 in the *Administrative Code of Regulations* for the Department of Education. In addition 14 DE Admin. Code 250 shall be removed from the *Administrative Code of Regulations* for 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 on January 10, 2005. 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 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

~~250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data~~

~~1.0 Authority:~~

~~Under the provisions of Section 122, Title 14, of the Delaware Code, the Department of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations, Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 105-17 Individuals with Disabilities Education Act effective June 4, 1997, and their respective regulations.~~

~~2.0 Applicability~~

~~2.1 These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.~~

~~2.2 These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in 1.0, if no funds under those programs are made available to the agency or institution.~~

~~2.3 For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in 1.0, are provided to the agency or institution by grant, contract, sub-grant, or subcontract, or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.)~~

~~2.4 Except as otherwise specifically provided, these procedures apply to education records of students who are,~~

~~have been, or will be in attendance at the educational institution that collects, maintains, or discloses the records.~~

~~3.0 Purpose:~~

~~The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by covered agencies and institutions.~~

~~4.0 Definitions: as used in these procedures:~~

~~“Attendance” at an agency or institution includes, but is not limited to: attendance in person having homebound or correspondence instruction, and the period during which a person is working under a work-study program.~~

~~“Consent” means that the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and the parent or eligible student understands that the granting of consent is voluntary.~~

~~“Directory information” means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.~~

~~“Disclosure” means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.~~

~~“Educational institution” or “educational agency or institution” means any public or private agency or institution that is the recipient of the funds under any Federal program referenced in 2.0. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.~~

~~“Education records” means those records that are directly related to a student, and are maintained by an educational agency or institution or by a party acting for the agency or institution, the term does not include:~~

- ~~• Records of instructional, supervisory, and administrative personnel and educational personnel ancillary~~

thereto which:

- Are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a “substitute” means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

- Records of a law enforcement unit of an educational agency or institution that are:

- Maintained apart from the records described above.

- Maintained solely for law enforcement purposes, and:

- Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

- Records relating to an individual who is employed by an educational agency or institution which are made and maintained in the normal course of business; relate exclusively to the individual available for use for any other purpose.

- This paragraph does not apply to records relating to an individual in attendance at the agency or institution that is employed as a result of his or her status as a student.

- Records relating to an eligible student that are:

- Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

- Created, maintained, or used only in connection with the provision of treatment to the student, and

- Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, “treatment” does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the development of the student's instructional program.

- Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

“**Eligible Student**” means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

“**Financial Aid**” means a payment of funds provided to

an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

“**Student with Disability**” means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the Department of Education, requires special educational services in order to develop his or her capabilities.

“**Institution of post-secondary education**” means an institution which provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

“**Parent**” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

“**Party**” means an individual, agency, institution, or organization.

“**Personally identifiable**” means that the data or information includes the name of the child, the child's parent, or other family member, the address of the child, a personal identifier, such as the child's social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. 34 CFR 300.500 (e) (1) through (4).

“**Records**” means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

“**Secretary**” means the Secretary of the U. S. Department of Education.

“**Student**” includes any individual with respect to whom an education agency or institution maintains educational records.

5.0 Student Rights

5.1 For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in

this document.

5.2 The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by 5.1.

5.3 Nothing in these regulations shall be construed to limit the ability of a pupil who has reached the age of 14 to request the release of records as provided in 14 ~~Del.C.~~ §4111.

5.4 These procedures shall not be construed to preclude educational agencies or institutions from acceding students rights in addition to those accorded to parents of students.

6.0 Formulation of Institutional Policies and Procedures

6.1 Each educational agency or institution shall formulate and adopt a policy of:

6.1.1 informing parents of students or eligible students of their rights under 7.0;

6.1.2 permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0 including at least:

6.1.2.1 a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

6.1.2.2 An understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

6.1.2.3 A schedule of fees for copies; and

6.1.2.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

6.1.3 Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, including, at least:

6.1.3.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest" and

6.1.3.2 A specification of the personally identifiable information to be designated as "directory information" under 23.0.

6.1.4 Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.

6.1.5 Providing a parent of the student or an

eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.

6.2 The policy adopted by the educational agency or institution shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

7.0 Annual Notification of Rights

7.1 Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

7.1.1 Their rights under these procedures adopted under 6.0; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

7.1.2 The right to file complaints under 24.0 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

7.2 Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

8.0 Limitations on Waivers

8.1 Subject to the limitations in 8.0 and 11.0, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

8.2 An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

8.3 An individual who is an applicant for admission to a post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

8.4 All waivers must be executed by the individual, regardless of age, rather than by the parent of the individual.

8.5 A waiver under this section may be made with respect to specified classes of education records, and persons or institutions.

8.5.1 A waiver under this section may be revoked with respect to any actions occurring after the revocation.

8.5.2 A revocation under this paragraph must be in writing.

8.5.3 If a parent of a student executes a waiver under this section, that waiver may be revoked by the student

at any time after he or she becomes an eligible student.

9.0 Fees

9.1 An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. 34 CFR 300.566(a)

9.2 An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. 34 CFR 300.566(b) and 34 CFR 99.11.

10.0 Right to Inspect and Review Educational Records

10.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. 34 CFR 300.562(a)

10.2 The right to inspect and review education records under 10.1 include:

10.2.1 The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

10.2.2 The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and 34 CFR 300.562(b)(2)

10.2.3 The right to have a representative of the parent inspect and review the records. 34 CFR 300.562(b)(3)

10.3 An education agency or institution may presume that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

11.0 Limitations on the Right to Inspect and Review Records

11.1 If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information that pertains to that student.

12.0 Destruction of Educational Records

12.1 An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.1 The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them as in 10.0.

12.1.2 Explanations placed in the education record under 14.0 shall be maintained as provided in 14.4.

12.1.3 The record of access required under 18.0 shall be maintained for as long as the education record to which it pertains is maintained.

12.1.4 Records of children with disabilities shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They shall be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information shall be destroyed. However, a record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed shall be maintained. (See School District General Records Retention Schedule)

12.2 The following shall apply to the length of time and special consideration for the maintaining of all student records:

12.2.1 Directory information shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.2 Academic grades and attendance records shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.3 Other personally identifiable data which is no longer needed to provide educational services for the child shall be purged and destroyed in accordance with the Delaware Public Archives (29 Del.C. §504(b)).

12.2.4 Student records shall be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;

12.2.5 Records of students who are no longer in school shall be transferred to the Delaware Public Archives for storage.

13.0 Request to amend Educational Records

13.1 A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

13.2 The agency shall decide whether to amend the

information in accordance with the request within a reasonable period of time of receipt of the request.

13.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. 34 CFR 300.567

14.0 Right to a Hearing

14.1 A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with 15.0.

14.2 If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3 If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

14.4 Any explanation placed in the education records of the student under 14.3 shall:

14.4.1 Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

14.4.2 If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. 34 CFR 300.569

15.0 Conduct of a Hearing

15.1 The hearing required to be held by 14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.1 The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.2 The hearing may be conducted by any party, including an official of the educational agency or

institution, who does not have a direct interest in the outcome of the hearing;

15.1.3 The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under 14.0, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.4 The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.5 The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

16.0 Prior Consent for Disclosure Required

16.1 An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in 17.0.

16.1.1 Consent is not required under this section where the disclosure is to the parent of a student who is not an eligible student, or the student himself or herself.

16.2 Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

16.3 The written consent must be signed and dated by the parent of the student or the eligible student giving the consent and shall include: a specification of the records to be disclosed; the purpose of the disclosure; and the party or class of parties to whom the disclosure may be made.

16.4 When a disclosure is made pursuant to 16.1, the educational agency or institution shall, upon request, provide a copy of the record that is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

17.0 Prior Consent

17.1 An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

17.1.1 To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

17.1.2 To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in 20.0.

17.1.3 Subject to the conditions set forth in 21.0, to authorized representatives of the Comptroller of the United States, the Secretary of Education and state and local educational authorities.

17.1.4 In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as: to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms and conditions of the financial aid.

17.1.5 To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

17.1.6 To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

17.1.7 To accrediting organizations in order to carry out their accrediting functions.

17.1.8 To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

17.1.9 To comply with a judicial order or lawfully issued subpoena; provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

17.1.10 The appropriate parties in health or safety emergency subject to the conditions set forth in 22.0.

18.0 Records of Requests and Disclosure Required to be Maintained

18.1 An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

18.1.1 The parties who have requested or

obtained personally identifiable information from the education records of the student, and

18.1.2 The legitimate interests these parties had in requesting or obtaining the information.

18.1.3 18.1 does not apply: to requests by or disclosures to a parent of a student or an eligible student, to requests by or disclosures to school officials under 34 CFR §99.31(a)(1); if there is written consent of a parent of a student or an eligible student; or to requests for or disclosure of directory information under 34 CFR §99.37.

18.1.4 The record of requests and disclosures may be inspected:

18.1.4.1 By the parent of the student or the eligible student.

18.1.4.2 By the school official and his or her assistants who are responsible for the custody of the records, and

18.1.4.3 For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

19.0 Limitation on Redisclosure

19.1 An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

19.2 Section 19.1 does not preclude an agency or institution from disclosing personally identifiable information under 17.0, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of 18.0 are met with respect to each of those parties.

19.3 An educational agency or institution shall, except for the disclosure of directory information under 23.0, inform the party to whom a disclosure is made of the requirements set forth in 19.1.

20.0 Conditions for Disclosure to Officials of Other Schools and School Systems

20.1 An educational agency or institution transferring the education records of a student pursuant to 17.1.2 shall:

20.1.1 Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

20.1.1.1 When the transfer of the records is

initiated by the parent or eligible student at the sending agency or institution, or

20.1.1.2 When the agency or institution includes a notice on its policies and procedures formulated under 6.0, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

20.1.2 Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

20.2 If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of 20.1.

21.0 Disclosure to Certain Federal and State Officials for Federal Program

21.1 Nothing in these policies shall preclude authorized representatives of officials listed in 17.1.3 from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

21.2 Except when the consent of the parent of a student or an eligible student has been obtained under 16.0, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in 17.1.3 shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

22.0 Conditions for Disclosure in Health and Safety Emergencies

22.1 An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2 The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following: the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the

emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and the extent to which time is of the essence in dealing with the emergency.

22.3 22.1 shall be strictly construed.

23.0 Conditions for Disclosure of Directory Information

23.1 An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under 23.3.

23.2 An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under 23.3.0

23.3 An educational agency or institution that wishes to designate directory information shall give public notice of the following:

23.3.1 The categories of personally identifiable information which the institution has designated as directory information;

23.3.2 The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

23.3.3 The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

24.0 Safeguards

24.1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

24.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

24.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and part 99 of this title.

24.4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. 34 CFR 300.572

25.0 Destruction of Information

25.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide

educational services to the child.

25.2 The information must be destroyed at the request of the parents. However, permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. 34 CFR 300.573

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in 25.2.

26.0 Education Records Required in Delaware Schools:

26.1 Directory information for each student as defined in 4.3.

26.2 A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized intelligence, achievement, aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

26.3 Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

26.3.1 A School Health Record Card and Emergency Treatment Data Card for each student.

26.3.2 A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each student with disabilities.

26.3.3 The records of students with disabilities shall be maintained in accordance with 12.1.4.

26.3.4 The total cumulative record shall be disclosed only in accordance with 16.0 to 22.0.

26.4 Maintenance for 100 years is required of certain education records and the following information shall be maintained for each student ever registered and/or in attendance:

26.4.1 Names, addresses and telephone numbers of parents or guardians.

26.4.2 Birthdate, sex and other identifying data of the student.

26.4.3 Academic work completed.

26.4.4 Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

26.4.5 Attendance data.

26.4.6 Transportation data.

26.4.7 The reason for leaving school—graduated, transferred or dropped out.

26.5 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives. Two or more copies in separate sites are recommended to provide fire safe storage.

26.6 The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized a central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Education.)

Otherwise, the Delaware Public Archives should be contacted immediately to facilitate the transfer and continuing maintenance of the student records in those cases described above. In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

26.7 Transfer is required of certain education records. A file consisting of the complete up-to-date cumulative record including the school health record card shall follow each student transferred from one school to another. The file for each student with disabilities transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in 16.0 through 22.0. Records of students graduated from or who left school prior to graduation from Wilmington High School, may be obtained by contacting the Delaware Public Archives.

26.8 Transfer of Student Records in the Case of Placement for Adoption and Change of Name

26.8.1 In the case of either placement for

adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by 13 **Del.C.** Ch. 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the adoption coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

26.9 Transfer of Students

26.9.1 When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form shall be made available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to an educational program operated by the Department of Services for Children Youth and Their Families shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

26.9.2 When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

26.9.3 In order for a transfer unit of credit to be valid in the school to which transfer is made, it shall have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or

left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work shall be repeated if credit is to be granted for that work.

26.9.4 Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the *Delaware Code* and the regulations of the Department of Education.

26.9.5 In the case of students who transfer to a Delaware school from a foreign country, the local school district or school is responsible for having the transcripts evaluated.

27.0 State and Federal Review

27.1 The Secretary of the U.S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints that may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Policy Compliance Office, Federal Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

27.2 In the case of students with disabilities the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Director, Exceptional Children and Early Childhood Education, Department of Education, Townsend Building, Box 1402, Dover, DE—

251 Family Educational Rights and Privacy Act (FERPA)

1.0 Authority and Incorporation of Federal Regulations:

1.1 The Department of Education is authorized by 14 Del.C. §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools:

2.1 Each school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be

amended. The policy shall comply with FERPA and its implementing regulations.

2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.

2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

3.0 State Adoption of FERPA:

3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 C.F.R. part 99), including any subsequent amendment or revision to that regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.

3.2 Notwithstanding section 3.1, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.

3.3 Notwithstanding section 3.1, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.

4.0 Federal Complaints and Investigations:

4.1 The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA [by agencies to which federal education funds have been made available]. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students [of covered agencies]. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. [Families of students attending schools to which federal education funding has not been made available may also find FPCO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation].

252 Required Educational Records and Transfer and Maintenance of Educational Records

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

"**Court Orders**" shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

"**Discipline Record**" shall mean information about any and all periods of out of school suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.

"**Emergency Treatment Card**" shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 DE Admin Code 811.1.1.

"**Identifying Data**" shall mean the name of the student, date of birth, sex, race/ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

"**Progress Report**" shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP and attendance data for each year of the student's attendance.

"**School Health Record**" shall mean the form required by 14 DE Admin Code 811.2.0 for Delaware public school students.

"**Student Transcript**" shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP, SAT, PSAT, ACT; [the career area competency if applicable list;] attendance data and school activities. [If applicable, a list of the career-technical competencies achieved by a student enrolled in a specific career-technical program shall also be included.]

2.0 Education Records Required by Schools in Delaware

2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.

2.1.1 The student Cumulative Record File shall contain the Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.

2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district's possession, to the extent the school or district maintains such documents for an individual student.

2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 DE Admin Code 925 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

3.0 Transfer of the Records of Public School and Private Schools Students

3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.

3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.

3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.

3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children Youth and Their Families to deny or to delay transfer of the Cumulative Record File.

3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.

3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.

3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

4.0 Maintenance of the Education Records of Public Schools

4.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.

4.2 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives.

4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from

high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

5.0 Destruction of Education Records of Public Schools

5.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.

5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin Code 925.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 278

REGULATORY IMPLEMENTING ORDER

278 Non-public School Educator Licensure and Certification

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt 14 DE Admin. Code 278 Non-public School Educator Licensure and Certification to provide a system for non public school educators to become licensed and certified. This regulation is required by Senate Bill 162 of the 142nd General Assembly found in 14 Del. C. §121(b). The only changes to the final version of the regulation are that the definitions, Non-public School Educator and Student Teaching Program have had capitol letters added and the word "incompetency" has been changed to "incompetence".

Notice of the proposed regulation was published in the News Journal and the *Delaware State News* on November 24, 2004, in the form hereto attached as *Exhibit "A"*. No Comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 DE Admin. Code 278 in order to comply with. Senate Bill 162 of the 142nd General Assembly found in 14 Del. C. §121(b).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 DE Admin. Code. 278 Non-public School Educator Licensure and Certification.

Therefore pursuant to 14 **Del.C.** §121(b), 14 **DE Admin. Code** 278 attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 278 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 278 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 278 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §121(b) on January 10, 2005. 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 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

278 Non-Public School Educator Licensure And Certification

1.0 Purpose:

Consistent with the provisions of 14 **Del.C.** §121(b), the intent of this regulation is to establish a voluntary licensure and certification system for non-public school teachers, specialists and administrators employed in this State.

2.0 Definitions:

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

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Composite Score" means a total of an applicant's scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test and/or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score

provision, but may not be used in conjunction with scores from the PRAXIS I (PPST) paper and pencil test and/or with the PRAXIS I (CPPST) computerized test.

"Department" means the Delaware Department of Education.

"Dismissal" means (1) dismissal of a non-public school educator by his/her employing authority for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license or certificate holder's voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license or certificate holder's conviction of a crime which is evidence of immorality.

"Examination of General Knowledge" means a standardized test that measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

"Exigent Circumstances" means unanticipated circumstances or circumstances beyond the non-public school educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the non-public school educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the non-public school educator's temporarily leaving active service.

"Good Moral Character" means conduct which is consistent with the rules and principles of morality expected of an educator.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"Jurisdiction" means a state, territory or country.

"License" means a credential that authorizes the holder to engage in the practice for which the license is issued.

"Mentoring" means activities prescribed by the employing authority with the consent of the Secretary in which a holder of an initial license must engage during the three-year term of the initial license.

"Non-public School" means a private school as that term is defined in 14 **DE Admin. Code** 255.2 or any homeschool defined in 14 **Del.C.** §2703A.

"Non-public School Educator" means a non-public school employee who holds a license issued by the Department pursuant to 14 **Del.C.** §121(b).

"PRAXIS I" or "PPST" means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

"PRAXIS I CBT" means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from

the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

“PRAXIS I CPPST” means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190. Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite score.

“Secretary” means the Secretary of the Delaware Department of Education.

“Standard Certificate” means a credential issued to certify that a non-public school educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Student Teaching Program” means a traditional student teaching placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited non-public school educator preparation program.

“Suspension” means the temporary removal of an initial license for failure to pass the PRAXIS I test.

“Unfit” means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

3.0 Performance Appraisal Evaluation

3.1 A licensed and certified non-public school educator must receive at least 1 performance appraisal evaluation annually. The evaluation system and any forms used in connection therewith must be in a form approved by the Secretary and must be consistent with the Delaware Professional Teaching Standards and the Delaware Administrators’ Standards. Further it must be demonstrated that the evaluation system is equivalent to the Delaware Performance Appraisal System (DPAS) or the Delaware Performance Appraisal System II (DPAS II) whichever is in effect for public educators.

3.2 The employing authority shall develop a performance appraisal evaluation to submit to the Secretary for approval. The performance appraisal evaluation shall include an overall rating and a student-improvement component rating, and must identify what constitutes satisfactory performance and unsatisfactory performance on the overall evaluation and on each component of the evaluation.

3.3 Notwithstanding subsection 3.1, any performance appraisal evaluation designed and approved hereunder, may include a provision whereby the minimum annual evaluation requirement for non-public school educators may be waived

for proficient performance on previous evaluations. However, a non-public school educator may not receive 2 consecutive evaluation waivers.

3.4 The performance appraisal evaluation shall have no more than 5 components and must have a strong focus on student improvement, with 1 component dedicated exclusively to student improvement and weighted at least as high as any other component. The measure of student improvement must be approved by the Secretary.

3.5 Nothing herein prevents an employing authority from administering other evaluations in addition to the Department approved performance appraisal evaluation.

4.0 Non-public School Educator Licensure and Certification System.

In order to be eligible for a license and certificate, a non-public school teacher, specialist, or administrator must receive at least one performance appraisal evaluation annually which meets the requirements set forth in section 3.0.

4.1 Initial License

4.1.1 An initial license is valid for three (3) years unless revoked and may not be renewed.

4.1.1.1 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by their non-public school employer.

4.1.2 The Department shall issue an initial license to a non-public school educator if the applicant demonstrates that:

4.1.2.1 He or she has received a bachelor’s degree from a regionally accredited 4-year college or university; and

4.1.2.2 He or she has completed a student teaching program, as defined in 2.0, or has one (1) year of teaching experience consisting of a minimum of 91 days of long term teaching experience in one (1) assignment; and

4.1.2.3 He or she has achieved a passing score on an examination of general knowledge, such as Praxis I, or such other alternative as might be established by the Department.

4.1.2.4 The Department shall issue an initial license to an applicant currently licensed as an educator in another jurisdiction who has less than three (3) years of teaching experience and meets the requirements of sections 4.1.2.1 through 4.1.2.3. Further, the Department shall issue an initial license to an applicant who previously held a valid Delaware Standard or Professional Status Certificate who has been out of the profession for more than three (3) years.

4.1.3 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.

4.1.3.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened unaltered envelope.

4.1.4 Examination of General Knowledge Requirement

4.1.4.1 A non-public school educator seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 4.1.4.4 below.

4.1.4.2 Scores of Examinations of General Knowledge.

4.1.4.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

4.1.4.2.1.1 Pre-professional Skills Test (PPST) taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

4.1.4.2.1.2 PRAXIS I (PPST)-Paper and Pencil Tests (taken on 10/23/93 and thereafter with a possible score range of 150 to 190) and PRAXIS I Computerized Pre-Professional Skills Tests (CPPST) taken on 1/1/02 and thereafter (both of which have a possible score range of 150 to 190) with passing scores of: reading - 175, mathematics - 174, writing - 173.

4.1.4.2.1.3 PRAXIS I - Computer Based Tests (CBT) (taken between 10/23/93 and 12/31/01) with passing scores of: reading - 322, mathematics - 319, writing - 319.

4.1.4.3 Individuals holding Delaware certificates issued prior to July 1,1983 are exempt from the testing requirements.

4.1.4.4 Acceptable alternatives to the PRAXIS I test scores include:

4.1.4.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

4.1.4.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

4.1.4.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

4.1.4.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken

thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

4.1.4.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

4.1.4.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

4.1.4.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

4.1.4.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

4.1.4.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

4.1.4.6 Timeline for Examination of General Knowledge.

4.1.4.6.1 A non-public school educator seeking initial licensure must pass the three PRAXIS I (PPST) tests in any format or an approved alternative within two years of the issuance of the initial license. Notwithstanding the foregoing, the non-public school employer may submit to the Secretary a written request for a one-year extension. The request must document the effectiveness of the applicant and that the applicant has attempted at least twice to pass Praxis I or an approved alternative within the proceeding two years.

4.1.4.6.2 If proof of passage of PRAXIS I is not provided within two years of the issuance of the initial license and no extension is granted by the Secretary, the initial license shall be suspended for a maximum of two years.

4.1.4.6.2.1 Evidence of passage of PRAXIS I within the time period of the suspension shall result in the reinstatement of the initial license.

4.1.4.6.2.2 An applicant who does not pass PRAXIS I during the time period of the suspension, and whose initial license is expired, must reapply and may be issued an initial license, valid for three years, if he/she meets the requirements for initial licensure then in effect.

4.1.4.7 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage.

4.1.4.7.1 Scores from either the paper and pencil PRAXIS I (PPST) test or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 150 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test or with the computerized PRAXIS I (CPPST) test.

4.1.4.7.2 Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.

4.1.4.8 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

4.1.4.8.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

4.1.4.9 Submission of Scores of Examination of General Knowledge.

4.1.4.9.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

4.1.4.9.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

4.1.4.9.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.1.5 Applicants with Foreign Credentials.

4.1.5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

4.1.6 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

4.1.6.1 Non-public school educators who hold a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first.

4.2 Continuing License

4.2.1 The Department shall issue, upon application, a continuing license to a non-public school educator who has successfully completed the requirements

under the initial licensure as set forth in subsection 4.1. The Department shall issue a continuing license to an applicant licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience. A continuing license is valid for 5 years unless extended pursuant to 4.4 or revoked for cause, as defined in 4.8.

4.2.1.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of the non-public school educator's annual performance appraisal evaluation for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory annual performance appraisal evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

4.2.2 The Department may issue a continuing license to a non-public school educator who previously held a valid Delaware certificate that has expired.

4.2.2.1 A non-public school educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon request.

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

4.2.2.3 A non-public school educator who has completed three (3) or more years of successful teaching and who holds a continuing license which has expired and who has been out of the profession for more than three (3) years may be issued a continuing license upon request, but must, within the first year of employment, successfully complete an employer-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.2.2.4 A non-public school educator holding a limited standard or temporary certificate and currently employed as a non-public school educator will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.2.3 Renewal of a Continuing License: To obtain renewal of a continuing license, a non-public school educator shall participate in professional development activities totaling 90 clock hours every five years. At least one-half of the required hours (45 hours every five years) for non-public school educators must be in activities that relate to the non-public school educator's work with students or

staff. Satisfactory evidence of such completion, as set forth in Sections 4.2.3.2 and 4.2.3.3, shall be submitted to the Department with the application for renewal.

RE-LICENSURE OPTIONS – SPECIFICATIONS – TEACHERS/SPECIALISTS/ADMINISTRATORS

4.2.3.1 Options for Relicensure

<u>OPTION</u>	<u>MAX. HOURS</u>	<u>HOUR VALUE</u>	<u>VERIFICATION</u>	<u>CRITERIA</u>
College Credit	No limit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Must be completed at a regionally accredited college. Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.
Employer Sponsored Professional Development Programs	No Limit	Verified clock hours actively involved in professional development activities	Certificate of attendance provided by the employing authority	Employer professional development programs must focus on identified curriculum, instruction, assessment, school climate or other identified need.
Professional Conference/ Workshop/ Institute or Academy	30 clock hours per year 45 clock hours per cycle	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff. Copies/ Exhibits of products developed by Applicant. Course Attendance Slip	Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. Includes workshops offered by districts or other employing authorities either as part of professional development day or after school hours.
Mentoring	30 per year 45 per cycle	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Must be mentoring of teacher, administrator, or specialist. Must be part of a formal program.
Cooperating Teacher/Intern Supervisor	30 per year 45 per cycle	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field-based clinical studies. (No prior approval required)	Must be supervision of graduate or undergraduate intern or student teacher in a state-approved non-public school educator preparation program.
Presentation	10 per 3 clock hour course; 30 per longer course; 45 per cycle	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Curriculum/ Assessment Development	30 per year 45 per cycle	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Must be service on formal committee organized by local, state, national, or international education agency or organization.
Professional Programs/ Committees	30 per year 45 per cycle	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Must be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	30 per year 45 per cycle	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Must be part of a formal program.
Publication	30 per year 45 per cycle	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.

NBPTS Certification or similar National Certification	30 per year 45 per cycle	45 clock hours for attaining national certification Not complete B. verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual=s work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	30 per year 45 per cycle	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Must relate to the individual=s work or assignment. Must include a product.

4.2.3.2 Documentation of Clock Hours for Relicensure

4.2.3.2.1 For renewal of the continuing license, non-public school educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each non-public school educator is responsible for obtaining any necessary approvals, as set forth in Section 4.2.3.1, from his or her employer before participating in a professional development activity. Any employer may not impose additional activity requirements on the award of clock hours towards renewal of a continuing license.

4.2.3.2.1.1 Criteria for determining if activities are acceptable for clock hour credit for a non-public school educator include the following:

4.2.3.2.1.1.1 The activity enhances the knowledge and skills in the non-public school educator's job or contributes to his/her school or profession.

4.2.3.2.1.1.2 The activity meets one of the relicensure options.

4.2.3.2.1.1.3 The activity addresses one of the standards for the non-public school educator's area of the profession.

4.2.3.2.1.1.4 The activity is completed during the term of the non-public school educator's current continuing license.

4.2.3.2.1.1.5 The activity addresses specific Professional Teaching or Administrator Standards.

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

4.2.3.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original

or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

4.2.3.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the non-public school educator's position at the time the clock hours were completed.

4.2.4 The 90 clock hours must be completed during the five-year term of the license. All activities must relate to the 14 DE Admin. Code 1593, Delaware Professional Teaching or 14 DE Admin Code 1594, Delaware Administrator Standards.

4.2.5 The activities selected must be beyond the normal or specified requirements of the position. Professional development activities, which fulfill the criteria for relicensure for which non-public school educators receive compensation, may be submitted in fulfillment of the 90-clock hour requirement for relicensure.

4.2.6 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Non-public school educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Non-public school educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

4.3 Advanced License

4.3.1 The Department, upon receipt of the list of successful candidates provided annually by the National Board of Professional Teaching Standards, shall issue an advanced license to any non-public school educator who has successfully obtained National Board for Professional Teaching Standards. An advanced license is valid for 10 years unless extended pursuant to 4.4 or revoked for cause, as defined in 4.8.

4.3.1.1 The Department shall issue, upon application, an advanced license to a non-public school educator licensed in another jurisdiction who provides verification of receipt of National Board certification.

4.3.2 The Department shall renew an advanced license, valid for an additional 10 years, to a non-public school educator who has maintained proficiency through the National Board for Professional Teaching Standards.

4.3.2.1 The Department shall renew an advanced license upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.

4.3.2.2 An applicant who elects not to renew with the National Board for Professional Teaching Standards or who fails to meet the recertification requirements set forth by the National Board will be issued a continuing license.

4.4 License Extension

4.4.1 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

4.4.2 A license holder whose license expires during the school year may have the license extended until the last day of the fiscal year upon a request from the employing authority. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

4.5 Leave of Absence

4.5.1 A non-public school educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

4.6 The Department shall not act on an application for licensure if the applicant is official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.7 Criminal Conviction History

4.7.1 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license.

4.8 License Denial

4.8.1 Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth herein.

4.8.1.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within

thirty (30) days.

4.8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.8.2.1 There is legal evidence that the applicant is not of good moral character; or

4.8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.9 License Revocation

4.9.1 An initial, continuing or advanced license; or a limited standard, standard, or professional status certificate issued prior to August 31, 2003, issued to a non-public school educator may be revoked upon the dismissal of the license or certificate holder for immorality, misconduct in office, [~~incompetency incompetent~~], willful neglect of duty or disloyalty, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

4.9.1.1 Revocation Requested by an Employing Authority

4.9.1.1.1 When any license or certificate holder is dismissed by an employing authority for immorality, the body making such a determination shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or certificate.

4.9.1.1.2 When any license or certificate holder is dismissed by an employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the body making such a determination may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or certificate.

4.9.1.1.3 When a license or certificate holder voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the employing authority, the employer shall, upon accepting the resignation, give written notice to the Secretary.

4.9.1.1.4 Upon receipt of written notification from the employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within thirty (30) days.

4.9.1.1.5 If the licensee fails to request a formal hearing before the Secretary or his/her designee within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

4.9.1.2 Revocation by the Secretary of

Education

4.9.1.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that any of the following circumstances exist:

4.9.1.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality; or

4.9.1.2.1.2 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, [~~incompetency~~ **incompetent**], willful neglect of duty or disloyalty or falsification of credentials.

4.9.1.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within thirty (30) days.

4.9.1.2.3 If the licensee fails to request a formal hearing before the Secretary or his/her designee within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

4.9.2 Duty of License or Certificate Holder to Report.

4.9.2.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.9.2.1.1 The license or certificate holder is dismissed by an employing authority for immorality;

4.9.2.1.2 The license or certificate holder voluntarily resigns employment in the face of disciplinary action for immorality or an open investigation for immorality;

4.9.2.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or

4.9.2.1.4 The license or certificate holder has had a certificate or license revoked in another jurisdiction for immorality, misconduct in office, [~~incompetency~~ **incompetent**], willful neglect of duty, disloyalty or falsification of credentials.

4.9.2.2 The failure of the license or certificate holder to report any of the above events to the Secretary shall be grounds for revoking a license or certificate.

4.9.2.3 When a license or certificate is revoked, all standard and emergency certificates held by the license or certificate holder shall be revoked.

4.10 Standard Certificate

4.10.1 The Department shall issue a standard certificate to a non-public school educator who holds a valid

Delaware initial, continuing or advanced license; or limited standard, standard, or professional status certificate issued prior to August 31, 2003, who has:

4.10.1.1 Acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

4.10.1.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a standard certificate is requested; or

4.10.1.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought; or

4.10.1.1.3 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the area of the standard certificate requested; or

4.10.1.1.4 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the area of the standard certificate requested, where the state approval body employed the appropriate NCATE specialty organization standards; or

4.10.1.1.5 Meeting any additional options set forth in 14 **DE Admin. Code** 1516.3.1; or

4.10.1.2 Graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 **DE Admin. Code** 399, with a major in the area of the standard certificate requested; or

4.10.1.3 Achieved a passing score on a Praxis II examination in the area requested, as established by the Professional Standards Board, in consultation with the Department and with concurrence with the State Board of Education; or

4.10.1.4 A valid and current certificate from another state in the area for which a standard certificate is sought.

4.10.1.4.1 A "valid and current certificate from another state" means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

4.10.1.4.2 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.10.2 Educators may hold certificates in more than one area.

4.10.3 An applicant for a standard certificate shall submit:

4.10.3.1 official transcripts; or

4.10.3.2 official scores on the Praxis II examination; or

4.10.3.3 evidence of passage of the National Board for Professional Teaching Standards Certificate; or

4.10.3.4 an official copy of the out-of-state license or certification, if applicable.

4.10.3.5 If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

4.10.4 If an applicant holds a valid initial, continuing, or advanced Delaware license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

4.10.5 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with section 4.8.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 714

REGULATORY IMPLEMENTATION ORDER

714 Professional Employee Work Stoppage or Strike

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike, by adding charter schools to the regulation. In addition the words "of Education" have been added to the references to a local board and the reference to the **Delaware Code** has been corrected

Notice of the proposed regulation was published in the

News Journal and the Delaware State News on November 24, 2005, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 714 in order to add charter schools to the regulation and the words "of Education" to the references to a local board.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 714 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 714 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 14 **DE Admin. Code** 714 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 714 in the *Administrative Code of Regulations* for 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 on January 10, 2005. 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 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

714 Professional Employee Work Stoppage or Strike

1.0 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local board Board of Education or charter school shall:

1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 ~~Del.C. §4011~~ **Del.C.** §4016, and ~~that the certification of such organization as the exclusive~~

representative will be revoked at a time to be determined by the ~~board of education~~ local Board of Education or charter school;

1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;

1.3 Deduct salary for unexcused absence in accordance with 14 **Del.C.** §1320;

1.4 Execute items 1.2 and 1.3 above in the preparation of the next regular payroll;

1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

2.0 As a part of any settlement following a strike or work stoppage, the local ~~board~~ Board of Education or charter school shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled. Similarly, the local ~~board~~ Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 725

REGULATORY IMPLEMENTING ORDER

725 School Administrator Contracts/Agreements

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to re-authorize 725 School Administrator Contracts/Agreements. The only change is to add the words "of Education" after the words "local Board" for the purpose of clarity.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 24, 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to re-authorize 14 **DE Admin. Code** 725 as per the five year review cycle.

III. Decision to Re-authorize the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-authorize 14 **DE Admin. Code** 725. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 725 attached hereto as *Exhibit "B"* is hereby re-authorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 725 hereby reauthorized 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 14 **DE Admin. Code** 725 re-authorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 725 in the *Administrative Code of Regulations* for 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 on January 10, 2005. 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 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

725 School Administrator Contracts/Agreements

1.0 Duties of a School Administrator

1.1 The Administrator shall faithfully perform those duties which may be assigned by the local Board of Education and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the local Board of Education as currently in force and as from time to time amended, enacted or promulgated.

2.0 Non-renewal of the Existing Contracts/Agreements

2.1 Failure on the part of the local Board of Education or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one year extension of the existing Agreement.

3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement

3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board of Education.

3.2 The local Board of Education shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board of Education or before a Hearing Officer designated by the local Board of Education. Prior to any hearing in regard to the termination of the Administrator, the local Board of Education shall serve the Administrator with a written statement of the reasons for termination.

3.3 If the local Board of Education designates a Hearing Officer to conduct such a hearing, a majority of the local Board of Education shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board of Education, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.

3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.

3.5 Appeal from a decision of the local Board of Education concerning the provisions of the Agreement may be made to the State Board of Education.

3 DE Reg. 1077 (2/1/00)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 805

REGULATORY IMPLEMENTING ORDER

805 School Health Tuberculosis (TB) Control Program

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 805 School Health Tuberculosis (TB) Control Program. The amendments change the requirement for school staff, volunteers and new school enterers concerning the Mantoux tuberculin skin test. This regulation was advertised previously in the May 1, 2004 Volume 7 Issue 11, the July 1, 2004 Volume 8 Issue 1 and the September 1, 2004 Volume 8 Issue 3 *Register of Regulations*. In this version two additional definitions have been added and the definitions are all at the beginning of the regulation.

Changes have been made to the last section (now 5.0) and the new title is Tuberculosis Status Verification and Follow Up. In addition changes have been made to the other sections for clarity and accuracy. A non-regulatory note was also added for 14 DE Admin. Code 930 Supportive Instruction (Homebound).

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 14, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Department changed 4.1 as recommended to improve clarity and made the grammatical correction in 5.1.1 as recommended. The Definition of "New School Enterer" will remain as ages 1-21 since the Department of Public Health does not recommend TB Testing for children under one year of age.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code in order to add two additional definitions and place the definitions at the beginning of the regulation and to change the last section (now 5.0) and re-titled it as Tuberculosis Status Verification and Follow Up. In addition changes have been made to the other sections for clarity and accuracy. A non-regulatory note was also added for 14 DE Admin. Code 930 Supportive Instruction (Homebound).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 805 School Health Tuberculosis (TB) Control Program. Therefore pursuant to 14 Del.C. §122, 14 DE Admin. Code 805 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 805 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 14 DE Admin. Code 805 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 805 in the *Administrative Code of Regulations* for 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 on January 10, 2005.

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 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

805 The School Health Tuberculosis (TB) Control Program

~~1.0 School Employees, Substitutes, Student Teachers, and Contract Employees — All school employees, substitutes, student teachers, and contract employees (including bus drivers) shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment.~~

~~1.1 Present employees, substitutes, and contract employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.~~

~~1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.~~

~~2.0 Volunteers — Volunteers, those persons who give their time to help others for no monetary reward and who share the same air space with students and staff on a regularly scheduled basis, shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools prior to their assignment. Should the volunteer answer affirmatively to any of the questions, he/she must provide proof of a Mantoux tuberculin skin test in the past 12 months before beginning their assignment.~~

~~2.1 Volunteers shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools every fifth year.~~

~~2.1.1 The district designee(s) shall collect and monitor the volunteer questionnaires. These questionnaires will be stored in the School Nurse's office in a confidential manner.~~

~~3.0 Students — All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP). Health Care Providers must send documentation of the decisions. Multi-puncture skin tests will not be accepted. A school enterer is defined as any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and~~

~~children entering from nonpublic schools.~~

~~3.1 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.~~

~~3.2 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.~~

4.0 Positive Reactors

~~4.1 Positive reactors (those currently identified and those with a history) need verification from a Health Care Provider or Division of Public Health indicating:~~

~~4.1.1 Skin test reaction recorded in millimeters.~~

~~4.1.2 Current disease status, i.e. contagious or non-contagious.~~

~~4.1.3 Current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease.~~

~~4.1.4 Date when the individual may return to their school assignment without posing a risk to the school setting.~~

~~4.2 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the above information related to disease status and treatment.~~

~~4.2.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.~~

~~4.3 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.~~

~~4.4 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.~~

~~See 1 DE Reg. 1971 (6/1/98)~~

~~See 3 DE Reg. 440 (9/1/99)~~

1.0 Definitions:

"New School Enterer" means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a

public school who are receiving compensation to work directly with students and staff. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

“Tuberculosis Risk Assessment” means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

“Verification” means a documented evaluation of the individual’s disease status.

“Volunteers” mean those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

2.1 School staff and extended services personnel shall provide the Mantoux tuberculin skin test results from a test administered within the past 12 months during the first 15 working days of employment.

2.1.1 Tuberculin skin test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculin skin testing is against their religious beliefs. In such cases, the individual shall complete the *Delaware Department of Education TB Health Questionnaire for School Employees* or provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.1.1 If a school staff member or extended services person, who has received a waiver because of religious beliefs, answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

2.2 Every fifth year, by October 15th, all public school staff and extended services personnel shall complete the *Delaware Department of Education TB Health Questionnaire for School Employees* or, within two (2) weeks, provide Mantoux tuberculin skin test results administered within the last twelve (12) months.

2.2.1 If a school staff member or extended services staff member answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed

health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

3.1 Volunteers shall complete the *Delaware Department of Education’s TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.

3.1.1 If the volunteer answers affirmatively to any of the questions, he/ she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.

3.2 Each public school nurse shall collect and monitor all documentation related to the School Health Tuberculosis (TB) Control Program and store them in the school nurse’s office in a confidential manner.

4.0 New School Enterers

4.1 New school enterers shall show proof of tuberculin screening results as described in 4.1.1 and 4.1.2 including either results from the Mantoux Tuberculin test or the results of a tuberculosis risk assessment. **[Multi-puncture skin tests will not be accepted.]**

~~[4.1.1 Health care providers shall provide documentation of the Mantoux Tuberculin test results or the tuberculosis risk assessment results for the school. Multi-puncture skin test results will not be accepted.]~~

~~[4.1.2 4.1.1]~~ If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student’s parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).

~~[4.1.2.1 4.1.1.1]~~ If a student’s parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of Mantoux tuberculin skin test results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.

4.2. School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program.

5.0 Tuberculosis Status Verification and Follow-up

5.1 Tuberculosis Status shall be determined through the use of a tuberculosis risk assessment, tuberculin skin test and other testing, which may include x-ray or sputum culture. Individuals who either refuse the tuberculin skin test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.

5.1.1 Verification shall include Mantoux results recorded in millimeters (if test [~~was~~ were] administered), current disease status (i.e. contagious or non-contagious), current treatment (or completion of preventative treatment for TB) and date when the individual may return to [their his/her] school assignment without posing a risk to the school setting.

5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.

5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

5.2 In the event an individual shows any signs or symptoms of active TB infection, he/she must be excluded from school until all required medical verification is received by the school.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)

Non-regulatory note: See 14 **DE Admin. Code** 930 Supportive Instruction (Homebound)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1501

REGULATORY IMPLEMENTING ORDER

1501 Knowledge, Skills and Extra Responsibility Based Supplements for Educators

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1501 Knowledge, Skills and Extra Responsibility Based Supplements for Educators. It is

necessary to amend this regulation to clarify the effective date of salary supplements paid to educators who complete professional development clusters.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1501 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6th DAY OF JANUARY, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of January, 2005

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

* Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 828 (8 DE Reg. 828). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Department of Education.

A complete set of the rules and regulations for the Department is available at:

<http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
 Section 122(d) (14 Del.C. §122(d))
 14 DE Admin. Code 1540

REGULATORY IMPLEMENTING ORDER

1540 Standard Certificate Science Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1540 Standard Certificate Science Teacher. It is necessary to amend this regulation to clarify some of the requirements for a standard certificate and to add an additional category of certification for integrated science, which is aligned with the Delaware content standards in Science.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board

of Education find that it is appropriate to adopt this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 1540 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6th DAY OF JANUARY, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day of January, 2005

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
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 Dennis J. Savage
 Dr. Claibourne D. Smith

* Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 834 (8 DE Reg. 834). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Department of Education.

A complete set of the rules and regulations for the Department is available at:

<http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1542

REGULATORY IMPLEMENTING ORDER

1542 Standard Certificate Science Teacher Middle Level

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1542 Standard Certificate Science Teacher Middle Level. It is necessary to amend this regulation to remove the requirements for earth science and physical science from this regulation, as those subjects are taught at the high school level, not the middle school level.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 1542 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6th DAY OF JANUARY, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of January, 2005

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1542 Standard Certificate B Science Teacher B Middle Level

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Science Teacher - Middle Level (required for grades 7-8, and valid in a middle level school, grades 5-6).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

2.1 The following words and terms, when used in this

regulation, shall have the following meaning unless the context clearly indicates otherwise:

"**Department**" means the Delaware Department of Education.

"**License**" means a credential which authorizes the holder to engage in the practice for which the license is issued.

["**Science Discipline**" means those areas of science for which Delaware content standards have been established.]

"**Standard Certificate**" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"**State Board**" means the State Board of Education of the State pursuant to 14 Del.C. §104.

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Science Teacher – Middle Level to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A Bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in general science, middle school science, or a science discipline; and or

3.2 Professional Education A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in general science, middle school science, or a science discipline where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board in science; or

3.4 A bachelor's degree from a regionally accredited college or university with a major in general science, middle level science, or a science discipline; and

3.4.1 Completion of at least the semester hours indicated below A minimum of twenty-four (24) semester hours of pedagogy courses from a regionally accredited college or university to include:

3.4.1.1 Human development;

3.4.1.2 Methods of teaching middle school or secondary science;

3.4.1.3 Teaching of reading in the content areas or identifying/treating exceptionalities;

3.4.1.4 Effective teaching strategies; and

3.4.1.5 Multicultural education; and or

3.3.3.1 Earth science:

3.3.3.1.1 ~~Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following: geology, geography, climatology, meteorology, oceanography, astronomy, laboratory safety, biology, chemistry, and mathematics.~~

3.4.1.2 ~~General Science:3.3.3.2.1 Courses should include at least 39 semester hours, with at least 3 semester hours in each of the following, except where noted: laboratory safety,~~

3.5 Completion of the pedagogy requirements set forth in section 3.4.1 and a total of thirty-six (36) semester hours in science, with a minimum of:

3.5.1 Mathematics (3 semester hours);

3.5.2 Environmental education (3 semester hours);

3.5.3 Earth science (6 semester hours); and

3.5.4 ~~12 semester hours in b~~Biology (12 semester hours); and

3.5.5 ~~12 semester hours in C~~chemistry, physics, and physical science (12 semester hours combined with a minimum of 3 semester hours in each area).

3.3.3.3 Physical science:

3.3.3.3.1 ~~Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following, except where noted: chemistry (12 semester hours); physics (12 semester hours); laboratory safety, biology, mathematics (6 semester hours); and earth science.~~

3.2.1 ~~Completion of an approved teacher education program in science; or~~

3.2.2 ~~A minimum of 24 semester hours to include human development; methods of teaching middle school or secondary science; teaching of reading in science or identifying/treating exceptionalities; effective teaching strategies; multicultural education; and~~

3.3 Specific Teaching Field

3.3.1 ~~Major in the area of the certificate sought; or~~

3.3.2 ~~Completion of an approved teacher education program in the area of the certificate sought; or~~

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Science Teacher B Middle School after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

7 DE Reg. 775 (12/1/03)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1584

REGULATORY IMPLEMENTING ORDER**1584 Permits Paraeducators****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1584 Permits Paraeducators.. It is necessary to amend this regulation to change the date when Title I paraeducators employed prior to January 8, 2002 must meet the requirements from June 30, 2006 to January 8, 2006 to align with the enactment date of *No Child Left Behind*.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1584 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware*

Register of Regulations.

APPROVED BY THE PROFESSIONAL
STANDARDS BOARD THE 6th DAY OF JANUARY, 2005

Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of January, 2005

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1584 Permits –Paraeducators**1.0 Content**

Pursuant to 14 **Del.C.** §1205(a) this regulation shall apply to the qualifications required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full-time or part-time, in support positions in public schools.

2.0 Definitions

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

"Associate's or Higher Degree" means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

"Completed at Least 2 Years of Study at an Institution of Higher Education" means the satisfactory completion of a minimum of 60 semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two years of full-time study as the successful completion of a minimum of 48 semester hours,

and provides documentation of such definition.

"**Department**" means the Delaware Department of Education.

"**Instructional Paraeducator**" means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

"**Paraeducator**", as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202 (6).

"**Permit**" means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional or Service Paraeducator.

"**Secretary**" means the Secretary of the Delaware Department of Education.

"**Service Paraeducator**" means a public school employee who provides support services other than instructional assistance to students.

"**Standards Board**" means the Professional Standards Board of the State of Delaware as established in response to 14 **Del.C.** §1205.

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

"**Title I Paraeducator**" means a public school employee who provides one-on-one or small group ~~tutoring instruction~~; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home-school liaison.

3.0 Title I Paraeducators.

A Title I Paraeducator must hold a Title I Paraeducator Permit.

3.1 The Department shall issue a Permit to a Title I Paraeducator applicant who submits evidence to his/her district, charter school, or other employing authority of:

3.1.1 completion of at least two years of study in general or educational studies at an institution of higher education; or

3.1.2 receipt of an associate's or higher degree; or

3.1.3 evidence of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.3.1.2 Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:

3.1.3.1.2.1 Mathematics: greater than or equal to a total right score of 94 on arithmetic.

3.1.3.1.2.2 English: greater than or equal to a total right score of 87.

3.1.3.1.2.3 Reading: greater than or equal to a total right score of 78.

3.1.3.1.3 Such alternative as may be established by the Standards Board, with the approval of the State Board.

3.2 Pursuant to the provisions of the No Child Left Behind Act, Title I Paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.

3.3 Notwithstanding the above, and pursuant to the provisions of the No Child Left Behind Act, Title I Paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until ~~June 30~~ January 8, 2006 to meet the requirements of 3.1.

3.3.1 Accordingly, Title I Paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I Paraeducator Permit which shall expire on ~~June 30~~ January 8, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to ~~June 30~~ January 8, 2006, the Permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.

3.4 Application Procedures.

3.4.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of 3.0.

3.4.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

4.0 All Instructional Paraeducators and Service Paraeducators must hold the appropriate Permit.

The Department shall issue a Permit to an Instructional Paraeducator applicant or a Service Paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.1 Notwithstanding the above, Instructional Paraeducators and Service Paraeducators hired before February 11, 2004 and who do not have a high school diploma may be issued the applicable permit which shall expire June 30, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to June 30, 2006, the Permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0

5.0 Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five years from the date of issuance.

The Department shall renew a Paraeducator Permit, valid for an additional five years, to a Paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of 15 clock hours of professional development.

5.1 Fifteen clock hours of professional development is required to be completed during the term of validity of the Paraeducator Permit.

5.2 Options for Renewal: The following professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

5.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass/fail course (1 semester hour equals 15 clock hours).

5.2.2 Planned school professional development day (maximum 6 clock hours per day).

5.2.3 Professional conference, workshop,

institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a (verified clock hours actively involved in workshop or conference sessions).

5.2.4 Participation on school, district, or state-sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

6.0 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a as specified in 14 Del.C. §1219.

7.0 A Paraeducator Permit may be denied an applicant upon a finding that an applicant is unfit to be issued a Permit in the State in accordance with 14 Del.C. §1513 or revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application in accordance with 14 Del.C. §1514.

5 DE Reg. 856 (10/1/01)

7 DE Reg. 1006 (2/1/04)

DEPARTMENT OF FINANCE

OFFICE OF THE STATE LOTTERY

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

ORDER

Pursuant to 29 Del.C. §10115 and 29 Del.C. §4805(a), the Delaware Lottery Office issues this Order adopting proposed amendments to the Video Lottery Regulations. Following notice and a public hearing held on December 21, 2004, the Lottery makes the following findings and conclusions:

Summary of the Evidence

1. The Lottery posted public notice of the proposed amendments in the December 1, 2004 *Register of Regulations* and for two consecutive weeks in the Delaware Capital Review and Delaware State News. The Lottery's proposed amendments were as follows: i) amend Video Lottery Regulation 4.2 to provide that any entity proposing to contract with the Lottery or a video lottery agent must obtain a technology provider license; ii) amend Video

Lottery Regulation 6.34(5) to provide that temporary employees, consultants, or contractors must obtain a license and vendors who propose to contract with the Lottery or a video lottery agent must obtain a technology provider license; iii) amend Video Lottery Regulation 6.35 to require video lottery agents to file copies of video lottery related contracts in excess of \$50,000; iv) amend Video Lottery Regulation 7.16.2 to require a video lottery agent to update the self-exclusion list within forty-eight (48) hours after receiving notice from the Lottery or the Video Lottery Enforcement Unit.

2. The Lottery received no written comments from the public during the period from December 1, 2004 through December 30, 2004. The Lottery received no public comments at the public hearing on December 21, 2004.

Findings of Fact and Conclusions

3. The public was given notice and an opportunity to provide the Lottery with comments in writing and by testimony at the public hearing on the proposed amendments to the Video Lottery Regulations.

4. The Lottery finds that the amendments to the Video Lottery Regulations should be adopted as proposed. The proposed amendments are necessary under 29 **Del.C.** §4805 (a) to permit the Lottery to operate the video lottery in a manner that produces the maximum amount of net revenues consonant with the dignity of the State and the general welfare of the people of Delaware. The proposed amendments are necessary steps to strengthen the licensing and enforcement procedures authorized by 29 **Del.C.** §4805(a)(16-17).

5. The effective date of this Order shall be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2005. This Order adopts the proposed amendments to the Video Lottery Regulations in their entirety as published in the *Register of Regulations* in December, 2004, **8 DE Reg 842**.

IT IS SO ORDERED this 10th day of January, 2005.

Don Johnson, Hearing Officer

*** Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 842 (8 DE Reg. 842). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Department of Finance, Office of the State Lottery.**

A complete set of the rules and regulations for the Office of the State Lottery is available at: <http://lottery.state.de.us/videolottery.html>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 133 (16 **Del.C.** §133)

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Cancer Treatment Program Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 *Delaware Code* Chapter 101 and authority as prescribed by 16 *Delaware Code*, Section 133.

On December 1, 2004 (Volume 8, 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 7, 2005, or be presented at a public hearing on January 5, 2005, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Summary of Evidence

A public hearing was held on January 5, 2005, at 10:00 a.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed amendments to the Department of Health and Social Services (DHSS) Cancer Treatment Program 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. Kathleen Russell, of the Comprehensive Cancer Control Branch of the Division of Public Health (DPH) made the agency's presentation. Although two individuals attended the hearing, no verbal comments were offered at the hearing on the proposed amendments to the Regulations. Written comments were received on the proposed regulations during the public comment period (December 1, 2004 through January 7, 2005). Organizations present at the hearing and those offering written comments included:

- State Council for Persons with Disabilities (SCPD)
- American Cancer Society
- Delaware Healthcare Association

Public comments and the DHSS (Agency) responses are as follows:

Sections 1.0 and 4.2.5: Amendments to these sections have been interpreted to allow the Cancer Treatment Program (CTP) to pay for deductibles and co-pays for children who are otherwise eligible for CTP benefits.

Agency Response: The Agency intended that if co-pays and deductibles were not covered by other plans, the CTP would cover such costs for minor children (under 18 years of age).

Sections 4.2.5 and 4.1.4.3: An observation was made that these sections indicate different eligibility requirement for adults and children under the CTP.

Agency Response: The Agency intended that there be different eligibility requirements for adults and children.

In addition to written comments made above, positive comments were shared about Delaware enacting such a regulation to cover cancer treatment for the adults and children.

The public comment period was open from December 1, 2004 to January 7, 2005.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

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.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Cancer Treatment Program Regulations are adopted and shall become effective February 10, 2005, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, DHSS, 1/1/2005

4203 Cancer Treatment Program

1.0 Purpose

The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to Delawareans for the treatment of cancer. ~~The program serves Delawareans who have no health insurance.~~

2.0 Availability Of Funds

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, disability, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

4.0 Technical Eligibility

4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The

minor applicant must:

4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for reoccurrence during or after remission.

4.2.2 Be a Delaware resident

4.2.3 Have been a Delaware resident at the time cancer was diagnosed.

4.2.4 Be diagnosed with any cancer on or after July 1, 2004. Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.

4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.

4.23 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.23.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.34 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits - as paid after deduction for Medicare premium

5.3.2 Pension - as paid

5.3.3 Veterans Administration Pension - as paid

5.3.4 U.S. Railroad Retirement Benefits - as paid

5.3.5 Wages net amount after deductions for taxes and FICA Senior Community Service Employment - net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends - gross amount

5.3.7 Capital Gains - gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance

Payments not as paid

5.3.9 Alimony - as paid

5.3.10 Rental Income from entire dwelling net gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income - gross room/board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment - countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust Fund payments

5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments

5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

5.5.1 Married couples if they live together; and,

5.5.2 Unmarried couples who live together as husband and wife.

5.5.3 Couples will be considered as living together as husband and wife if:

5.5.3.1 They say they are married, even if the marriage cannot be verified; or,

5.5.3.2 They are recognized as husband and wife in the community; or,

5.5.3.3 One partner uses the other's last name;
or,

5.5.3.4 They state they intend to marry.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/ her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

7.0 Verification Of Eligibility Information

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional

verifications may be required.

7.4 Failure to provide requested documentation may result in denial or termination of eligibility.

8.0 Disposition Of Applications

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

9.0 Changes In Circumstances And Personal Information

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

10.0 Termination Of Eligibility

10.1 Eligibility terminates:

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 12 months after the date that cancer treatment is initiated.

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with another cancer for which coverage has not been previously provided.

11.0 Coverage And Benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to

September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

12.0 Cancer Treatment Services Which Are Not Covered

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

13.0 Changes In Program Services

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

14.0 Confidentiality

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

15.0 Review Of CTP Decisions

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

8 DE Reg. 107 (7/1/04)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Delaware Medicaid/Medical Assistance Program Provider Manual to add language to Section 1.6 of the General Policy to promote provider accuracy in processing claims. 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 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

Medical services are reimbursed by the Delaware Medicaid/Medical Assistance Program (DMAP) under Title XIX of the Social Security Act, as amended. Direct health care services are provided by a variety of provider groups. This amendment clarifies general provider participation requirements and provider responsibilities for claims submitted to the DMAP.

All DMAP providers are responsible for their own claims preparation and submission. The effects of this amendment are: 1) more efficient service delivery through more detailed billing requirements; and, 2) increase level of provider accountability for services rendered.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

First, since Medicaid reimbursement rates are low, many providers already have a disincentive to participate in the program. For this reason, DSS may wish to be cautious in imposing additional administrative requirements on providers. Although the actual regulations do not specifically address more detailed billing, imposing onerous

billing standards on providers may simply result in more administrative work and less inclination to participate in the Medicaid program.

Agency Response: The proposed clarification is an extension of the Medicaid Provider Certification on Form CMS-1500 Claim Form. The billing standard simply states that DMAP providers are responsible for the accuracy of all claims submitted by the provider to assure processing and timely claims payment.

Second, many of the provisions favor consumers (e.g. acceptance of Medicaid as payment in full; informing client of services that will not be covered by Medicaid). These are important safeguards and DDDC and SCPD endorse inclusion of the regulation.

Agency Response: Thank you for your endorsement.

Third, we have a minor concern with the requirement of “assuring that all necessary authorizations from the managed care organizations are obtained prior to the delivery of the service” (§1.6.1 5th bullet). Emergency services may not require prior authorization. See 42 C.F.R. §438.114. Moreover, there is a history of MCO failure to provide timely reauthorizations or terminating services without proper notice. For example, if an MCO advises a provider that it will no longer authorize an on-going service (e.g. speech therapy; home health service) and it is clear that no Medicaid qualifying notice has been given to the Medicaid beneficiary, the provider should be permitted to continue services and expect reimbursement. At a minimum, the word “initiation” could be substituted for “delivery” to focus the directive on ensuring the existence of an initial authorization as juxtaposed to continuing services based on non-extended authorization.

Agency Response: §1.6.1 is not the subject of the proposed regulation. The section was inserted for ease of reading in the context of the proposed change.

Fourth, in the 10th bullet under §1.6.1, some words are missing.

Agency Response: Due to a publication error, the proposed regulation shows eleven bullets and there should only be ten bullets. The final order regulation shows the following correct text for the 10th bullet: “Notifying EDS in writing of any changes related to their Medicaid participation including but not limited to, changes in address or changes in group affiliation.”

Findings Of Fact

The Department finds that the proposed changes as set forth in the December 2004 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the DMAP Provider Manual relating to

provider contractual/programmatic responsibilities is adopted and shall be final effective February 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 1/13/2005

DSS FINAL ORDER REGULATION #05-04

1.6 Provider Contractual/Programmatic Responsibilities

1.6.1 A provider who signs a contract with the DMAP is responsible to meet certain conditions in order to remain an eligible provider and receive payment for services rendered. The provider must abide by the DMAP's policies and procedures, for example, including but not limited to:

- Directing clients to the most appropriate, medically necessary, and cost-efficient care possible.
- Acceptance of final DMAP payment disposition as payment in full for Medicaid covered services; [therefore, providers cannot charge the client for any services reimbursable by the DMAP (refer to Billing DMAP Clients section in this General Policy for exceptions)].
- Billing all other insurance resources or legally liable third parties prior to billing DMAP (unless under special arrangement as a managed care provider in which third party liability is accounted for in the capitated rate).
- Keeping records necessary to verify the services provided and permitting federal/state representatives access to the records.
- Determining that the client has valid Medical Assistance eligibility before rendering service and, if the client is enrolled in managed care, assuring that all necessary authorizations from the managed care organization are obtained prior to the delivery of services.
- Informing the client of any service that will not be covered by the DMAP prior to the delivery of the service.
- Making restitution for any overpayment promptly.
- Notifying the DMAP of any suspensions or exclusions from any program.
- Sending copies of professional license or certifications to EDS, the fiscal agent, whenever renewed or altered.
- Notifying EDS in writing of any changes related to their Medicaid participation including but not limited to, changes in address or changes in group affiliation.

1.6.2 Providers are responsible for the accuracy, truthfulness, and completeness of all claims submitted to DMAP. The provider is further responsible for all costs associated with the preparation for the submission of claims, whether prepared or submitted by the provider or by an outside agency or service. State employees are prohibited from submitting claims on behalf of non-government providers.

Providers acknowledge that by submitting a claim to DMAP they certify the services were rendered prior to the submission of the claim.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. §512)

ORDER

Nature Of The Proceedings

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Case Processing Procedures policy in the Division of Social Services Manual (DSSM) regarding redeterminations: certification periods. 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 2004 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Changes

The purpose of this rule amendment is to simplify the application and eligibility review process for DSS benefits. DSS is aligning program rules of the Cash Assistance Programs with the Food Stamp Program. The Food Stamp Program has mandated regulations on case reviews. DSS plans to adopt rules to align the eligibility review processes for Temporary Assistance for Needy Families (TANF) and General Assistance (GA) so both programs have the same rules.

DSS plans to amend the rules in DSSM 2001 to update

program language and reorganize and renumber program requirements for the eligibility review process for cash assistance programs. TANF and GA cases will close at the end of a certification period if the case is not reviewed. The certification period will be adjusted to any existing open cash assistance or Food Stamps already in the case. After written notification, the recipient is responsible for making an appointment with DSS for a case review.

Summary Of Comments Received With Agency Response And Explanation Of Change(S)

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) provided the following observations summarized below.

DDDC and SCPD believe there are several positive features to the revised regulations. First, the eligibility periods for GA have been either 3 or 6 months. The new regulations will have a uniform 6 month eligibility period. Second, the eligibility periods for cash assistance and Food Stamps will be adjusted to ensure the same due date for redeterminations. This will reduce paperwork and burden on beneficiaries. Third, mail-in applications with a telephone interview for TANF beneficiaries are authorized.

The DDDC and the SCPD have the following recommendations:

First, it is not entirely clear if a mail-in application and telephone interview are options for GA recipients. Section 2001.1, second paragraph appears to generally authorize mail-in applications and telephone interviews. However, proposed 2001.1.1 appears to focus solely on TANF recipients.

Agency Response: DSSM 2001.1 does state that a new application must be completed. It further states that the person must appear for an interview or use a mail-in with telephone interview process. This applies to all cash assistance programs. Special emphasis was given in DSSM 2001.1.1 to TANF recipients because the program requires work or work activity participation for continued benefits to those who are able to engage in those activities.

Second, the superseded regulations contemplate DSS scheduling of an interview and DSS assistance if a client has difficulty in obtaining documentation supporting continued eligibility. The new regulations omit such references. It would be preferable to include an acknowledgement that DSS will send notice of a pending expiration along with reapplication materials at least 30 days prior to the expiration date. It would also be preferable to include an assistance provision similar to that in the superseded regulation: “When the client says s/he cannot get a requested document, the worker will assist the client in obtaining an acceptable

verification to establish continuing eligibility.”

Agency Response: The following provision was inadvertently omitted and will be included in the final order regulation: “When the client says s/he cannot get a requested document, the worker will assist the client in obtaining an acceptable verification to establish continuing eligibility”.

Third, the italicized sentence of Section 2001.1, First Paragraph, provides no flexibility or discretion based on “good cause”. In contrast, the superseded regulation provided examples of “good reason” for missing an interview. The following substitute would establish the general rule while still allowing DSS some discretion: In the absence of compelling good cause or extenuating circumstances, benefits will not continue beyond the end of an application period without a new determination of eligibility.

Alternately, DSS could also consider the following variation: In the absence of good cause (e.g. unforeseen hospitalization; notice sent to incorrect address), benefits will not continue beyond the end of an application period without a new determination of eligibility.

Agency Response: Under no circumstance will benefits continue beyond the end of an eligibility period without a new determination of eligibility. This provision is consistent with the Food Stamp program. Recipients will receive a notice approximately 45 days prior to the end of the review period. The Delaware Client Information System (DCIS) will close these cases as the review period is due. As long as an application is received prior to the end of the review period, benefits can be reopened in the event of a good cause situation that prevents the review from being completed timely. DCIS will generate a notice of review and send a mini application to be completed so benefits may be continued. However, for TANF recipients, there are other requirements that must also be met that cannot be mailed at the same time. Those families will need to contact the Division of Social Services to complete the review process.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the December 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Case Processing Procedures policy in the Division of Social Services Manual (DSSM) is adopted and shall be final effective February 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 1.13.2005

DSS FINAL ORDER REGULATION #05-03

2001 Redeterminations

~~In order for cash assistance to continue, the eligibility of all recipients must be reviewed any time a change is reported. In addition, regular periodic redeterminations of eligibility are also required.~~

~~A redetermination is a re-evaluation of a recipient's continued eligibility for assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements.~~

~~When a redetermination is due, the recipient is required to complete a new DSS application form (Form 100) and appear for a scheduled interview. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

~~The assistance case of a recipient who fails without a good reason to appear for a scheduled redetermination interview will be closed. Examples of good reason for missing a redetermination appointment are:~~

- ~~Illness of the payee or another family member requiring the presence of the payee;~~
- ~~Court required appearance;~~
- ~~Household emergency;~~
- ~~Inelement weather which prevents travel;~~
- ~~Appointment letter sent to the wrong address.~~

~~The recipient will be sent a notice of advance action produced by DCIS at least ten (10) days prior to the effective date of the termination. This notice cannot be mailed until the recipient has missed the appointment.~~

~~EXAMPLE: A client is scheduled for a redetermination appointment on March 22nd. The client missed the redetermination appointment. The worker closes the assistance case for failure to keep a redetermination appointment. The earliest the notice can be sent is March 23rd, so the closing is effective April 30th.~~

~~The assistance case of a recipient who fails to provide requested information necessary to establish continued eligibility will be closed. Recipients must be notified via Form 105 of all information necessary to establish continuing eligibility and allowed ten (10) days to return the information. When the client says s/he cannot get a requested document, the worker will assist the client in obtaining an acceptable verification to establish continuing eligibility.~~

~~The recipient will be sent a notice of advance action produced by DCIS at least ten (10) days prior to the effective date of the termination. This notice cannot be mailed until the recipient has missed the deadline for returning the requested information.~~

~~EXAMPLE: On March 1st a client has a redetermination interview. On March 1st the worker gives the client a Form 105 requesting verification of the bank account and gives March 11th as the deadline date. The~~

client does not return the verification by March 11th. The worker closes the case for failure to provide requested information. The earliest the notice can be sent is March 12th so the closing is effective March 31st.

~~EXAMPLE: On March 1st a client has a redetermination interview. On March 12th the worker realizes the client did not verify a bank account. The worker sends the client a Form 105 requesting verification of the bank account and gives March 22nd as the deadline date. The client does not return the verification by March 22nd. The worker closes the case for failure to provide requested information. The earliest the notice can be sent is March 23rd so the closing is effective April 30th.~~

Any recipient whose assistance benefits are reduced or terminated as a result of a redetermination will be sent written notice of the change at least ten (10) days prior to the effective date of the reduction or termination.

A redetermination is a process by which eligibility factors are periodically reviewed to determine if the assistance group remains eligible for benefits.

2001.1 Required Periodic Redeterminations

The minimum requirement for regular periodic redeterminations on all cases receiving cash assistance is as follows:

1. Every six (6) months for TANF and GA cases where eligibility is based on unemployability
2. Every three (3) months for GA families
3. For GA cases with 12th grade high school students, the redetermination date is scheduled in the month prior to the month of graduation.

2001.1 Redetermination: Eligibility Review Periods

Eligibility periods means the period of time within which a family shall be eligible to receive benefits. At the expiration of each eligibility period cash assistance benefits end. Further eligibility will be established based upon a newly completed application, an interview and verification of information. Under no circumstance will benefits continue beyond the end of an eligibility period without a new determination of eligibility. The first month of the eligibility period will be the first month for which the household is eligible to participate.

A redetermination is due when the eligibility period is expiring. The recipient is required to complete a new DSS application form and either appear for an interview in person or have a mail-in application with a telephone interview. A redetermination is complete when all eligibility factors are examined and a decision regarding eligibility is reached. [When the client says she cannot get a requested document, the worker will assist the client in obtaining an acceptable verification to establish continuing eligibility.] At that point, a new review period is given for eligible families.

The eligibility review periods for cash assistance cases will normally be set at 6 months. But if there

is also Food Stamps to review, the cash assistance eligibility period will be adjusted to come due at the same time as the Food Stamp review so that the family does not experience any undue hardship in the review process. That means, the cash assistance redetermination will be due at the same time as the open Food Stamp case because the eligibility period for the cash assistance case will be adjusted to the same date as the open Food Stamps certification period.

If there was no previously open Food Stamp case but there was an open cash assistance group, the eligibility period of the new cash assistance group would have been adjusted to come due at the same time as the existing cash assistance group.

Therefore, the eligibility review period will be at 6 months or when the Food Stamps assistance groups are due for review but no later than 11 months.

2001.1.1 Interviews.

Delaware's Temporary Assistance for Needy Families Program emphasizes work and work-related activity. Mandating face-to-face interviews might undermine that goal. Therefore, use mail-in applications, with a telephone interview, as an option to encourage recipients to continue employment and training activities or continue working. For Non-Needy Non-Parent Caretakers using mail-in applications with a telephone interview is also permitted since DSS does not count the income and resources of these caretakers. A Contract of Mutual Responsibility is still required to be reviewed and updated.

Redeterminations of eligibility are performed in the regional office.

2001.1.2 Redetermination Notices

Families that have filed an application by the fifteenth (15th) day of the last month of their eligibility period must be provided with either a notice of eligibility or a notice of denial by the end of the current eligibility period. The end of the eligibility period means that a redetermination interview is due.

A system-generated notice is issued even if the assistance group's benefit level increases or does not change.

If a family received a notice of expiration of when the eligibility period was ending indicating that a redetermination was due, and timely reapplied for cash assistance, they are to be sent another notice no later than 30 days after the review date. This second notice will indicate whether the family was eligible for benefits or denied benefits based on the information provided for the redetermination.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. §512)

ORDER**Nature of the Proceedings**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program for the following reasons: 1) DSS no longer assigns 3-month certification periods; 2) DSS no longer mails benefits to local food stamp offices; and, 3) the implementation of simplified reporting, six-month certification periods, and EBT have made this policy obsolete. 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 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Removes old language certifying homeless households for 3 or 6 months. Homeless households are subject to simplified reporting. DSS automatically gives these households a six-month certification period.

Removes old language about canceling benefits not picked up at the local offices. DSS does not mail benefits to the local offices.

Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following summarized recommendations:

One of the examples of a “homeless individual” is someone whose primary nighttime residence is a halfway house or similar institution... This description is problematic since 1) a halfway house is typically not an institution; and 2) a halfway house is not typically provided “for individual intended to be institutionalized”. Therefore, SCPD recommends the following substitute: A halfway house or similar supervised transitional setting that provides

temporary residence to individuals (applied to individuals leaving institutions to community-based settings with staff support, not prisoners considered to be detained under a Federal or State law while in a halfway house).

In summary, SCPD endorses the overall regulation subject to amending the above “halfway house” reference.

Agency Response: The sentence describing homelessness, “A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized,” comes from the Federal regulation. In the Federal regulation, the term “institution” means any program or facility where people live and are fed a majority of their meals each day. Institutions can include, but are not limited to, correctional facilities, hospitals, halfway houses, drug and alcohol treatment facilities, federally subsidized housing for the elderly, group living arrangements, shelter for battered women and children, and nonprofit shelters for homeless persons.

Individuals must be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution’s normal services. Residents of institutions where over 50% of the meals are provided do not get food stamps except under certain circumstances per regulations.

The sentence will not be revised.

Findings of Fact

The Department finds that the proposed changes as set forth in the December 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program regarding the Certification Period Length is adopted and shall be final effective February 10, 2005.

Vincent P. Meconi, Secretary, DHSS, January 13, 2005

DSS FINAL ORDER REGULATION #05-02**9032.6 Residency (Including Homelessness Definition)**

[273.2(f)(1)(vi)]

The residency requirements of DSSM 9008 will be verified except in unusual cases where verification of residency cannot reasonably be accomplished. “Unusual cases” would include homeless households, some migrant farmworker households, or households newly arrived in a project area, where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not

limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residence as well.

Any documents or collateral contacts which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement will be established. An otherwise eligible household cannot be required to reside in a permanent dwelling or to have a fixed mailing address as a condition of eligibility.

"Homeless individual" means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized (applied to individuals released from institutions who still need supervision, not prisoners considered to be detained under a Federal or State law while in a halfway house);
- A temporary accommodation in the residence of another individual if the accommodation is for no more than 90 days.
- The 90-day period starts at application or when a change is reported.
- The 90-day period starts over when a household moves from one residence to another.
- If a homeless household leaves, for whatever reason, and returns to the same residence, the 90-day period will start over again.
- If a household has a break in receiving food stamps, the 90-day period will not start over if the household remains in the same residence. The 90-day period will start over if the household moved to another residence.
- A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

~~Use the following procedures to certify eligible homeless households:~~

~~Certify stable homeless households:~~

- ~~• Using the DSS local office address for a minimum of six (6) months;~~
- ~~• Using their own P. O. Box for a~~

~~minimum of three (3) months.~~

~~Benefits not claimed by recipients will be cancelled. The case should be closed by authorization deadline for the coming month if there has been no contact from the client. (Per DSSM 9006.3, timely notice is not required when DSS has reason to believe that the household is no longer in the project area.)~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. §512)

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding child care purchase of care policy, as it relates specifically to compensation, method of payment, and collection of fees. 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 September 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Statutory Authority

- 42 USC §§ 9858-9858q, Child Care and Development Block Grant
- 31 *Delaware Code*, Ch 3, Subchapter VII, Child Day-Care Centers

The proposed rule will allow providers to charge DSS fee paying clients the difference between the DSS determined co-pay and the provider's private fee. Providers will not be allowed to charge non-fee paying clients the difference.

The proposed changes will also allow self-arrange parents whose provider does not have a subsidy slot

available to opt to pay only the difference between the DSS rate and the provider's private rate. Thus eliminating the 4 to 6 week wait for DSS client reimbursement.

The proposed changes will be incorporated into the Division of Social Services Child Care Contract (Section IV, Method of Payment, and Collection of Fees, Paragraph J) and the Division of Social Services Child Care Certificate Provider Agreement and Registration Form (Section II, Fees, Paragraph C).

Implementation of the proposed provisions on November 10, 2004 is contingent upon promulgation of this rule.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC), and the State Council for Persons with Disabilities (SCPD) provided the following observations and position statement, summarized below, and responds as follows:

First, as background, in January 2004, the Department of Services for Children Youth and Their Families (DSCYF) issued proposed regulations to prompt improvements in day care centers [7 DE Reg. 911 (January 1, 2004)]. It is our understanding that at the FY 04 JFC Hearings, the Governor's Office requested that a budget analysis be conducted to determine the effect of the aforementioned proposed regulations, which included purchase of care rates. If possible, SCPD respectfully request a copy of such an analysis.

DSS Response: Please contact the Office of Child Care Licensing for a copy of the budget analysis.

Second, the most significant change in the regulations is the creation of a new option known as "Purchase of Care Plus". In a nutshell, the provider receives the regular DSS subsidy, the DSS-determined parent fee, and the shortfall up to the provider's private rate. If the provider is unwilling to accept regular "Purchase of Care" or the new "Purchase of Care Plus", the parent can opt to self-pay the provider and the parent is then reimbursed up to the DSS statewide limit.

This system will help some parents and hurt others. It will help parents who cannot find a provider willing to accept the State "Purchase of Care" rate and who have funds to pay the difference. It will hurt indigent parents who have no funds to augment the "Purchase of Care" rate. The Councils believe it would have been simpler to raise the State reimbursement rate across the board.

In summary, the Councils would have preferred a general increase in the DSS reimbursement rates payable to providers to promote enhanced provider participation in the State system. In the long run, this would result in greater

availability of child care for eligible parents. In the absence of such a general rate increase, we the proposed regulation insofar as they result in more options and flexibility for parents.

DSS Response: Thank you for your endorsement. DSS was successful with a budget initiative that added \$1.1 million State dollars to the Purchase of Care program to increase reimbursement rates statewide for infants and toddlers. The DSS budget request for fiscal year 2006 includes \$800,000 to increase rates for preschool age children statewide.

Findings of Fact:

The Department finds that the proposed changes as set forth in the September 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program is adopted and shall be final effective February 10, 2005.

Vincent P. Meconi, Secretary, DHSS, January 13, 2005

DSS FINAL ORDER REGULATIONS #05-06

REVISIONS:

11002.9 Definitions and Explanation Of Terms

(Break in Continuity of Sections)

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

AB. Job Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training contracted programs, JTPA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of parent/caretakers to choose from a broad range of child care providers, the

type and location of child care.

AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the CCMIS, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parent/ caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parent/Caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 18 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - Parent/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (P.O.C. +) - Care option that allows providers to charge fee paying clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined parent fee and any additional provider-determined co-pay.

(Break in Continuity of Sections)

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parent/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
3. public or private school care,
4. preschools and kindergarten care, and
5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and
4. relatives who provide care cannot be part of the welfare grant.

D. Once parent/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parent/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are

full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care or purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parent/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parent/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parent/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

(Break in Continuity of Sections)

11004.7.2 Paying the Child Care Fee

Parent/caretakers will pay their child care fee directly to the child care provider. This fee, in combination with what DSS pays the provider, represents the reimbursement limit DSS allows for child care services. These limits are based on the child care type and the age of the child. DSS ~~either~~ has contracts with providers for these rates ~~or providers agree to accept them as their rates~~ which include purchase of care plus option. If, however, providers do not accept these rates or the purchase of care plus option, parent/caretakers will self-arrange care directly with the provider. In this instance, the parent/caretaker will not only pay their fee, but also the provider's full charge for care. The parent/caretaker will submit an original receipt for reimbursement, at which time DSS will reimburse the parent/caretaker in an amount up to the statewide limits (see 11004.4.1 above), less the child care fee.

Parent/caretakers who fail to pay their child care fee or who fail to make arrangements to pay past fees owed will have their child care services terminated. Providers are responsible for informing DSS of the parent/caretaker's failure to pay the fee. Obtain such information in writing from providers whenever possible. However, it is acceptable to obtain this information verbally if the following procedures are used.

A. Accept and document (e.g. note the date and time of the call/conversation and the information given in the case record) the information from the provider.

B. Request that the provider follow up this information in writing to the child care monitor in their county.

C. Send the Failure to Pay Child Care Fee Closing (CCMIS Notice 4060) to the parent/caretakers informing them that service will terminate due to non-payment of the fee unless arrangements are made with providers to pay past fees owed.

NOTE: Allow timely (10 days) and adequate notice.

D. Require parent/caretakers to submit information in writing which details the arrangements they made with providers to pay past fees owed.

Parent/caretakers whose child care case closes because of failure to pay child care fees cannot receive a new authorization for service until they satisfy or make arrangements to pay past fees owed.

(Break in Continuity of Sections)

11006.4.2 Fee Paying Clients

The client fee is based on the DSS scale according to the client's income. The provider is responsible for collecting fees from their private and DSS fee-paying clients. The provider must develop a fee collection policy that states the fees collected prior to or after delivery of service and the frequency of collection, such as weekly, biweekly, or monthly. The provider's fee collection policy should be discussed with the parent/caretaker upon initial enrollment at the facility and should be reviewed periodically.

The provider must ensure that enrollment procedures include how the provider informs parent/caretakers of the availability of purchase of care slots for non-fee paying clients.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311 and 2712 and 21 Delaware Code,
Section 2118

(18 Del.C. §§311, 2712; 21 Del.C. §2118)
18 DE Admin. Code 603

ORDER

Regulation 603 (formerly Regulation 9) first became effective on December 1, 1983. It was last amended effective May 16, 1987. Effective July 22, 2004, the Delaware General Assembly amended 21 Del.C. §2118(a)(2)f to require certain consumer notifications and acknowledgements for policies issued on or after October 1, 2004. Those new statutory provisions required all automobile insurers to: (a) provide each consumer/policyholder with a separate document that fully explains all of the PIP deductible options offered by the insurer, (b) obtain a written acknowledgment from the consumer/policyholder that such explanation has in fact been received, and (c) obtain from the consumer/policyholder a signed separate acknowledgment of the specific PIP deductible selected by the consumer/policyholder which shall include an acknowledgment of the policy costs relating to such PIP deductible.

Prior to that amendment, 21 Del.C. §2118 and 18 Del.C. §2712 required similar but different notifications and acknowledgements from consumers. The statutory provisions that took effect on July 22, 2004 require that Regulation 603 and Form A attached thereto be amended to conform to the new legal requirements imposed by amended 21 Del. C. § 2118(a)(2)f. Since the date the regulation was last amended, there have been statutory changes to 21 Del.C. §2118 that affect other provisions of the regulation.

Under the authority of 29 Del.C. §10113(b)(4) and (5) I hereby order that Regulation 603 be amended without the necessity of meeting the procedural requirements of 29 Del.C. §§10115-10118 as follows:

1. Revise Section 1.0 of the regulation to reflect the scope and authority of the regulation in conformity with the requirements of the Register of Regulations.
2. Move the definition of "Loss of Use" from Section 8.3 to the definitions in Section 4.0.
3. Amend Section 11.1 by deleting the reference to prior iterations of the regulation.
4. Amend Section 11.0 by adding a new Section 11.2 to reflect 21 Del. C. § 2118 as amended by 74 Del Laws c. 400.
5. Revise Section 15.0 to reflect the effective dates of the regulation's adoption and amendment.
6. Revise Form A to reflect the changes required by

74 Del Laws c. 400.

7. Revise the statutory reference to the Wilmington Auto Accident Reparations Arbitration Committee or its Successors in Section 4.0.

I order that the proposed change shall become effective on February 11, 2005.

IT IS SO ORDERED this 18th day of January, 2005.

Matthew Denn
Insurance Commissioner

600 Automobile Insurance**603 Delaware Motorists Protection Act [Formerly Regulation 9]****1.0 Rules and Regulations Scope and Authority**

1.1 ~~18 Del.C. §314 of the Delaware Insurance Laws authorizes the Insurance Commissioner to "make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this Title."~~ ~~18 Del.C. §2712 provides that no policy providing automobile liability insurance shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner. It also allows the Commissioner to disapprove any such form within 30 days after the date of filing.~~ This Regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311 and 2712, 21 Del.C. §2118 and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 Del.C. Chapter 101.

1.2 21 Del.C. §2118 provides that policies purporting to meet the requirements of the Section must provide coverage and policyholder notifications required by that Section.

1.3 In order to enable insurers to satisfy this requirement, the following guidelines are promulgated to advise insurers of the standards which will be used by the Insurance Department in reviewing forms filed by insurers.

2.0 Coverage

2.1 Policies shall contain at least the following required coverages:

2.1.1 Bodily injury and property damage liability with limits of at least those prescribed by the Financial Responsibility Laws of Delaware.

2.1.2 Personal Injury Protection, and

2.1.3 Compensation for damage to property other than motor vehicles.

2.2 The following additional coverages must be offered to the insured:

2.2.1 Compensation for damage to the insured motor vehicle, including loss of use of the motor vehicle.

2.2.2 Uninsured/Underinsured vehicle coverage.

3.0 Minimum Coverage Required

3.1 The provisions herein required need not be stated in the language or form of these regulations, but the coverage afforded shall be equal or of greater benefit to the insured with the exception of the requirement stated in section 11.1.

4.0 Definitions

~~4.1 Whenever used:~~

"**Bodily Injury**" means bodily injury to a person and sickness, disease or death which results from it.

"**Funeral Expenses**" means reasonable, customary and necessary expenses incurred within two years of the accident for professional funeral services. These expenses include the cost of a burial plot for one person.

"**Injured Person**" is as defined in 21 Del.C. §2118(a)(5).

"**Innocent Third Parties**" means claimants who at the time of the event leading to the claim (1) were not in violation of any Rules of the Road as promulgated under Title 21, Delaware Code and (2) whose activities did not contribute in any way to the accident. This presumption may be rebutted by clear and convincing evidence.

"**Loss of Earnings**" means loss of salary or its equivalent, net of taxes which were lost by reason of inability to work. This covers loss of wages, salary or lost earnings of a self-employed person. Payment of lost earnings is to be at the time they are actually lost.

"**Loss of Use**" means expenses necessarily and actually incurred by the named insured as a result of damage to the insured motor vehicle.

"**Medical Expenses**" means reasonable charges for necessary medical, hospital, dental, surgical, x-ray, ambulance, professional nursing services and prosthetic devices.

"**Motor Vehicle**" means a land motor vehicle, including a trailer or semi-trailer as used therewith, required to be registered, licensed and required to carry insurance under the Financial Responsibility Laws.

"**Nonstandard**" means an insured policyholder who is unable to procure insurance through the standard market and whose premium charge is in excess of the premium charged by the Delaware Automobile Insurance Plan ("DAIP") for similar (though not identical) coverage.

"**Substitute Service Expenses**" means reasonable and necessary extra-incurred expense for personal services which would have been performed by the injured person had he or she not been injured.

"**Wilmington Auto Accident Reparations Arbitration Committee or Its Successors**" as described at 21 Del.C. §2118(a)(4) ~~(f)(3)~~ (g)(3) is deemed to include the insurance industry forums including the nationwide intercompany arbitration agreement, special arbitration

agreement forum, automobile accident reparations arbitration agreement.

5.0 Bodily Injury Liability and Property Damage Liability

5.1 The insurer shall undertake to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by accident and arising out of ownership, maintenance or use of a motor vehicle. The policy shall designate by explicit description or by appropriate reference the motor vehicle to which this coverage applies. Indemnity from such legal liability shall be to a limit of at least the Financial Responsibility Laws of the State of Delaware and, if a single limit for such bodily injury and property damage liability is provided, such single limit shall be not less than the sum of the bodily injury and property damage limits stated in the Financial Responsibility Laws for any one accident.

6.0 Personal Injury Protection

6.1 The policy shall provide compensation to an injured person for medical expenses, funeral expenses, loss of earnings and for substitute services incurred as a result of bodily injury, caused by accident, involving the insured vehicle.

6.2 The policy must have minimum limits for this coverage as stated in 21 Del.C. §2118. The policy may provide for higher limits of compensation but the compensation for funeral expenses included in the foregoing shall not exceed the sum of \$3000 per person. Personal injury protection benefits shall be payable within 30 days of the demand thereof by the claimants provided that reasonable proof of loss for which the benefits as demanded has been submitted to the PIP carrier.

6.3 Any insurer, in accordance with filings made with the Insurance Department, may provide for certain deductibles, waiting periods, sublimits, percentage reductions, excess provisions or similar reductions at the election of the owner of a motor vehicle to apply only to loss and expense incurred as a result of injury to the owner of the vehicle or members of his household. All deductibles offered must be per accident and not per person. For the purpose of this coverage members of the owner's household shall be members of the named insured's immediate family not having a separate household, and persons actually residing with and economically dependent upon him/her. The owner's election of any reduced benefits described in this section must be made in writing and signed by that owner. The requirement of an election in writing may be satisfied by a statement on the application for insurance, or other form which shall clearly convey the effect of his/her option selected. In order to assure that this election is made, insurers, agents or brokers must offer for the consideration of

the owner the deductibles or similar reductions required to be filed in accordance with this section.

7.0 Compensation for Damage to Property Other than Motor Vehicles

7.1 Compensation for damage to property arising as a result of an accident involving the motor vehicle, other than damage to a motor vehicle, aircraft, watercraft, self-propelled mobile equipment and any property in or upon any of the aforementioned, with the minimum limits of \$10,000 for any one accident. Payments under this section shall be excess over other valid and collectible insurance.

8.0 Compensation for Damage to Motor Vehicles

8.1 Every insurer shall offer compensation for damage to the insured motor vehicle identified in the policy including the loss of use of the motor vehicle up to but not exceeding the actual cash value of the vehicle at the time of the loss, The coverage for loss of use shall not be less than \$10 per day.

8.2 The owner of the motor vehicle so covered may elect to have such coverage excluded in whole or in part by use of certain deductibles and exclusions in accordance with filings made by the insurer with the Commissioner.

8.3 ~~"Loss of Use" means expenses necessarily and actually incurred by the named insured as a result of damage to the insured motor vehicle.~~

9.0 General Conditions

9.1 The coverages provided in an insurance policy as described herein may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section.

9.2 Personal Injury Protection benefits shall be considered excess to any other similar insurance for passengers, other than Delaware residents, when the accident occurs outside this State.

9.3 To enable owners of motor vehicles to properly exercise the coverage elections, insurers are required to offer deductibles, waiting periods, sublimits, percentage reductions and excess provisions as designated in 21 Del.C. §2118(a)(2)(f).

9.4 To enable owners of motor vehicles who are unable to procure insurance through the standard market to properly exercise their coverage elections, insurers and insurance agents are required to

~~(1)9.4.1~~ notify policyholders if they are considered nonstandard by the insurer and

~~(2)9.4.2~~ to inform the policyholders of the availability of the Delaware Assigned Insurance Risk Plan ("DAIP"). Notwithstanding the above, no agent is required to write a DAIP policy.

9.5 Insurers are required to notify injured persons

covered under this section that the coverage is for two years from the date of the accident, and that it only extends beyond two years in cases involving surgical or dental procedures related to the accident and that were impossible or impractical to perform within the two year period. Such surgical or dental procedures must be verified in writing within two years of the accident, by a qualified medical or dental practitioner. The insurer must give prompt and timely notice after the written application for benefits has been made. This notice can be included on the APPLICATION FOR BENEFITS form.

10.0 Mandatory Intercompany Arbitration

10.1 All insurers authorized to write auto insurance in this State shall be deemed signatory companies of the insurance industry forums arbitration agreements for accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party claims and to first party claims in other states or territories of the United States or foreign countries.

10.2 The requirement to participate in intercompany arbitration for Delaware disputed claims shall not imply that non-signatory companies are obligated to become "signatory companies" to the intercompany arbitration agreements or to affect these companies' position with respect to intercompany arbitration outside the jurisdiction of this State.

10.3 Non-signatory companies shall be subject to all duties and obligations of signatory companies with respect to Delaware claims, or the claims of Delaware policyholders. This includes payment of dues and fees and compliance with the various arbitration forum rules.

10.4 In all disputed Delaware claims involving damage to vehicular or non-vehicular property of "innocent third parties", where the dispute involves a liability determination, the insurer providing liability and/or non-vehicular no-fault property damage coverage for the vehicle which actually strikes or first strikes the "innocent third party's" property shall promptly pay the "innocent third party's" property damage claim. The total payment shall not exceed the lowest of the applicable available coverage of the involved insurance carriers. The insurers shall submit the case to the appropriate arbitration forum after diligent efforts to resolve the claims of the contesting insurers fail.

11.0 Delaware Form a "Coverage Election"

11.1 The coverage election form (Delaware Form A), attachment to Regulation 603 (Formerly Regulation No. 9), shall be properly presented by the insurer, broker, or agent to the policyholder, and acknowledged by the policyholder's signature. Proper presentation by the insurer, where possible, should be in person at the time application is made. If personal presentation is not possible, or if there is further need for clarification, insurers may present Form A

by mail. The language or context of ~~this form~~ Form A shall be as shown unless, in accordance with filings made with this office, the insurer offers options, deductibles, etc., other than those described on the approved form. Any amended Form A shall clearly describe all additional options of coverage and must be filed with this Department prior to use. Any version of the coverage election form which deviates from Delaware Form A as shown (Appendix 1), must be filed with the Department prior to its use except that ~~(Exception~~ companies may overprint the form with company name, address and logo without filing it with the Department, providing the text remains unchanged.

~~Amendments to 11(a):~~ Prior to May 16, 1987, the first sentence of § 11(a) read as follows:

~~"(a) The coverage election form (Delaware Form A), attachment to Regulation 9, shall be properly presented to the new policyholder by the insurer, broker, or agent, and shall be completed for each policyholder and vehicle."~~

~~Amendment No. 1 effective May 16, 1987 inserted the word "new" between the words "the" and "policyholder" in the second line of the sentence.~~

~~A second amendment to § 11(a), first sentence, ordered effective December 31, 1987, deleted at the end of the first sentence of § 11(a) the words "and shall be completed for each policyholder and vehicle." "The sentence now reads as shown § 11(a). (4/1/88)~~

~~The notice of amendment to § 11(a) effective December 31, 1987, follows:~~

~~DELAWARE MOTORIST'S PROTECTION ACT (As amended)~~

~~"WHEREAS, on April 16, 1987, the Department adopted an amended Regulation 9 which became effective May 16, 1987;~~

~~WHEREAS, under the Administrative Procedures Act, 29 Del. C., Section 10113(b) (4) duly adopted regulations may be amended to reflect non-substantive changes or to alter style or form or to correct technical errors; and~~

~~WHEREAS, it has come to the attention of the Department that a certain provision of Section 11 of Regulation 9 may be interpreted more broadly than was intended,;"~~

~~NOW, THEREFORE, the Commissioner finds that Regulation 9, Section 11 requires clarification in the form of a non-substantive change in form.~~

~~IT IS ORDERED AS FOLLOWS: Section 11 of Regulation 9 is hereby amended to delete the words at the end of the first sentence "and shall be completed for each policyholder and vehicle." The first sentence of Regulation 11 shall therefore read:~~

~~"(a) The coverage election form (Delaware Form A), attachment to Regulation 9 shall be properly presented by the insurer, broker, or agent to the policyholder, and acknowledged by the policyholder's signature."~~

~~This amendment shall be effective immediately upon signature by the Commissioner as no substantive change is contemplated by this amendment.~~

~~SO ORDERED THIS 31st DAY OF DECEMBER, 1987.~~

11.2 The policyholder shall receive a full explanation of all deductible options available to the policyholder in writing as a separate document from the insurer and the insurer shall obtain from the policyholder a written acknowledgment of the policyholder's receipt of such explanation as a separately includable item on the Form A. Additionally, the Form A acknowledgment signed by the policyholder shall include the related cost for each deductible offered by the insurer.

12.0 Notices to Policyholders

12.1 Insurers not less than once annually shall inform their policyholders of the coverage in force for each auto policy. The form of this notice may be in any form reasonably calculated to inform policyholders of their existing coverage.

12.2 Upon renewal of any policy in effect, on the date of the adoption of this regulation each insurer shall send a notice to their nonstandard policyholders in substantially the following form:

"NOTICE TO NON-STANDARD POLICYHOLDERS:

My agent has informed me that I am considered a nonstandard driver and has notified me of the availability of the Delaware Automobile ("Assigned Risk") Insurance Plan, which provides less expensive automobile insurance for some drivers."

12.3 The failure of a policyholder to sign and return this statement shall not create any legal rights nor shall the insurer be responsible for the policyholder's failure to return the signed statement."

13.0 Claimant's Duty

13.1 An injured party shall submit to reasonable treatment recommended by competent physicians, and must act reasonably to minimize the disability and mitigate damages.

14.0 Separability

14.1 If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

15.0 Effective Date

15.1 The above amendments to existing Regulation 603 (Formerly Regulation No. 9) shall become effective May 16, 1987. This regulation became effective on December 1, 1983 and was amended effective May 16, 1987.

The effective date of the second amendment, including revisions to Form A, is February 11, 2005. The use of revised Form A shall be required for all policies issued on or after March 1, 2005.

~~DELAWARE MOTORIST'S PROTECTION ACT FORM A~~
~~The Coverage Election form (Delaware Form A)~~
~~attachment to Regulation 9 shall be properly presented to the~~
~~new policyholder by the insurer or broker or agent.~~

FORM A

DELAWARE MOTORISTS PROTECTION ACT REQUIRED STATEMENT TO POLICYHOLDERS

* **Please Note: Adobe Acrobat required to view form**

**DEPARTMENT OF NATURAL
 RESOURCES AND
 ENVIRONMENTAL CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
 Statutory Authority: 7 Delaware Code, Section
 6010 (7 Del.C. §6010)

Secretary's Order No. 2004-A-62

Based on the Hearing Officer's Report, dated December 21, 2004 and attached hereto and incorporated herein, I find and conclude that approval of the proposed regulation in the above-referenced proceeding as a final regulation is appropriate and necessary to protect the public and the environment.

In sum, I find and conclude that:

1. The Department provided adequate public notice of the hearing in a manner required by the law and regulations;
2. The Department's issuance of the proposed regulation is under its authority under 7 Del.C. Section 6010, and its authority to administer the Clean Air Act and regulations promulgated thereunder. This action is supported by the need to take state action to protect the air quality from the potentially harmful air emissions from heavy diesel trucks built in the vehicle model year 2007 and thereafter;
3. The Department's issuance of the proposed regulation as a final regulation is appropriate under the law and applicable regulations because the regulation will protect the environment and reduce harmful air pollution emissions consistent with the standard recognized appropriate by the Environmental Protection Agency and thirteen states, including Delaware;
4. The comments in opposition to the proposed regulation do not state any substantive opposition to the

proposed regulation. Instead, they raised procedural challenges, which should not prevent this state action insofar as the final regulation is issued under state law and is necessary to protect the state's interests from any adverse changes in the applicable federal law and/or regulations. This action is taken to maintain air quality based on existing federal standards, and is to prevent any lowering of the air quality standards if the federal laws or regulations are changed. The intent of this action is to ensure that the environmental protection now afforded Delaware citizens under the current federal regulatory protection is maintained. Thus, this final regulation will protect Delaware citizens and its visitors through an independent state regulation to protect the environment from the potentially harmful air emissions from heavy diesel truck emissions that do not meet the standard set forth in this final regulation;

5. The Department has an adequate record for its decision and no further public hearing or comments are appropriate because it would delay the implementation of the final regulation in time for the 2007 model year, which EPA indicates that states should implement three years in advance;

6. The Department considered all timely public comments and questions on the proposed regulation, as presented to the Department in the public hearing record, and its Staff's expert technical advice and investigation of the proposed regulation in issuing this final regulation, and;

7. The Department shall have published in the next available issue of the *Delaware Register of Regulations* as a final regulation, the proposed regulation as included in the hearing record, and the final regulation as published will become effective according to the law.

John A. Hughes, Secretary

Proposed Amendments to Regulation No. 43

Regulation Number 43 is hereby re-named from "Not To Exceed California Heavy Duty Diesel Engine Standards" to "Heavy Duty Diesel Engine Standards". This was necessitated due to the addition of later model years than those subject to the existing regulation.

Section 1.0 of this proposal contains the entirety of existing Regulation Number 43, and only reformatted to current *Delaware Register of Regulations* standards, which also required providing a name for the section. No wording changes were made that would affect the regulatory authority of the existing regulation. A title for the section was added to reflect the applicable model years within the overall scope of Heavy Duty Diesel Standards, and the addition of the words "section" and "sub-section", consistent with the aforementioned formatting standards, were also made to make the section read properly. The new parent Department of the Division of Motor Vehicles was also

corrected from Public Safety to Transportation, which was effective in July, 2003.

Section 2.0 of this proposal contains totally new wording, and is both the reason and the substance of the regulation amendment.

The entire revised and supplemented Regulation Number 43 follows:

Regulation No. 43

~~Not To Exceed California Heavy Duty Diesel Engine Standards~~ **Heavy Duty Diesel Engine Standards**

1.0 On Road Heavy Duty Diesel Requirements for Model Years 2005 and 2006

1.1 Applicability

These rules apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware.

1.2 Definitions

The following definitions are applicable to this section:

“Department” means The Delaware Department of Natural Resources and Environmental Control.

“Division” means The Delaware Division of Motor Vehicles of the Delaware Department of ~~Public Safety~~ Transportation.

“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the

Superintendent of the Delaware State Police.

“Executive Order” means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

“Heavy-duty diesel engine” means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Heavy-duty motor vehicle” means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Model year” means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

“New motor vehicle” means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser

“New motor vehicle engine” means a new engine in a motor vehicle.

“Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

“Ultra-small volume manufacturer” means any manufacturer with Delaware sales less than or equal to 300 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

“Urban bus” means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

1.3 Severability

Each sub-section of this section shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

1.4 Reporting Requirements

All manufacturers of 2005 and 2006 model year heavy-duty diesel vehicles with a MGVWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer's vehicle comply with the applicable exhaust emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department thirty (30) days prior to the date of the first vehicle being potentially available for sale.

1.5 Dealer Compliance

No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended on July 25, 2001 or complies with other documentation approved and provided by the Department:

1.5.1 A 2005 or 2006 model year heavy-duty diesel engine;

1.5.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.5.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.6 Exemptions and Technology Review

Notwithstanding sub-section 1.4, the requirements of this section shall not apply to:

1.6.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.6.2 An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.6.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.6.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.6.5 A motor vehicle having a certificate of

conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.6.6 An emergency vehicle;

1.6.7 A military tactical vehicle or equipment; or

1.6.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.7 Manufacturer Compliance with California Orders and Voluntary Recalls

1.7.1 Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.7.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

1.8 Adoption and Incorporation by Reference of California Rules

The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.

1.9 Requirements for Vehicle Registration and Transactions

1.9.1 No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with sub-

section 1.5 of this regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with sub-section 1.5 of this regulation or other documentation approved by the Department.

1.9.2 No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin complies with the standards adopted in sub-section 1.4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:

1.9.2.1 A 2005 or 2006;

1.9.2.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.9.2.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.10 Exemptions and Technology Review

Notwithstanding sub-section 1.8, the requirements of this section shall not apply to:

1.10.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.10.2 An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.10.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.10.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.10.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.10.6 An emergency vehicle;

1.10.7 A military tactical vehicle or equipment;

or

1.10.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.11 Manufacturer Compliance with California Orders and Voluntary Recalls

1.11.1 Any order or enforcement action taken by the CARB to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.11.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation:

1.11.2.1 Sold, leased, or rented,

1.11.2.2 Offered for sale, lease, or rental, or

1.11.2.3 Registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

2.0 On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later

2.1 Applicability

Except as specifically provided in sub-section 2.2, this section applies to all heavy-duty diesel vehicles sold, leased or registered for use in Delaware where:

2.1.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.1.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section.

2.2 Exemptions

Notwithstanding sub-section 2.1, the requirements set forth in this section do not apply to:

2.2.1 A heavy-duty diesel engine intended for use in an urban bus;

2.2.2 A heavy-duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy-duty diesel engine standards is not required;

2.2.3 A vehicle acquired outside of Delaware by a resident of Delaware for the purpose of replacing a vehicle registered to the resident which, while out of Delaware, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is

acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;

2.2.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

2.2.5 An emergency vehicle; or

2.2.6 A military tactical vehicle or equipment.

2.3 Definitions

For the purpose of this section, the following definitions apply:

"CARB" means the California Air Resources Board, as set out in section 39003, California Health and Safety Code. (1999)

"The terms certification; diesel-cycle; emergency vehicle; engine family; heavy-duty vehicle; heavy-duty diesel engine; medium duty vehicle; military tactical vehicles and equipment; model year; urban bus; and ultimate purchaser" each shall have the meaning set out in Title 13, California Code of Regulations ("CCR") and section 165 of the California Vehicle Code.

"Division" means The Delaware Division of Motor Vehicles of the Delaware Department of Transportation.

"Emergency vehicle" means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

"Heavy-duty diesel engine" means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

"Heavy-duty motor vehicle" means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater

"Lease" means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.

"Model year" means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Sell" means any commercial transaction recognized under the laws of this State as a means of transferring ownership of a good and includes barter. It also includes offering for sale.

"Urban bus" means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

2.4 Prohibition Against Sale or Registration of Noncomplying Vehicles

No person shall sell, lease or register a heavy-duty vehicle for use in Delaware if:

2.4.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.4.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section, unless the heavy-duty engine installed in such vehicle has been certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8, and the test procedures incorporated by reference therein that apply to Model Year 2007 and subsequent engines.

2.5 Recall of Vehicles

If, for any reason, the manufacturer of any vehicle or engine subject to this Section conducts a recall, whether required or voluntary, or a service campaign in any other state that involves any emissions-related component or element of design that is incorporated in vehicles sold, leased or registered in Delaware, such manufacturer shall notify the Division no later than five days after initiating such recall or service campaign and, unless the Division determines that the recall or service campaign is unwarranted given the facts of the matter, shall conduct such

recall or service campaign on vehicles registered in Delaware in accordance with a schedule determined by the Division.

2.6 Prohibition Against Sale or Registration of Recalled Vehicles

~~2.7~~ No person shall sell, lease or register a heavy-duty vehicle subject to the requirements of this section if such vehicle has been the subject of an emissions-related recall, unless the vehicle has been corrected in accordance with a recall plan pursuant to this section.

2.7 Prohibition Against Stockpiling

The purchase of engines or vehicles in excess of normal business needs for the purpose of evading the requirements of this section shall be unlawful. No heavy-duty vehicle that is manufactured after January 1, 2007, may be sold, leased or registered in Delaware unless it contains an engine certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8 that apply to Model Year 2007 and subsequent engines.

**DIVISION OF AIR AND WASTE MANAGEMENT
TANK MANAGEMENT BRANCH**

Statutory Authority: 7 Delaware Code,
Chapter 74A (7 Del.C. Ch. 74A)

Secretary's Order No.: 2005-A-0003

I. Background

On November 22, 2004, a public hearing was held at the Lukens Drive office of DNREC in New Castle, Delaware, to receive public comment regarding the proposed revisions to Delaware's **Regulations Governing Aboveground Storage Tanks**. Senate Substitute No. 1 for Senate Bill N. 344, signed by Governor Minner on July 22, 2004, amended several sections of Title 7, **Del.C.** Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act, which required subsequent changes in the Delaware **Regulations Governing Aboveground Storage Tanks**. Other changes were made to add clarification and/or provide corrections to the existing language contained within these Regulations.

The Department prepared the changes to these Regulations and presented them to the Aboveground Storage Tank Technical Advisory Committee (ASTTAC). ASTTAC worked with the Department to develop the initial set of AST Regulations promulgated in June of 2004. By unanimous vote, the ASTTAC committee members endorsed these proposed changes. A public workshop was held by the Department regarding these proposed revisions on September 30, 2004, and, as noted previously herein, the

public hearing was held on November 22, 2004.

No public comments were received by the Department in either the pre-hearing phase or at the hearing itself. Subsequent to the public hearing, the Tank Management Branch of the Division of Air & Waste Management reviewed the entire record generated as a result of this rulemaking procedure, and provided a Final Response Memorandum concerning this matter to the Hearing Officer dated December 8, 2004. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated January 4, 2005, and that memorandum is expressly incorporated herein by reference. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 4, 2005, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's memorandum.

IV. Reasons

The adoption of these proposed changes in the Delaware **Regulations Governing Aboveground Storage Tanks** will be beneficial to the State of Delaware, in that it will clarify and/or correct existing language currently contained within these regulations, and, most importantly, allow the Department's AST Regulations to remain consistent with the amendments recently made to The Jeffrey Davis Aboveground Storage Tank Act this year. Additionally, the adoption of these amendments will help to improve and/or enhance the overall performance of the State of Delaware's Tank Management Program with the Division of Air and Waste Management, in furtherance of the policies and purposes of 7 **Del.C.** Ch. 74A.

John A. Hughes, Secretary

Proposed changes include:

Part A, §1.2.2. – added Part A, §6 to correct omission in original Regulations.

Part A, §1.2.3. – added Part A, §6 to correct omission in original Regulations.

Part A, §1.2.3.3. – added Part A, §10 to comply with new signage requirements.

Part A, §1.2.4. –reworded to show what parts of the Regulations Hazardous Waste ASTs are not subject to.

Part A, §2

Change-In-Service – additional changes in service added

Closure – deleted as it is not used in the Regulations

Permanent Change in Contents – definition added

Permanent Closure in Place or *Permanently Closed in Place* or *Permanently Closing in Place* or *Permanently Closed* – definition added

Relocation or *Relocating* or *Relocated* – definition added

Removal or *Removing* or *Removed* – definition added

Upgrade – definition added

Part A, § 4.1.2. – Added *Permanent Change in Contents* (from regulated substance to unregulated substance) as situation whereby registration of an AST would no longer be required.

Part A, §4.3.2. – Capitalized defined terms.

Part A, §4.3.3. – Capitalized defined terms.

Part A, §4.4.2.5. – Capitalized defined terms.

Part A, §4.5.4. – Capitalized defined terms.

Part A, §4.6.1. – Capitalized defined terms.

Part A, §4.6.2. – Capitalized defined terms.

Part A, §7.1.1. – Deadline for preparation of Release Preparedness Plan added.

Part A, §8.1.6.5 – Capitalized defined terms.

Part A, §10 – Section added to require labeling of ASTs per SS1 for SB344.

Part B, §1.1. – The requirements for relocated ASTs stipulate that the relocated AST must meet New AST requirements therefore AST relocations has been added to the section for New ASTs.

Part B, §1.1. – AST relocations added to New AST section.

Part B, §1.3 – Notification requirement for Relocated AST added to mirror notification requirements for New ASTs.

Part B, §1.3.2. - Requirement for Relocated AST plans to be corrected to meet New ASTs requirements added to mirror requirements for New ASTs.

Part B, §1.4. - Requirement for Relocated AST approval letters to be posted added to mirror posting requirement for New ASTs.

Part B, §1.9. – Clarification added for construction permit fees. Construction Permit Fees apply only to New ASTs, not those being Relocated.

Part B, §9.1.7. - Capitalized defined terms.

Part B, §10.1. – Additional Referenced Standards added to include Shop-Fabricated ASTs.

Part B, §10.2. – Clarifications added and a requirement that the Department be notified and a formal approval letter

be issued before Relocation of an AST added.

Part B, §11.1.5. - Capitalized defined terms.

Part B, §11.1.6. - Capitalized defined terms.

Part B, §11.2.1. - Capitalized defined terms.

Part B, §11.3. – This section was added to address ASTs that were built prior to the Regulations and are converting from storage of a non-Regulated Substance to storage of a Regulated Substance. Requirements include notification to the DNREC; internal cleaning and inspection; inspection to determine if the AST is structurally sound and Upgrading of piping.

Part B, §11.4. - This section was added to address ASTs that were built after the Regulations and are converting from storage of a non-Regulated Substance to storage of a Regulated Substance. Requirements include notification to the DNREC; internal cleaning and inspection; inspection to determine if the AST is structurally sound; API 570 testing and Upgrading of piping; and Upgrading of the AST to meet New AST standards as applicable.

Part B, §13.1.2. – Added clarification that the Department does not require notification for ASTs that are Out-of-Service for scheduled inspection or maintenance.

Part B, §13.1.3.2.- Deleted prescriptive requirement that manways on out-of-service ASTs be bolted and that valves be capped.

Part B, §13.1.3.3. – A requirement that documentation of the proper disposal of sludge, solids and residual Regulated Substances be retained has been added.

Part B, §13.1.4. – The site assessment requirement for ASTs that have been Out of Service for over 3 years was originally only in Part B, §14. It is reiterated here for clarification and remains in Part B, §14 also.

Part B, §14 – *Relocations* has been added to this section to address situations where a tank is removed from one area and relocated to another.

Part B, §14.1.1. – The notification requirement has been deleted as it is detailed in the Notification section in Part A.

Part B, §14.1.1. – *Relocation* and *Conversion of an AST* have been added to this section to clarify situations where contamination may be detected.

Part B, §14.2. - *Relocation* and *Conversion of an AST* have been added to this section to clarify situations when a site assessment is required.

Part B, §14.2.1.2. - Capitalized defined terms.

Part B, §14.2.1.3. - *Relocation* and *Conversion of an AST* have been added to this section to clarify situations when a site assessment is required.

Part B, §14.2.6. - *Relocation* and *Conversion of an AST* have been added to this sub-section to be consistent within all subsections of §14.

Part B, §15 – This section has been added to clarify the requirements when Removing an AST.

Part B, §16 - This section has been added to clarify the requirements when Permanently Closing an AST.

Part B, §17 - This section has been added to clarify the requirements when a Permanent Change in Contents of an AST occurs.

Part C, §1.1.2. – Added “or monthly” to accommodate months with 31 days.

Part C, §1.1.2.1 – Added “monthly” to accommodate months with 31 days.

Part C, §1.1.2.2. – Added “monthly” to accommodate months with 31 days.

Part C, §2.2.1. – Changed 30 days to 31 days to accommodate months with 31 days.

Part C, §3.1.1. – Changed 90 days to 93 days to accommodate months with 31 days.

Part C, §4.1.2. – Capitalized defined term.

Part C, §4.1.6. - Added “monthly” to accommodate months with 31 days.

Part C, §5.2.1. – Changed “every 60 days” to “no less frequently than every sixty-three (63) days” to accommodate months with 31 days.

Part C, §6.2.1. - Changed 30 days to 31 days to accommodate months with 31 days.

Part C, 8.1.5. - Changed 30 days to 31 days to accommodate months with 31 days.

Part D, § 3. – The aggregate storage capacity categories for the amount and scope of Financial Responsibility have been changed to more effectively represent the breakdown of AST ownership in Delaware.

DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.

[Aboveground Storage Tank \(PDF Version\)](#)
[Aboveground Storage Tank \(HTML Version\)](#)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Sections 903(e)(2)(a)(3&5) and 930(b)
(7 Del.C. §§903(e)(2)(a)(3&5) and 930(b))

Order No. 2005-F-0004

Summary of Evidence and Information

Pursuant to due notice vol. 8, issue 6 DE *Register of Regulations*, 859-860 (12/1/04), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulations 3502 and 3505 pertaining to striped bass season and area restrictions and to striped bass commercial fishing season; quotas; tagging and reporting

requirements. The purpose of these amended regulations is to extend the commercial striped bass season without increasing the harvest quota and to require the use of non-offset circle hooks when fishing on striped bass spawning grounds during the spawning season.

A public hearing was held on December 30, 2004 to take comments on proposed amendments to Tidal Finfish Regulations 3502 and 3505. Comments were taken that evening and during the remainder of the comment period which remained open for written, faxed, or e-mail comments until 4:30 PM January 4, 2005.

Findings of Fact

903(e)(2)(a) 7 *Delaware Code* authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish.

The Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Board approved Delaware’s proposed regulatory changes for striped bass that were the subject of this hearing as being consistent with Amendment 6 to the Fishery Management Plan for Atlantic Striped Bass.

The majority of the speakers and those who sent e-mail comments favored the circle hook requirements as proposed, although two opposed the requirement for circle hooks.

Three respondents favored the proposed extensions to the commercial seasons while four opposed the extensions. Those who supported the extensions to the commercial season are commercial fishermen, while those who opposed it indicated that they are recreational fishermen.

The Delaware Advisory Council on Tidal Finfisheries suggested that the Department draft regulations to extend the commercial striped bass season and to consider circle hook requirements for striped bass catch and release fishing on the spawning grounds. After extensive discussions of various options at more than one meeting in the spring of 2004, the Advisory Council approved the regulatory changes included herein.

The draft regulations as proposed for extending the commercial gill net season should not result in excessive additional losses of discarded striped bass and other fishes because of the requirement that drift nets be used during the proposed season extensions in February rather than anchored nets. During most of the proposed season extensions in May, drift nets have to be used anyway because of existing statutes requiring the use of drift nets after May 10. Further, annual net closures to protect weakfish will prevent the use of any gill nets for the first week and a half in May, so during the proposed extended striped bass season after May 8 until the

end of May, only drift nets may be used. Studies conducted by Department scientists in the late 1980s and again over the past couple of years indicate that by-catch losses are minimized when gill nets are drifted and attended continually as opposed to the usual practice of leaving the nets anchored overnight or sometimes longer, depending on the weather. Also, the seasonal poundage quotas would not be changed by the proposed season extensions.

Commercial fishermen can benefit from the proposed changes by taking advantage of any favorable market conditions during the proposed season extensions in order to achieve a better price for their catches. The longer the season lasts, the greater the likelihood exists that prices for striped bass will be favorable at some time during the open season because of annual price fluctuations caused by market supply and demand. Prices in other states frequently drive market demand for Delaware-caught striped bass.

The use of non-offset circle hooks when fishing with natural bait has been scientifically proven to reduce mortalities from catch and release of striped bass. Most striped bass hooked with circle hooks are hooked in the corner of the mouth and very few in the throat or gullet, thus increasing the likelihood of survival upon release. By present Delaware regulations no one may harvest striped bass on the spawning grounds during the spawning season, yet there presently exists a modest catch and release fishery for these same striped bass. Also fishing takes place during this same season and location for other species like channel catfish and white perch. Therefore it would be desirable to minimize as much as possible the unintended loss of striped bass by recreational fishermen due to catch and release.

The State of New Jersey already has instituted a requirement for the use of circle hooks when fishing with any hook size greater than or equal to a size 2 hook when fishing on the striped bass spawning grounds of the Delaware River and its tributaries during the spawning season. A size 2 hook is roughly equivalent to the proposed Delaware measure which would require that a circle hook be used whenever the hook gap exceeds 3/8ths inches. Delaware chose the gap measurement to distinguish smaller hooks typically used for white perch and small catfish from hooks that would be used to take larger catfish and mature striped bass because the hook gap can be readily measured, while retail hook size designations vary between hook manufacturers and styles of hooks (see accompanying diagram 1).

Conclusions

The Department of Natural Resources and Environmental Control has a statutory obligations to manage the tidal water finfisheries of Delaware in a manner that "... perpetuates the historic significance of recreational and commercial fisheries... and that maintain optimum yields of

fish, that provide a viable experience for recreational fishermen and provide sound business opportunities for commercial fishermen..." [§ 901(b) & (c), 7 *Delaware Code*].

The regulations as proposed will not increase commercial landings but will allow commercial interests to take advantage of potential market conditions so as to receive a more favorable price for their striped bass catches. The proposed season extensions should not appreciably increase by-catch or discard losses of striped bass or other fishes because of the requirement for the use of drift nets during the proposed season extensions.

A requirement for the use of circle hooks on striped bass spawning grounds during the spawning season is a conservation measure that should reduce the likelihood of catch and release-caused mortality, thus benefiting spawning striped bass at a time of year when they are most vulnerable to exploitation.

ORDER

It is hereby ordered this 12th day of January in the year 2005 that amendments to Tidal Finfish Regulations 3502 and 3505, copies of which are attached hereto, are adopted pursuant to 7 Del. C. 903(e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on February 10, 2005.

John A. Hughes, Secretary

3502 Striped Bass Spawning Season and Area Restrictions. (Formerly Tidal Finfish Reg. 2)

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 AM on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.
- 4.0 It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28

millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.

5.0 It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

6.0 It shall be unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 in the areas defined in 3502 section 2.0 with natural bait using any hook other than a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements. (Formerly Tidal Finfish Reg. 8)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on February 15 ~~March 1~~ and ending at 4:00 P.M. on May 31 ~~April 30~~ next ensuing. It shall be unlawful to use any gill net having a stretched-mesh size greater than four (four) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on November 15 and ending at 4:00 PM on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February – May ~~March – April~~ gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the February 15 ~~March – May 31~~ April gill net fishery and by November 1 for the December gill net fishery.

2.0 It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food

fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 AM on April ~~September~~ 1 and ending at 4:00 PM on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by August ~~March~~ 15.

3.0 It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

4.0 The striped bass gill net fishery in February ~~March – May~~ April, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April ~~September~~ - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the February 15 ~~March – May 31~~ April gill net fishery, 10% of the State's commercial quota for the April ~~September~~ - December hook and line fishery and, provided that in excess of two (2) % of the February 15 ~~March – May 31~~ April gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

5.0 It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

6.0 It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

7.0 The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

8.0 It shall be lawful for a commercial food fisherman who is authorized to be issued striped bass tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

9.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

10.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

11.0 It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

12.0 The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

13.0 Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the

Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

1 DE Reg 270 (9/1/97)

4 DE Reg 1552 (3/1/01)

DIVISION OF SOIL AND WATER CONSERVATION

Statutory Authority: 7 Delaware Code,
Section 6010, (7 Del.C. §6010)

Secretary's Order No.: 2005-S-0001

I. Background

On April 20, 2004, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the *Delaware Sediment and Stormwater Regulations*. The Sediment and Stormwater Program of the Department held a series of workshops in the fall of 2003 to explain and discuss the draft proposed changes to these Regulations. Comments were solicited from the community by the Department regarding same at that time as well.

This rule making procedure represents a culmination of a process which began in February of 2001 when the Department convened a regulatory advisory committee to assist in the implementation of proposed changes to these regulations. Subsequent to the Start Action Notice being filed in August of 2001, the first public workshop was held in October of 2002. Additional comment and response periods occurred between October of 2002 and April 2003, at which time the Division received their legal review concerning these proposed revisions. In November of 2003, several optional public review workshops were once again held to further discuss the draft regulation with the public. On March 1, 2004, the proposed amendments were forwarded to the *Register of Regulations*, and the actual public hearing was held on April 20, 2004.

No public comments were entered into the record at the time of the public hearing on April 20, 2004. However, as a result of Department's solicitation for public input regarding this rulemaking, there were written comments received and incorporated into the record from the public in both the pre-hearing and post-hearing phases of this rulemaking process. The Department provided their Final Response Document with regard to these comments in a memorandum to the Hearing Officer dated January 3, 2005. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated January 4, 2005, and that memorandum is expressly incorporated

herein by reference. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 4, 2005, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's memorandum.

IV. Reasons

The adoption of these proposed changes in the Delaware Sediment and Stormwater Regulations will be beneficial to the State of Delaware, in that it will clarify the difference between federal requirements and the state permitting process regarding such matters. Additionally, the adoption of these amendments will help to improve and/or enhance the overall performance of the State of Delaware's Sediment and Stormwater Program, in furtherance of the policies and purposes of 7 Del.C. Ch. 40.

John A. Hughes, Secretary

Date of Issuance: January 7, 2005

Effective Date of the Amendment: February 11, 2005

Section 1 - Scope

1. Stormwater runoff may reasonably be expected to be a source of pollution to waters of the State, and may add to existing flooding problems. The implementation of a statewide sediment and stormwater program will prevent existing water quantity and water quality problems from becoming worse, and in some cases, reduce existing problems.

2. Sediment and stormwater approvals are required for land changes or construction activities for residential, commercial, ~~silvicultural~~, industrial, or institutional land use which are not exempted or waived by these Regulations. Requirements under these Regulations do not apply to agricultural land management practices unless the Conservation District or the Department determines that the land requires a soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District.

3. The Department intends that, to the extent possible, the provisions of these Regulations be delegated to either the

Conservation Districts, local governments, or other State agencies. Those program provisions which are subject to delegation include sediment and stormwater management plan approval, inspection during construction, post-construction inspection, and education and training. Initial consideration regarding delegation of program components shall be given to the Conservation Districts.

4. The implementation of a stormwater utility represents a comprehensive approach to program funding and implementation. The activities which may be undertaken by a stormwater utility include not only assessment, collection, and funding activities, but also carrying out provisions of adopted stormwater management plans. These provisions may include contracting for such services as project construction, project maintenance, project inspection, and enforcement of installation and maintenance requirements imposed with respect to approved land disturbing activities.

Section 2 - Definitions

As used in these regulations, the following terms shall have the meanings indicated below:

"Adverse Impact" means a negative impact to land or waters resulting from a construction or development activity. The negative impact includes increased risk of flooding; degradation of water quality; increased sedimentation; reduced groundwater recharge; negative impacts on aquatic organisms; negative impacts on wildlife and other resources, and threatened public health.

"Agricultural Land Management Practices" means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

"Applicant" means a person, firm, or governmental agency who executes the necessary forms to obtain plan approval ~~or a permit~~ for a land disturbing activity.

"Appropriate Plan Approval Agency" means the Department, Conservation District, county, municipality, or State agency that is responsible in a jurisdiction for review and approval of sediment and stormwater management plans.

"As-Built Plans or Record Documents" means a set of engineering or site drawings that delineate the specific approved ~~permitted~~ stormwater management facility as actually constructed.

"Certified Construction Reviewer" means those individuals, having passed a Departmental sponsored or approved training course, who provide on-site inspection for sediment control and stormwater management in accordance with these regulations.

"Delegation" means the acceptance of responsibility by a Conservation District, county, municipality, or State agency for the implementation of one

or more elements of the statewide sediment and stormwater management program.

”**Department**” means the Department of Natural Resources and Environmental Control.

”**Designated Watershed or Subwatershed**” means a watershed or subwatershed proposed by a Conservation District, county, municipality, or State agency and approved by the Department. The Department may establish additional requirements in these watersheds and subwatersheds due to existing water quantity or water quality problems. These requirements shall be implemented on an overall watershed or subwatershed master plan that is developed for water quality and/or water quantity protection.

”**Detention Structure**” means a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

”**Develop Land**” means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

”**Developer**” means a person undertaking, or for whose benefit, activities covered by these regulations are commenced and/or carried out.

”**Drainage Area**” means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

”**Easement**” means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

”**Erosion and Sediment Control**” means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

”**Exemption**” means those land development activities that are not subject to the sediment and stormwater requirements contained in these regulations.

”**Grading**” means excavating, filling (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

”**Infiltration**” means the passage or movement of water through the soil profile.

”**Land Disturbing Activity**” means a land change or construction activity for residential, commercial, ~~silvicultural~~, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

”**Off-site Stormwater Management**” means the design and construction of a stormwater management facility

that is necessary to control stormwater from more than one land disturbing activity.

”**On-site Stormwater Management**” means the design and construction of stormwater management practices that are required for a specific land disturbing activity.

”**Person**” means any State or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body or any other legal entity.

”**Redevelopment**” means a land disturbance activity that alters the use of land but does not necessarily alter the pre-development runoff characteristics.

”**Responsible Personnel**” means a foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

”**Sediment**” means soils or other surficial materials transported and/or deposited by the action of wind, water, ice or gravity as a product of erosion.

”**Sediment and Stormwater Management Plan**” (or Detailed Plan) means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts resulting from any land disturbing activity.

”**Stabilization**” means the prevention of soil erosion by surface runoff or wind through the establishment of a soil cover through the implementation of vegetative or structural measures. Examples include, but are not limited to, straw mulch with temporary or permanent vegetation, wood chips, and stone or gravel ground cover.

”**Standard Plan**” means a set of pre-defined standards and/or specifications for minor land disturbing activities that may preclude the preparation of a detailed plan under specific conditions.

”**State Waters**” means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State or any portion thereof.

”**Stormwater**” means the runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

”**Stormwater Management**” means:

- for water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

- for water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

”**Stormwater Utility**” means an administrative

organization that has been established for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

“**Tidewater**” means water that alternately rises and falls due to the gravitational attraction of the moon and sun and is under the regulatory authority of 7 **Del.C.** Ch. 72. Examples of tidewaters include the Atlantic Ocean, the Delaware Bay, and the Delaware Inland Bays.

“**Variance**” means the modification of the minimum sediment and stormwater management requirements for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of these regulations.

“**Waiver**” means the relinquishment from sediment and stormwater management requirements by the appropriate plan approval authority for a specific development on a case-by-case review basis.

“**Water Quality**” means those characteristics of stormwater runoff from a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

“**Water Quantity**” means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

“**Watershed**” means the total or partial drainage area contributing stormwater runoff to a single point.

Section 3 - Exemptions, Waivers, and Variances

1. The following activities are exempt from both sediment control and stormwater management requirements established by these regulations:

A. Agricultural land management practices, unless the local Conservation District or the Department determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District;

B. Developments or construction that disturb less than 5,000 square feet;

C. Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff. An example of this exemption would be specific permits required under the National Pollutant Discharge Elimination System when discharges are a combination of stormwater and industrial or domestic wastewater or which must comply with Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations. The Department shall ensure that all land developments which are regulated under specific State or federal laws are coordinated with delegated plan approval agencies to ensure compatibility of requirements;

D. Projects which are emergency in nature that are necessary to protect life or property such as bridge, culvert, or pipe repairs and above ground or underground electric and gas utilities or public utility restoration. The emergency nature of a project may preclude prior plan review and approval, but subsequent inspection may necessitate sediment control or site stabilization in accordance with the provisions of this Chapter. The appropriate plan approval agency shall be notified orally or in writing within 48 hours of the initiation of such emergency activity.

The appropriate plan approval agency shall determine and approve of the emergency nature of a project. If the nature of the emergency will require more than 120 days to accomplish construction, formal approval shall be obtained for sediment control and stormwater management. These activities must still comply with other State, federal, and local requirements.

E. Commercial forest harvesting operations that meet the requirements of the Department of Agriculture under 3 **Del.C.** Ch. 29 Subchapter VI.

2. Appropriate Plan Approval Agencies may grant waivers from the stormwater management requirements of these regulations for individual developments provided that a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which would alter the approved stormwater runoff characteristics to a development receiving a waiver.

A. A project may be eligible for a waiver of stormwater management for both quantitative and qualitative control if the applicant can demonstrate that:

(1) The proposed project will return the disturbed area to a pre-development runoff condition and the pre-development land ~~use~~ cover is unchanged at the conclusion of the project; or

(2) The proposed project consists of a linear disturbance of less than ~~six (6)~~ ten (10) feet in width; or

(3) The project is for an individual residential detached unit or agricultural structure, and the total disturbed area of the site is less than one acre; or

(4) The proposed project is for agricultural structures in locations included in current soil and water conservation plans that have been approved by the appropriate Conservation District.

B. A project may be eligible for a waiver or variance of stormwater management for water quantity control if the applicant can demonstrate that:

(1) The proposed project will not generate an increase in the 2-year post-development peak discharge rate of more than ten (10) percent above the 2-year pre-development peak discharge rate and will have no adverse impact on the receiving wetland, watercourse, or waterway;

or

(2) Provisions will be made or exist for a nonerosive conveyance system to tidewater by either a closed drainage system or by open channel flow that has adequate capacity to contain the runoff events being considered as a requirement of these regulations; or

(3) The location of a project within a watershed would aggravate downstream flooding by the imposition of peak control requirements.

3. The plan approval agency may grant a written variance from any requirement of these regulations if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of these regulations will result in unnecessary hardship and not fulfill the intent of these regulations. A written request for variance shall be provided to the plan approval agency and shall state the specific variances sought and the reasons for their granting. The plan approval agency shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the applicant.

Section 4 - Departmental Responsibilities

1. The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by 7 Del.C. Ch. 40. This responsibility shall include, but not be limited to, the authority to:

A. Provide technical and other assistance to Conservation Districts, counties, municipalities, federal, and State agencies in implementing this Chapter;

B. Develop and publish, as regulation components, minimum standards, guidelines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by Conservation Districts, counties, State agencies, and municipalities;

C. Review the implementation of all components of the statewide sediment and stormwater management program that have been delegated to either the Conservation Districts, counties, municipalities, or other State agencies in reviews to be accomplished at least once every three years;

D. Require that appropriate sediment and stormwater management provisions be included in all new erosion and sediment control plans developed pursuant to these regulations;

E. Cooperate with appropriate agencies of the United States or other states or any interstate agency with respect to sediment control and stormwater management;

F. Conduct studies and research regarding the causes, effects, and hazards of stormwater and methods to control stormwater runoff;

G. Conduct and supervise educational programs with respect to sediment control and stormwater management;

H. Require the submission to the Department of records and periodic reports by Conservation Districts, tax ditch organizations, county, and municipal agencies as may be necessary to carry out these regulations;

I. Review and approve designated watersheds;

J. Establish a maximum life of three years for the validation of approved plans. These regulations shall specify variances which expand this time limitation in specific situations; and

K. Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals.

2. Matters of policy, procedures, standards, criteria, approvals, inspection, or enforcement relating to the Sediment and Stormwater Chapter shall be established by the Department subject to the jurisdiction of the Secretary of the Department. Sediment and stormwater programs or portions of programs which are delegated to the Conservation Districts, counties, municipalities, or State agencies shall include sediment and stormwater criteria consistent with the standards, procedures, and regulations of the Department.

A variation of requirements by the delegated agency on a specific watershed will not be valid unless approved by the Department. All State and federal development in the watershed shall be reviewed subject to the same variations and requirements by the delegated State agency or Department as appropriate.

3. In situations where public notification and comment are required before an action is taken by the Department, the Regulatory Advisory Committee shall have an opportunity to review the proposed Departmental action and provide input to the Department regarding the action.

Section 5 - Criteria for Delegation of Program Elements

1. Conservation Districts, counties, municipalities, and State agencies may seek delegation of four program elements relating to the implementation of the statewide sediment and stormwater program. Delegation may be granted by the Secretary for review and approval of sediment and stormwater management plans, inspection during construction, subsequent maintenance inspection, and education and training. Program elements that are delegated shall be implemented according to Chapter 40 and these regulations.

2. The Secretary, or his designee, shall grant delegation of one or more program elements to any Conservation District, county, municipality, or State agency seeking delegation that is found capable of providing compliance with Chapter 40 and these regulations. The final decision regarding delegation shall be made only after an opportunity has been provided for public review and comment. Initial consideration regarding delegation of

program elements shall be given to the Conservation Districts. The Conservation Districts, having unique capabilities and area wide responsibilities are in ideal positions to coordinate and implement local sediment and stormwater programs.

3. Requests for delegation of more than one program element may be accomplished by the submission of one request for all the elements requested. A concern by the Department over one element will not jeopardize delegation of other requested program elements.

4. To be considered capable of providing compliance with Chapter 40 and these regulations, applications for delegation of program elements shall contain the following requisite items.

A. Requests for delegation of plan approval responsibility shall include the following information:

(1) Ordinance or program information detailing the plan approval process,

(2) Plan review check lists and plan submission requirements,

(3) Sediment and stormwater criteria, including waiver and variance procedures, that meet minimum standards established by these regulations,

(4) Assurance of adequate personnel allocations and expected time frames for plan review which meet the requirements of Section 8(9), and

(5) Assurance that plan reviewers will attend Departmental training programs in related fields such as wetlands identification, subaqueous permits requirements, etc.

B. Requests for delegation of inspection during construction shall include the following information:

(1) Inspection and referral procedures,

(2) Time frames for inspection of active land disturbing activities,

(3) Inspection forms,

(4) Assurance of adequate personnel allocations or a timetable to obtain adequate personnel,

(5) Criteria for the Certified Construction Reviewer if utilized, and

(6) Procedures and time frames for processing complaints.

C. Requests for delegation of maintenance inspection responsibility shall include the following information:

(1) Inspection and referral procedures,

(2) Inspection forms,

(3) Time frames, not exceeding one year, for inspection of completed stormwater management structures, and

(4) Assurance of adequate personnel allocation or a timetable to obtain adequate personnel.

D. Requests for delegation of education and training responsibility shall include the following

information:

(1) Types of educational and training activities to be accomplished,

(2) Frequency of activities,

(3) Names and backgrounds of those individuals conducting the training, and

(4) Procedures and timetables to notify the Department of educational programs.

5. A Conservation District, county, municipality, or State agency which has been granted delegation of one or more program elements may establish alternative requirements which are compatible with or are more stringent than Departmental requirements. These alternative requirements may be implemented only when prior Departmental approval has been granted. These alternative requirements shall apply in lieu of the provisions of these regulations in the specific program element that has been delegated. Alternative requirements shall be implemented only after public notice has been provided which would allow for public review and comment prior to Departmental approval.

6. Delegation of authority for one or more program elements may be granted for a maximum time frame of three years. After three years a new application to the Department must be made. Over the time frame for which delegation has been granted, the Department will evaluate delegation implementation, coordinate review findings with the delegated authority, and determine if the new delegation should be granted.

7. A Conservation District, county, municipality, or State agency requesting or renewing delegation shall submit a written request to the Secretary on or before January 1 of the year immediately preceding the fiscal year for which delegation or renewal of delegation is sought.

8. The Secretary shall, in writing, grant or deny delegation on or before April 1 of the year during which delegation is sought. The Secretary may not deny a requested delegation unless opportunity has been afforded to the appropriate officials to present arguments. Delegation shall be effective July 1 of that year and extend no more than three years, unless renewed. In the event that the Department does not act on the renewal request by April 1, the delegated authority submitting the request would be entitled to continue operating for a subsequent three year time period unless action is taken by the Department to suspend the program.

9. If the Secretary determines that a delegated program falls below acceptable standards established by these regulations, delegation may be suspended after opportunity is afforded for a hearing. During a period of suspension, the program element shall revert to the Department for implementation. Funds set aside by a delegated agency, that were collected through fees established by the plan approval agency, shall be transferred

to the Department for use if delegation is suspended.

10. A delegated authority may sub-delegate program elements, with Departmental concurrence, to a stormwater utility or other responsible entity or agency.

11. The Department shall maintain, and make available upon request, a listing of the current status of delegation for all jurisdictions within the State.

Section 6 - ~~Permit Plan Approval Fees, Maintenance Fees, and Performance Bonds~~

1. The establishment of permit plan approval fees, not involving stormwater utilities, shall be in accordance with the following items:

A. Delegation of program elements will depend, to a large extent, on funding and personnel commitments. If the delegated jurisdiction has a source of funding that is provided through State General or local revenues, then the implementation of the delegated component will not necessitate the imposition of a permit plan approval fee to cover the cost of the delegated program component.

B. In the event that one component of an overall sediment and stormwater management program is not funded through the use of general or special funds, a non-refundable permit plan approval fee will be collected at the time that the sediment and stormwater management plan or application for waiver or variance is submitted or approved. The permit plan approval fee will provide for the unfunded costs of plan review, administration and management of the ~~permitting office approval agency~~, construction review, maintenance inspection, and education and training. The plan review or permit approval agency, whether delegated or the Department, shall be responsible for the collection of the permit plan approval fee.

Unless all program elements in a county or municipality have been delegated to a single agency, the funds collected not supporting the plan review function shall be distributed to the appropriate agencies.

C. The number of needed personnel and the direct and indirect expenses associated with those personnel shall be developed by the agencies requesting delegation in a specific jurisdiction in conjunction with and with the concurrence of the Department. Those expenses will then form the basis for determining unit plan approval costs.

D. Prior to plan approval, a fee may be assessed by the appropriate plan approval agency for those activities approved prior to July 1, 1991 for which construction will initiate after July 1, 1991.

E. Where the Department becomes the designated plan approval agency, the Department may assess a plan review and construction review fee. That fee shall not exceed \$80.00 per disturbed acre per project.

F. The use of Certified Construction Reviewers for sediment control and the submission of "As Built or Record Document" certification regarding stormwater

management construction may reduce the inspection requirements for the delegated agency but may not eliminate that inspection requirement. Periodic overview inspections will still be necessary to ensure construction management.

2. The imposition of a financial guarantee, based on existing local authority, may be required by the plan approval agency to ensure that construction of the stormwater management practices was accomplished according to the approved sediment and stormwater management plan. The developer, when required, shall submit to the plan approval agency a surety or cash bond, or irrevocable letter of credit prior to the issuance of any building or grading permit for construction of any land disturbing activity that requires a stormwater management facility.

The amount of the security shall not exceed 150% of the total estimated construction cost of the stormwater management facility. The financial guarantee so required shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all the provisions of these regulations, and other applicable laws and regulations, and any time limitations. The financial guarantee, fully or partially, shall not be released without a final inspection of the completed work and, when required, after submission of "As Built or Record Document" plans, and after written confirmation by the design engineer that construction was accomplished according to the approved plans. A partial release of the financial guarantee shall be allowed only to the extent that the work already accomplished would warrant such release.

3. A maintenance fee may be required on approvals granted for stormwater management structures that will be maintained by a Conservation District, county, or municipality. A fee mechanism shall be established prior to the final release of any required financial guarantee or final approval of the completed stormwater management structure by the designated construction review agency.

Section 7- Criteria for Implementation of a Stormwater Utility

The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation. There are essential components that an ordinance must contain to function as a funding mechanism for stormwater management and those components shall include, but not be limited to, the following items:

1. The financing of a stormwater utility with a user charge system must be reasonable and equitable so that each user of the stormwater system pays to the extent to which the user contributes to the need for the stormwater system, and that the charges bear a substantial relationship to the cost of the service. The use of county and municipal taxpayer rolls

and accounting systems are allowed for the assessment and collection of fees.

2. The intent of the utility must be clearly defined regarding program components that are to be funded through the utility. Those components may include but not be limited to the following activities:

A. Preparation of long range watershed master plans for stormwater management,

B. Annual inspections of all stormwater management facilities, both public and private,

C. Undertaking regular maintenance, through contracting or other means, of stormwater management structures that have been accepted for maintenance,

D. Plan review and inspection of sediment control and stormwater management plans and practices, and

E. Retrofitting designated watersheds, through contracting or other means, to reduce existing flooding problems or to improve water quality.

3. The authority for the creation of the stormwater utility and the imposition of charges to finance sediment and stormwater activities is conferred in Chapter 40, Title 7, *Delaware Code*. The application of a stormwater utility by means of a local ordinance shall not be deemed a limitation or repeal of any other powers granted by State statute.

4. The creation of a stormwater utility shall include the following components:

A. The boundaries of the utility, such as watersheds or jurisdictional boundaries as identified by the local governing body,

B. The creation of a management entity,

C. Identification of stormwater problems,

D. Method for determining utility charges,

E. Procedures for investment and reinvestment of funds collected, and

F. An appeals or petition process.

5. As established by local ordinance, the local governing agency shall have responsibility for implementing all aspects of the utility including long range planning, plan implementation, capital improvements, maintenance of stormwater facilities, determination of charges, billing, and hearing of appeals and petitions. The local agency also will have responsibility for providing staff support for utility implementation

In the event that an agency or department other than the one in which the utility is located is best equipped to undertake a particular task, the local governing agency shall ensure that appropriate interagency charges are determined such that all costs of stormwater management are reflected in the utility budget and that utility charges finance all aspects of stormwater management.

6. With respect to new stormwater management facilities constructed by private developers, the local governing agency shall develop criteria for use in determining whether these will be maintained by the utility

or by the facility owner. Such criteria may include whether the facility has been designed primarily to serve residential users and whether it has been designed primarily for purposes of stormwater management. In situations where it is determined that public maintenance is not preferable, standards shall be developed to ensure that inspection of facilities occurs annually and that facilities are maintained as needed.

7. The use of charges is limited to those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection, and other activities which are reasonably required.

Section 8 -Permit Plan Application and Approval Process

1. After July 1, 1991, unless a particular activity is exempted by these regulations, a person may not disturb land without an approved sediment and stormwater management plan from the appropriate plan approval agency. A grading or building permit may not be issued for a property unless a sediment and stormwater management plan has been approved that is consistent with the following items:

A. Chapter 40, Title 7, *Delaware Code*, relating to erosion and sediment control and stormwater management, and;

B. These regulations, or duly adopted county or municipal ordinances that are adopted as a part of the delegation process and relate to the intent of these regulations.

2. A sediment and stormwater management plan or an application for a waiver shall be submitted to the appropriate plan approval agency by the developer for review and approval for a land disturbing activity, unless otherwise exempted. The sediment and stormwater management plan shall contain supporting computations, drawings, and sufficient information describing the manner, location, and type of measures in which stormwater runoff will be managed from the entire development. The appropriate plan approval agency shall review the plan to determine compliance with the requirements of these regulations prior to approval. The approved sediment and stormwater management plan shall serve as the basis for water quantity and water quality control on all subsequent construction.

3. The sediment and stormwater management plan shall not be considered approved without the inclusion of an approval stamp with signature and date, on the plans by the appropriate plan approval agency.

4. All sediment and stormwater management plans submitted for approval shall contain certification by the owner or developer that clearing, grading, construction, or

development will be accomplished pursuant to the plan and that responsible personnel involved in the land disturbance will have a Certification of Training at a Departmental sponsored or approved training program for the control of erosion and sediment control before initiation of the project. The Certification of Training for responsible personnel requirement may be waived by the appropriate plan approval agency on any project involving silviculture or fewer than four residential homes.

5. All sediment and stormwater management plans shall contain certification by the owner or developer of the right of the Department or delegated inspection agency to conduct on-site inspections.

6. A grading or building permit issued by a local jurisdiction may be suspended or revoked after written notice is given to the permittee by the responsible delegated agency or the Department for any of the following reasons:

A. Violations of the conditions of the sediment and stormwater management plan approval;

B. Changes in site runoff characteristics upon which a waiver was granted;

C. Construction not in accordance with the approved plans;

D. Noncompliance with correction notice or stop work order issued for the construction of the sediment control practices or the stormwater management facilities;

E. An immediate danger exists in a downstream area in the opinion of the appropriate plan approval or inspection agency, or the Department; or

F. Failure to submit stormwater management "As Built or Record Document" plans, when required, at the completion of the project.

7. Approved plans remain valid for 3 years from the date of an approval, unless specifically extended or renewed by the appropriate plan approval agency. The basis for extension or renewal may include, but not limited to, the following items:

A. Failure to initiate the approved project for reasons acceptable to the appropriate plan approval agency such as funding or other agency permit delays; or

B. Time duration for a type of activity that typically exceeds three years.

8. Projects which have been approved prior to July 1, 1991, and where site clearing has not been initiated on the project within two years, shall be resubmitted to the appropriate plan approval agency for review and approval subject to the requirements of these regulations.

9. Upon receipt of a completed application for sediment and stormwater management, the appropriate plan approval agency shall accomplish its review within 30 calendar days, and have either the approval or review comments transmitted to the applicant. If that 30 day time frame cannot be met, the appropriate plan approval agency shall notify the applicant of the reasons for delay, and an

expected time frame not to exceed an additional 30 days, when that review will be accomplished.

Section 9 - Criteria for Designated Watersheds

The concept of designated watersheds is intended, not only to prevent existing water quantity and water quality problems from getting worse, but also to reduce existing flooding problems and to improve existing water quality or meet State Water Quality Standards in selected watersheds. Criteria is established for designated watersheds and that criteria will depend on whether the specific problems of the watershed are water quantity or water quality oriented. Water quantity and water quality concerns will be considered in all designated watersheds, but the overall emphasis for each designated watershed will depend on its existing and anticipated problems.

1. To initiate consideration of a watershed for Designated Watershed or Subwatershed status, a watershed shall be recommended by a Conservation District, county, municipality, or State agency, to the Department. Upon recommendation to the Department, all involved agencies at the local level will be contacted and their input received prior to any watershed study being initiated.

2. Included with the recommendation of a watershed for Designated Watershed or Subwatershed status to the Department shall be an identification of the specific problems that exist in the watershed so that the pursuit of a watershed study is warranted. Inclusion in these regulations as a Designated Watershed or Subwatershed requires approval by the Department that a significant water quantity or water quality problem exists that would necessitate this joint State, District, and local government involvement. Also, inclusion of a watershed as a Designated Watershed or Subwatershed will necessitate a public hearing process. The process of problem identification shall be based on the following information:

A. To initiate a watershed study based on water quality considerations the following information must be submitted:

(1) Existing water quality data that has been collected as a result of the overall statewide water quality inventory process, or

(2) Other water quality data collected through specific sampling that was accomplished in the watershed, or

(3) Submission of a water quality assessment that was accomplished using a qualitative collection method of benthic macroinvertebrates.

B. To initiate a watershed study based on flooding or water quantity considerations the following information must be submitted:

(1) Estimated annual flood damage to either private, residential, commercial, industrial, or public properties, or

(2) Number of residences or industries in the

floodplain, or

(3) The history of flooding in the watershed,

or

(4) Measures already taken to minimize or reduce flooding, or

(5) Dangers to public health and welfare.

3. Upon modification of these regulations to include a watershed as a Designated Watershed or Subwatershed an advisory group will be established that will guide the overall watershed study. The advisory group will be appointed by the Secretary and will include State, District, and local representatives in addition to representatives of the regulated community and others affected by the results of the study.

4. The general components contained in the actual watershed studies shall be the following items:

A. Stormwater quantity or water quality problem identification,

B. The overall needs of the watershed including the additional impacts of new development activities,

C. Alternative approaches to address the existing and future problems,

D. A selected approach that includes the overall costs and benefits,

E. Schedule for implementation,

F. Funding sources that are available for the actual implementation of study recommendations, and

G. A public hearing process prior to final Departmental approval.

5. The following goals are to be obtained through the implementation of the Designated Watershed or Subwatershed program:

A. Reduction of existing flooding or water quality impacts,

B. Prevention of future flooding or water quality impacts, and

C. Minimization of economic and social losses.

6. Specific plan components of a water quality watershed study shall include, but not be limited to, the following items:

A. The limits of the watershed,

B. An inventory of existing water quality data,

C. An inventory of areas having significant natural resource value as defined in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

D. An inventory of areas of historical and archaeological value identified in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

E. A map or series of maps of the watershed showing the following information:

(1) watershed topography,

(2) Significant geologic formations,

(3) Soils information,

(4) Existing land use based on existing zoning,

(5) Proposed land use based on expected zoning or comprehensive plans,

(6) Location of tidal and nontidal wetlands, and

(7) Locations where water quality data were obtained.

F. An evaluation of water quantity concerns so that flooding does not become a problem in the watershed.

7. Specific components of a water quantity based study shall include, but not be limited to, the following items:

A. The limits of the watershed,

B. An inventory of historic flood damage sites, including frequency and damage estimates,

C. An inventory of areas of significant natural resource value as noted in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

D. An inventory of areas of historical and archaeological value identified in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

E. A map or series of maps of the watershed showing the following information:

(1) watershed topography,

(2) Soils information,

(3) Existing land use based on existing zoning,

(4) Proposed land use based on expected zoning or comprehensive plans,

(5) Locations of tidal and nontidal wetlands,

(6) Locations of existing flooding problems including floor and corner elevations of structures already impacted, and

(7) 100 year floodplain delineations, water surface profiles, and storm hydrographs at selected watershed location.

F. An evaluation of water quality concerns so that water quality degradation does not become a problem in the watershed.

8. The initiation of studies for Designated Watersheds or Subwatersheds depends on the availability of funding for the study. Once a watershed has been designated, the Department will make every effort to secure funding through federal, State, or local means.

9. The Department is designated as the agency responsible for administering designated watershed or subwatershed studies with the advice of the advisory group appointed by the Secretary. Recommendations based on the results of the watershed study will only be made with the overall consent of the advisory group.

10. The formal results of the Designated Watershed or

Subwatershed study will require formal acceptance by the local Conservation District Board of Supervisors and the local governing body of the appropriate county or municipality.

11. Implementation of the results of the Designated Watershed or Subwatershed study will necessitate the development and implementation of a dedicated funding source such as a stormwater utility to ensure design, construction, and maintenance of needed structures is accomplished.

12. Those watersheds or subwatersheds designated due to existing water quantity or water quality problems include the following:

A. Dover/Silver Lake/St. Jones River and all drainage areas upstream of the Silver Lake dam.

Section 10 - Specific Design Criteria and Minimum Standards and Specifications

1. General submission requirements for all projects requiring sediment and stormwater management approval include the following information:

A. A standard application form,

B. A vicinity map indicating north arrow, scale, and other information necessary to locate the property or tax parcel,

C. A plan at an appropriate scale accompanied by a design report and indicating at least:

(1) Name and address of:

(a) The owner of the property where the project is proposed;

(b) The land developer; and

(c) The applicant.

(2) The existing and proposed topography, as required on a case by case basis.

(3) The proposed grading and earth disturbance including:

(a) Surface area involved; and

(b) Limits of grading including limitation of mass clearing and grading whenever possible.

(4) Stormwater management and stormwater drainage computations, including:

(a) Pre- and post-development velocities, peak rates of discharge, and inflow and outflow hydrographs of stormwater runoff at all existing and proposed points of discharge from the site,

(b) Site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the land disturbing activity, and

(c) Design details for structural controls.

(5) Erosion, sediment control, and stormwater management provisions including:

(a) Provisions to preserve top soil and limit disturbance;

(b) Details of site grading, and;

(c) Design details for structural controls which includes diversions and swales.

D. Federal Emergency Management Agency flood maps and federal and State protected wetlands, where appropriate.

E. The appropriate plan approval agency shall require that plans and design reports be sealed by a qualified design professional that the plans have been designed in accordance with approved sediment and stormwater ordinances, regulations, standards and criteria. The appropriate plan approval agency may waive this requirement on a case by case basis.

F. Additional information necessary for a complete project review may be required by the appropriate plan approval agency as deemed appropriate. This additional information may include items such as public sewers, water lines, septic fields, wells, etc.

2. Specific requirements for the erosion and sediment control portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before that modification may be applied and that modification shall be subject to public review and comment prior to adoption.

A. All plans shall include details of temporary and permanent stabilization measures including placement of the following statement on all plans submitted for approval. Following soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within 14 calendar days as to the surface of all perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site.

These requirements do not apply to those areas which are shown on the plan and are currently being used for material storage, or for those areas on which actual earth moving activities are currently being performed.

B. All ~~erosion and sediment control~~ plans shall ~~comply with~~ be consistent with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, dated 1989 and approved supplements. The supplements shall be subject to public review and comment prior to their incorporation in the Erosion and Sediment Control Handbook.

C. A sequence of construction shall be contained on all plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, at a minimum, include the following activities:

(1) Clearing and grubbing for those areas necessary for installation of perimeter controls;

- (2) Construction of perimeter controls;
- (3) Remaining clearing and grubbing;
- (4) Road grading;
- (5) Grading for the remainder of the site;
- (6) Utility installation and whether stormdrains will be used or blocked until after completion of construction;
- (7) Final grading, landscaping, or stabilization; and
- (8) Removal of sediment controls.

D. The plans shall contain a description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local Conservation District.

E. Unless an exception is approved on a case by case basis or an exception is approved for a specific type of activity by the appropriate plan approval agency, not more than 20 acres may be cleared at any one time. Once grading is initiated in one 20 acre section, a second 20 acre section may have stumps, roots, brush, and organic material removed. This will necessitate the phasing of construction on sites in excess of 20 acres to minimize areas exposed of ground cover and reduce erosion rates. Grading of the second 20 acre section may not proceed until temporary or permanent stabilization of the first 20 acre section is accomplished.

3. Specific requirements for the permanent stormwater management portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before the modification may be applied and the modification for a type of project shall be subject to public review and comment.

A. It is the overall goal of the Department to ~~address~~ utilize stormwater management on a ~~watershed by watershed basis to provide a cost effective water quantity and water quality solution to the specific watershed problems as a means to minimize water quantity and water quality impacts due to land disturbing activities and to mimic pre-development hydrology, to the maximum extent practicable, in regards to the rate, volume and duration of flow.~~ These regulations will provide general design requirements that must be adhered to in the absence of Designated Watershed or Subwatershed specific criteria.

B. All hydrologic computations shall be accomplished most recent U.S.D.A. ~~Soil Conservation Service~~ Natural Resources Conservation Service Technical Releases 20 or 55. The storm duration for computational purposes shall be the 24 hour rainfall event. For projects south of the Chesapeake and Delaware Canal, the Delmarva Unit Hydrograph shall be incorporated into the design

procedure.

C. Stormwater management requirements for a specific project shall be based on the entire area to be developed, or if phased, the initial submittal shall control that area proposed in the initial phase and establish a procedure and obligation for total site control.

D. Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control is established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:

(1) Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.

(2) Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.

(3) Watersheds, other than Designated Watersheds or Subwatersheds, that have well documented water quantity problems may have more stringent, or modified, design criteria that is responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

E. Water quality control is also an integral component of stormwater management. Control of ~~water quality runoff from small, frequent rainfall events~~ on-site will prevent further degradation of downstream water quality and habitat. The following design criteria ~~is~~ are established for water quality protection unless a waiver or variance is granted on a case-by-case basis.

(1) In general, the preferred option for water quality protection shall be ~~ponds~~ practices that maximize the use of the natural features of a site, promote recharge and minimize the reliance on structural components. ~~Ponds having a permanent pool of water must be considered before a pond having no permanent pool.~~ Infiltration Structural practices shall be considered only after ponds preferred practices have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.

(2) Water quality practices shall be designed to manage the rate and volume of flow from the 2.0" NRCS Type II rainfall event, up to a maximum of 1.0" of runoff.

(3) Water quality ponds having a permanent pool shall be designed to release the ~~first 1/2 inch of runoff from the site~~ water quality volume determined from (2) over a 24 hour period. The storage volume of the normal pool shall be ~~designed to accommodate, at least, 1/2 inch of runoff from the entire site~~ equivalent to at least 1800 cubic feet for each contributing acre of drainage.

(4) Water quality ponds, not having a normal pool, shall be designed to release the ~~first inch of runoff from the site~~ water quality volume determined from (2) over a 24 hour period. The pond shall be configured so as to incorporate forebays at all inflow points and a micro-pool at the outlet.

~~(4) Infiltration practices, when used, shall be designed to accept, at least, the first inch of runoff from all streets, roadways, and parking lots.~~

~~(5) Other practices may be acceptable to the appropriate plan approval agency if they achieve an equivalent removal efficiency of 80% for suspended solids. Alternative stormwater quality practices may be acceptable to the Department and/or the plan approval agency if the removal efficiency for suspended solids meets or exceeds 80% as demonstrated by scientifically independent evaluation and monitoring performance data.~~

~~(6) The Department and/or the plan approval agency may require other acceptable stormwater quality practices if a receiving waterbody has been identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations.~~

~~(7) Water quality practices may also be acceptable to the department and the plan approval agency if they are designed to reduce pollutant loading from a specific post-development land use. The Department and/or the plan approval agency will determine if this criterion for water quality Best Management Practices is appropriate.~~

~~(8) The Department will develop policy and maintain documentation related to the performance of water quality practices. The Department will also provide guidance for the design, appropriate use and required maintenance of water quality practices. These shall include structural and non-structural practices in addition to source reduction management strategies.~~

~~(9) The Department and/or the plan approval agency will review the specific water quality practices proposed in a Sediment and Stormwater Management Plan, and review, approve or deny approval of the plan based on the criteria specified in Section E. of these regulations.~~

F. All ponds that are constructed for stormwater management shall be designed and constructed in accordance with the U.S.D.A. Soil Conservation Service Small Pond Code 378, dated September, 1990, as approved for use in Delaware.

G. Any pond utilized for water supply purposes,

or for irrigation, must obtain approval from the Department for that use pursuant to Chapter 60.

H. Where ponds are the proposed method of control, the developer shall submit to the approving agency, when required, an analysis of the impacts of stormwater flows downstream in the watershed for the 100 year frequency storm event.

The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development, with and without the pond, on downstream dams, highways, structures, or natural points of constricted streamflows past which the timing effects would be considered negligible. The results of the analysis will determine the need to modify the pond design or to eliminate the pond requirement. Lacking a clearly defined downstream point of constriction, the downstream impacts shall be established, with the concurrence of the approving agency, downstream of a tributary of the following size:

(1) The first downstream tributary whose drainage area equals or exceeds the contributing area to the pond; or

(2) The first downstream tributary whose peak discharge exceeds the largest designed release rate of the pond.

I. Where existing wetlands are intended as a component of an overall stormwater management system, the following criteria shall be adhered to:

(1) The only disturbance to the wetland, for the purposes of these regulations, shall be that disturbance caused by the stormwater management pond embankment placement and construction; or

(2) The applicant can demonstrate that the intended or functional aspects of the stormwater management facility and wetlands are maintained or enhanced, or the construction in the wetland for stormwater management is the only reasonable alternative.

(3) All other necessary State and federal permits can be obtained.

J. Designs shall be in accordance with standards developed or approved by the Department, which are subject to public review and comment.

K. Ease of maintenance must be considered as a site design component. Access to the stormwater management structure must be provided for in the design, and land area adjacent to the structure must be set aside for disposal of sediments removed from the structure when maintenance is performed. The land set aside for pond maintenance shall be sized as follows:

(1) The set aside area shall accommodate at least 2% of the stormwater management basin volume to the elevation of the 2 year storage volume elevation;

(2) The maximum depth of the set aside volume shall be one foot;

(3) The slope of the set aside area shall not exceed 5%; and

(4) The area and slope of the set aside area may be modified if an alternative area or method of disposal is approved by the appropriate plan approval agency.

L. A clear statement of defined maintenance responsibility shall be established during the plan review and approval process.

M. All ponds shall have a forebay or other design feature to act as a sediment trap. A reverse slope bench must be provided one foot above the normal pool elevation for safety purposes and all embankment ponds, having a normal pool, shall have a drain installed to facilitate maintenance.

N. The use of infiltration practices for the disposal of stormwater runoff is classified by the USEPA as an underground injection control practice, class V injection well. The appropriate plan approval agency shall forward a copy of all such approvals and the results of all construction inspections to the Department's Underground Injection Control program manager.

O. Infiltration practices have certain limitations on their use on certain sites. These limitations include the following items:

(1) Areas draining to these practices must be stabilized and vegetative filters established prior to runoff entering the system. Infiltration practices shall not be used if a suspended solids filter system does not accompany the practice. If vegetation is the intended filter, there shall be, at least, a 20 foot length of vegetative filter prior to stormwater runoff entering the infiltration practice;

(2) The bottom of the infiltration practice shall be at least three feet above the seasonal high water table, whether perched or regional, determined by direct piezometer measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs;

(3) The infiltration practice shall be designed to completely drain of water within 48 hours.

(4) Soils must have adequate permeability to allow water to infiltrate. Infiltration practices are limited to soils having an infiltration rate of at least 1.02 inches per hour.

Initial consideration will be based on a review of the appropriate soil survey, and the survey may serve as a basis for rejection. On-site soil borings and textural classifications must be accomplished to verify the actual site and seasonal high water table conditions when infiltration is to be utilized.

(5) Infiltration practices greater than three feet deep shall be located at least 20 feet from basement walls;

(6) Infiltration practices designed to handle runoff from impervious parking areas shall be a minimum of 150 feet from any public or private water supply well;

(7) The design of an infiltration practice shall provide an overflow system with measures to provide a non-erosive velocity of flow along its length and at the outfall; and

(8) The slope of the bottom of the infiltration practice shall not exceed five percent. Also, the practice shall not be installed in fill material as piping along the fill/natural ground interface may cause slope failure.

(9) Unless allowed on a specific project, infiltration practices will be used primarily for water quality enhancement only.

(10) An infiltration practice shall not be installed on or atop a slope whose natural angle of incline exceeds 20%.

P. A regional approach to stormwater management is an acceptable alternative to site specific requirements. As a substitute control practice, regional stormwater management structures shall be required to meet the following items:

(1) They shall have a contributory drainage area not in excess of 400 acres unless, on a case by case basis, a larger drainage area is approved by the appropriate plan approval agency;

(2) They shall have a permanent pool of water and provide for 24 hour detention of the first inch of stormwater runoff from the entire upstream watershed; and

(3) All other necessary approvals have been obtained that could be cause for site rejection.

Q. The pre-development peak discharge rate shall be computed assuming that all land uses in the site to be developed are in good hydrologic condition.

Section 11 -~~General Permit~~ Standard Plan Criteria

1. ~~A general permit involves completion and submission of a form~~ Approval under this section involves submission of a standard plan by a land owner, developer, or agent to the appropriate plan approval agency ~~for signature~~. The minimum criteria for the ~~form~~ standard plan will be developed by the Department, and may be expanded upon by the appropriate plan approval agency. The ~~form~~ standard plan will contain standard conditions for erosion and sediment control that must be implemented on sites where a ~~specific control~~ detailed plan is not required. The appropriate plan approval agency shall approve or deny general permit standard plan requests within ~~5~~ 14 calendar days of receipt.

2. The inclusion of an activity into the ~~general permit~~ standard plan classification does not relinquish that activity from the requirements of Chapter 40. Rather, the ~~general permit~~ standard plan precludes that activity from the necessity of a ~~specific~~ detailed plan review for each individual project.

3. Approval of a ~~general permit~~ standard plan does not relieve the applicant from the conditions that are a part of the ~~general permit~~ standard plan approval regarding the

implementation of control practices as required by the general permit standard plan. Failure to implement control practices pursuant to conditions included in the general permit standard plan may necessitate appropriate enforcement action as provided in Chapter 40 and these regulations.

4. Those activities eligible for general permits standard plans include the following, when the stormwater management requirements have been waived in accordance with Section 3 of these Regulations:

A. Individual detached residential home or agricultural structure construction where the disturbed area for construction will be less than one acre in size. Two or more contiguous lots being developed concurrently by the same land developer will not be eligible for the general permit standard plan.

B. ~~Forest harvest operations~~. Highway shoulder and side swale maintenance.

C. The repair, maintenance, and installation of above and underground utilities.

D. Minor Commercial, Institutional, and industrial projects where the total disturbed area will be less than one acre.

E. Modification or reconstruction of a tax ditch by a tax ditch organization when that tax ditch is not intended to serve new development, and which will not increase water quantity or adversely impact water quality, or change points of discharge so as to adversely affect the waters of the State.

5. The appropriate plan approval agency may place more restrictive conditions upon the general permits standard plan approval including the requirement for site specific detailed plans for any general permits standard plan category. The imposition of more specific requirements for categories of projects shall be approved by the Department, and shall be subject to public review and comment prior to their imposition.

Section 12 - Certified Construction Reviewer Requirements

1. Projects reviewed and approved by the Department for sediment control and stormwater management, in general, shall have a certified construction reviewer when the disturbed area of the project is in excess of 50 acres. In addition any project, regardless of its size, may be required by the Department, or the appropriate plan approval agency, to have a certified construction reviewer on a case by case basis.

2. The Department or the appropriate inspection agency may require that any project, already under construction, have on site a certified construction reviewer if, on that project, significant sediment control or stormwater management problems necessitate more frequent inspections.

3. The certified construction reviewer shall function

under the direction of a registered professional engineer licensed to practice engineering in the State of Delaware.

4. Individuals designated as certified construction reviewers shall attend and pass a Departmental sponsored or approved construction review training course. The course content will contain, at a minimum, information regarding the following items:

A. Basic hydrology and hydraulics;

B. Soils information including texture, limitations, erodibility, and classifications;

C. Types of vegetation, growing times, and suitability;

D. Erosion, sediment control, and stormwater management practices;

E. Inspection and problem referral procedures;

F. Aspects of State law, regulations, local ordinances, and approval procedures; and

G. Sediment and stormwater management plan content.

5. The time frame for certification shall not exceed five years unless extended by the Department.

6. The responsibility of the certified construction reviewer will be to ensure the adequacy of construction pursuant to the approved sediment and stormwater management plan.

7. The certified construction reviewer shall be responsible for the following items:

A. Provision of a construction review of active construction sites on at least a weekly basis;

B. Within five calendar days, informing the person engaged in the land disturbing activity, and the contractor, by a written construction review report of any violations of the approved plan or inadequacies of the plan. The plan approval agency shall be informed, if the approved plan is inadequate, within five working days. In addition, the appropriate construction review agency shall receive copies of all construction review reports; and

C. Referral of the project through the delegated inspection agency to the Department for appropriate enforcement action if the person engaged in the land disturbing activity fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within two working days and written notice shall be provided to the Department within five working days.

8. If the Secretary or his designee determines that a certified construction reviewer is not providing adequate site control or is not referring problem situations to the Department, the Secretary or his designee may suspend or revoke the certification of the construction reviewer.

9. In any situation where a certified construction reviewer's approval is being suspended or revoked, an opportunity for hearing before the Secretary or his designee shall be provided. During any suspension or revocation, the

certified construction reviewer shall not be allowed to provide construction reviews pursuant to these regulations. The minimum time of suspension or revocation shall be 6 months.

Section 13 - Contractor Certification Program

1. The Department shall require certification of responsible personnel for any foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project. Responsible personnel are not required on any project involving silvaculture or fewer than four residential homes. Responsible personnel shall obtain certification by completing a Department sponsored or approved training program. Enrollment of existing and future responsible personnel is the responsibility of employers. Response to a Department notice of training and certification in accordance with the provisions of item 3 of this section shall serve as an application for training. The Department shall notify employers of responsible personnel as to the date and location of training programs for attendance by responsible personnel and other interested persons.

2. After July 1, 1991, any applicant seeking sediment and stormwater plan approval shall certify to the appropriate plan approval agency that all responsible personnel involved in the construction project will have a certificate of attendance at a Departmental sponsored or approved training course for the control of sediment and stormwater before initiation of any land disturbing activity. The certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that recertification is required due to a change in course content.

3. After July 1, 1991, employers of responsible personnel may receive interim certification for responsible personnel during the period before attendance at a Departmental sponsored or approved training course by submitting an enrollment form to the Department. Interim certification shall be valid until the scheduled date of attendance for training of responsible personnel. These enrollment forms are available from the Department and the Conservation Districts.

Section 14 - Construction Review and Enforcement Requirements

1. The land developer shall request, at least 24 hours ahead of time, that the appropriate inspection agency approve work completed at the stages of construction outlined in the sequence of construction contained on the approved plans. Any portion of the work which does not comply will be promptly corrected by the developer after written notice by the appropriate inspection agency. The notice shall set forth the nature of corrections required and the time frame within which corrections must be made.

2. The land developer shall notify the appropriate inspection agency before initiation of construction and upon project completion when a final inspection will be conducted to ensure compliance with the approved sediment and stormwater management plan.

3. The responsible inspection agency shall, for inspection purposes, do all of the following items:

A. Ensure that the approved sediment and stormwater management plans are on the project site and are complied with;

B. Ensure that every active site is inspected for compliance with the approved plan on a regular basis;

C. Prepare and leave on site, or forward to the contractor, a written report after every inspection that describes:

(1) The date and location of the site inspection;

(2) Whether the approved plan has been properly implemented and maintained;

(3) Approved plan or practice deficiencies;

and
(4) The action taken.

D. Notification of on-site personnel or the owner/developer in writing when violations are observed, describing the:

(1) Nature of the violation;

(2) Required corrective action; and

(3) Time period for violation correction.

4. The Department may investigate complaints or refer any complaint received to the local inspection agency if the activity is located in a jurisdiction that has received delegation of sediment and stormwater management inspection. In conjunction with a referral, the Department may also initiate an on-site investigation after notification of the local inspection agency in order to properly evaluate the complaint. The Department shall take enforcement action when appropriate, and notify the local inspection agency in a timely manner of any enforcement actions taken.

5. The Department, at its discretion and upon notification to either the owner, developer, or contractor, may visit any site to determine the adequacy of sediment and stormwater management practices. In the event that the Department conducts site inspections, the appropriate inspection agency shall be notified prior to the initiation of any enforcement action. The appropriate inspection agency shall establish a time frame to obtain site compliance. This notification shall, in no way limit the right to the Department to take action subsequent to any provision of these regulations or Chapter. Formal procedures for interaction between the Department and the appropriate inspection agency on site inspection and referral will be developed on an individual basis.

6. The appropriate plan approval agency may require a revision to the approved plans as necessary due to differing

site conditions. The appropriate plan approval agency shall establish guidelines to facilitate the processing of revised plans where field conditions necessitate plan modification. Where changes to the approved plan are necessary those changes shall be in accordance to the following:

A. Major changes to approved sediment and stormwater management plans, such as the addition or deletion of a sediment basin, shall be submitted by the owner/developer to the appropriate plan approval agency for review and approval.

B. Minor changes to sediment and stormwater management plans may be made in the field if approved by the construction reviewer and documented in the field review report. The appropriate inspection agency shall develop a list of allowable field modifications for use by the construction reviewer.

7. Stormwater management construction shall have inspections accomplished at the following stages:

A. Infiltration practices shall be inspected at the commencement, during, and upon completion of construction;

B. All ponds shall be inspected at the following stages:

(1) Upon completion of excavation to sub-foundation and where required, installation of structural supports or reinforcement for structures, including, but not limited to;

(a) Core trenches for structural embankments,

(b) Inlet-outlet structures and anti-seep structures, watertight connectors on pipes, and

(c) Trenches for enclosed storm drainage facilities.

(2) During placement of structural fill, concrete, and installation of piping and catch basins;

(3) During backfill of foundations and trenches;

(4) During embankment construction; and

(5) Upon completion of final grading and establishment of permanent vegetation.

8. The agency responsible for construction review may, in addition to local enforcement options, refer a site violation to the Department for additional enforcement action.

9. Referral of a site violation to the Department may initiate a Departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

A. Notification through appropriate means to the person engaged in a land disturbing activity and the contractor to comply with the approved plan within a specified time frame; and

B. Notification of plan inadequacy, with a time frame for the person engaged in a land disturbing activity to

submit a revised sediment and stormwater plan to the appropriate plan approval agency and to receive its approval with respect thereto.

The Department shall notify the local inspection agency in a timely manner of what enforcement action is taken on the site.

10. Failure of the person engaged in the land disturbing activity or the contractor to comply with Departmental requirements may result in the following actions in addition to other penalties as provided in Chapter 40.

A. The Department shall have the power to issue a cease and desist order to any person violating any provision of Chapter 40 and these regulations by ordering such person to cease and desist from any site work activity other than those actions necessary to achieve compliance with any administrative order.

B. The Department may request that the appropriate plan approval agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.

Section 15 - Maintenance Requirements

1. For erosion and sediment control, all practices shall be maintained in accordance with requirements specified in the *Delaware Sediment and Erosion Control Handbook* dated 1989 or as directed by the construction reviewer.

2. Prior to the issuance of any building or grading permit for which stormwater management is required, the responsible plan approval agency shall require the applicant or owner to execute an inspection and maintenance agreement binding on all subsequent owners of land served by the private stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspection by an inspection agency and for an assessment of property owners to ensure that the stormwater management structure is maintained in proper design working condition.

3. The Department encourages, and will provide technical assistance to, any Conservation District or local jurisdiction who chooses to assume the maintenance responsibility for stormwater management structures on, at least, residential lands. Public maintenance provides a reasonable assurance that maintenance will be accomplished on a regular basis.

4. The owner or person responsible shall perform or cause to be performed preventive maintenance of all completed stormwater management practices to ensure proper functioning. The responsible inspection agency shall ensure preventive maintenance through inspection of all stormwater management practices. The inspections shall occur at least once each year.

5. Inspection reports shall be maintained by the responsible inspection agency on all detention and retention

structures and those inspection reports shall include the following items:

- A. The date of inspection;
- B. The name of the inspector;
- C. The condition of:
 - (1) Vegetation,
 - (2) Fences,
 - (3) Spillways,
 - (4) Embankments,
 - (5) Reservoir area,
 - (6) Outlet channels,
 - (7) Underground drainage,
 - (8) Sediment load, or
 - (9) Other items which could effect the proper

function of the structure.

- D. Description of needed maintenance.

6. Responsible inspection agencies shall provide procedures to ensure that deficiencies indicated by inspections are rectified. The procedures shall include the following:

- A. Notification to the person responsible for maintenance of deficiencies including a time frame for repairs;

- B. Subsequent inspection to ensure completion of repairs; and

- C. Effective enforcement procedures or procedures to refer projects to the Department if repairs are not undertaken or are not done properly.

Section 16 - Penalties

1. Any person who violates any rule, order, condition imposed in an approved plan or other provision of these regulations shall be fined not less than \$200 or more than \$2,000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

2. Any person who intentionally, knowingly, and after written notice to comply, violates or refuses to comply with any notice issued pursuant to these regulations shall be fined not less than \$500 or more than \$10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

Section 17 - Hearings

The conduct of all hearings conducted pursuant to these regulations shall be in accordance with the relevant provisions of 7 Del.C. Ch. 60.

Section 18 - Severability

If any section, subsection, sentence, clause, phrase, or portion of these regulations are for any reason held invalid or unconstitutional by any court or competent jurisdiction, such

provision and such holding shall not affect the validity of the remaining portions of these regulations.

DIVISION OF WATER RESOURCES
Statutory Authority: 7 Delaware Code,
Section 60, (7 Del.C. §60)

Secretary's Order No.: 2005-W-0006

I. Background

The Department of Natural Resources and Environmental Control held a public hearing on November 22, 2004 to receive comments on a proposed revision to the Department's *Regulations Governing the Control of Water Pollution*. The proposed changes and a notice advertising the aforementioned public hearing were published in the *Delaware Register of Regulations* on November 1, 2004.

When the Delaware Regulations Governing Aboveground Storage Tanks became effective on June 11, 2004, an overlap between Delaware's Regulations Governing Aboveground Storage Tanks and Delaware's Regulations Governing the Control of Water Pollution was created. The definition of "Aboveground Storage Tank" as stated in Title 7, Del.C., Chapter 74A and as set forth in the AST Regulations, and the definition of "Bulk storage facility" in the Water Pollution Regulations encompass the same set of aboveground storage tanks. Therefore, the purpose of this revision is to remove from the Water Pollution Regulations those aboveground storage tanks that are included by definition in the AST Regulations. No comments were received by the Department regarding this proposed revision to these regulations.

Subsequent to the public hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated January 12, 2005, and that report is expressly incorporated herein by reference. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 12, 2005, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendment be promulgated and implemented in the manner

and form provided for by law, as recommended in the Hearing Officer's report.

IV. Reasons

The adoption of these proposed changes in the Delaware *Regulations Governing the Control of Water Pollution* will be beneficial to the State of Delaware, in that it will clarify and/or correct existing language currently contained within these regulations. Additionally, the adoption of this amendment will help to improve and/or enhance the overall performance of the State of Delaware's Surface Water Discharges Section with the Division of Water Resources, in furtherance of the policies and purposes of 7 Del.C. Ch. 60.

John A. Hughes, Secretary

Date of Issuance: January 13, 2005

Effective Date of the Amendment: February 11, 2005

Regulations Governing the Control of Water Pollution

2.0 Definitions

As used in these regulations, the following terms shall be defined as outlined herein.

2.01 **"Act"** means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act Amendments of 1972); Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, Pub. L. 100-4 (Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub. L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 et seq.

2.02 **"Activity"** means construction, or operation, or use of any facility, property, or device.

2.03 **"Agricultural commodity"** means any agricultural product, including but not limited to plants and animals and plant and animal products grown, raised or produced within the State for use as food, feed, seed, or any aesthetic, industrial or chemurgic purpose.

2.04 **"Animal feeding operation"** means a lot or facility, together with any associated treatment works or waste management systems, where both of the following conditions are met: 1. Animals have been, are, or will be stabled or confined or kept and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

2.05 **"Animal waste management system"** means a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use on

cropland and pastureland: animal wastes, manures, composted dead animals or process wastewater from any animal feeding operation.

2.06 **"Agricultural wastes"** means any waste material generated from any agricultural practice including, but not limited to, farming, irrigation, manure or fertilizer spreading, aquaculture, aquatic animal production, livestock and dairy operations. Agricultural wastes may include animal manure, crop residues, dead animals and any agricultural chemicals, fertilizers and pesticides which may find their way into surface and subsurface water.

2.07 **"Antidegradation Statement"** means any provision or policy that has as its basis the prevention of deterioration of water quality or designated uses.

2.08 **"Applicable effluent standards and limitations"** means all State, interstate and Federal standards and limitations to which a discharge or related activity, including the use or disposal of sludge, is subject under the Law or the Act including effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Act.

2.09 **"Aquaculture facility"** means any water system and associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic stock.

2.10 **"Aquaculture project"** means a defined area of State waters which is managed for the maintenance or production of harvestable freshwater, estuarine or marine plants or animals, using discharges of pollutants into such defined area.

2.11 **"Aquatic animal production facility"** means any hatchery, fish farm, or similar system or facility and any associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic animal stock.

2.12 **"Approved POTW Pretreatment Program"** or "Program" or "POTW Pretreatment Program" means a program administered by a POTW which has been approved by the United States Environmental Protection Agency.

2.13 **"As-built plans"** means any set of engineering drawings delineating the specific permitted facility as actually installed or constructed.

2.14 **"Average daily loading"** means the total discharge by weight during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.

2.15 **"Average monthly discharge"** or "daily average discharge" is the arithmetic mean of all daily discharges during a calendar month, calculated as the sum of all daily discharges sampled and/or measured during the

month divided by the number of daily discharges sampled or measured during such month.

2.16 **"Average monthly effluent limitation"** or **"daily average effluent limitation"** means the highest allowable average of daily discharges over a calendar month.

2.17 **"Best management practices"** or **"BMP's"** means schedules of activities, prohibitions of practices, maintenance procedures and other management practices or measures to prevent or reduce the discharge of pollutants. BMP's include but are not limited to: structural and nonstructural controls; treatment requirements; operating procedures and practices or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during and after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

2.18 **"Biological toxicity testing"** refers to the measurement of physiological responses of organisms and/or their systems to environmentally induced conditions.

2.19 **"Biosolids"** refers to the biomass or biological sludge generated or produced by biological wastewater treatment processes.

2.20 **"Board"** means the Environmental Appeals Board.

2.21 **"Bulk storage facility"** means any facility used for the express purpose of storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste but shall not include Aboveground Storage Tanks as defined in 7 Del.C., Chapter 74A and the Delaware Regulations Governing Aboveground Storage Tanks.

2.22 **"Bulk transfer facility"** means any facility used for the express purpose of transfer of 20,000 gallons per day or more of any hazardous material, petroleum product, or liquid waste to or from any carrier such as, but not limited to, ships, barges, trains or trucks.

2.23 **"Bypass"** means the intentional diversion of wastes from any portion of a treatment facility.

2.24 **"Certification"** means the issuance of a written statement or document as required under §401 of the Act that any discharge into State waters will comply with the applicable provisions of §§301, 302, 303, 306 and 307 of the Act.

2.25 **"Cold water aquatic animals"** include, but are not limited to, the Salmonidae family of fish, e.g., trout and salmon.

2.26 **"Composite sample"** means a combination of individual samples obtained at specified intervals over a given time period, generally 24 hours.

In collecting a composite sample of a discharge other than a discharge of storm water or storm runoff (a non-storm water discharge), either: a) the volume of each individual sample is proportional to the discharge flow rate or b) the sampling interval is proportional to the discharge flow rate and the volume of each individual sample is

constant. For a continuous non-storm water discharge, a minimum of 24 individual grab samples shall be collected and combined to constitute a 24 hour composite sample. For intermittent non-storm water discharges 4 hours or more in duration, the number of individual grab samples collected and combined to constitute a composite sample shall at a minimum be equal to the duration of the discharge in hours but not less than 12. For intermittent non-storm water discharges of less than 4 hours, the minimum number of individual grab samples collected and combined to constitute a composite sample shall be equal to the duration of the discharge in hours times 3 but not less than 3 samples.

2.27 **"Concentrated animal feeding operation"** or **"CAFO"** means an animal feeding operation, feedlot or animal production facility that meets the criteria in Appendix B to 40 CFR Part 122 or which is designated as such by the Secretary in accordance with 40 CFR 122.23(c).

2.28 **"Concentrated aquatic animal production facility"** means a hatchery, fish farm, or other facility which contains, grows, or holds:

(1) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(i) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(ii) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(2) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff; or

(ii) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

2.29 **"Conservation practices and management measures"** means the basic components of a conservation waste management plan which apply the principles of agricultural engineering, economics, research, animal science and crop and soil sciences, as appropriate, to maximize the economic value of wastes, to minimize discharges of pollutants associated with and to minimize any environmental damage resulting from the activity.

2.30 **"Conservation waste management plan"** means a written document that outlines the site-specific conservation and management measures to be implemented and followed on the farm.

2.31 **"Construction"** means any placement, assembly, building or installation of equipment or facilities.

2.32 **"Continuous discharge"** means a discharge

which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

2.33 **"Daily discharge"** means the total discharge measured during a calendar day or any 24-hour period that reasonably represents the calendar day for sampling purposes. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of a pollutant discharged over a calendar day or the equivalent 24-hour period. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over a calendar day or the equivalent 24-hour period.

2.34 **"Daily maximum effluent limitation"** is the highest total mass of a pollutant allowed to be discharged during a calendar day or, in the case of a pollutant limited in terms other than mass, the highest average concentration or other measurement of the pollutant specified during the calendar day, or any 24-hour period that reasonably represents the calendar day for sampling purposes.

2.35 **"Degradation"** means any adverse change in water quality or designated uses.

2.36 **"Department"** means the State of Delaware Department of Natural Resources and Environmental Control.

2.37 **"Designated project area"** means the portion of State waters within which an owner plans to confine the cultivated species using a method or plan or operation which is expected to ensure that the aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

2.38 **"Designated uses"** means the categories of surface water uses as defined in the water quality standards.

2.39 **"Direct discharge"** means the "discharge of a pollutant".

2.40 **"Direct Responsible Charge"** or "DRC" means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance Supervision) for a wastewater facility, an operating shift of a system or a facility, or a major segment of a system or facility.

2.41 **"Discharge"** for the purposes of these regulations when used without qualification means the discharge of a pollutant.

2.42 **"Discharge of a pollutant"** means any addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act.

This definition includes additions of pollutants into State waters from:

(i) Surface runoff that is collected or channeled by man;

(ii) Discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and

(iii) Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

2.43 **"Domestic wastewater"** means the liquid and water-borne human and/or household type wastes derived from residential, industrial, institutional or commercial sources.

2.44 **"Draft permit"** means the document prepared under Section 6.12 of these regulations which incorporates the Secretary's tentative determinations with respect to any NPDES permit application or any request to modify, revoke and reissue or terminate a NPDES permit. The term, "draft permit", includes a notice of intent to deny a permit and a notice of intent to terminate a permit, as outlined in Section 6.52 of these regulations. The denial of a request to modify, to revoke and reissue or to terminate a permit is not a "draft permit", however.

2.45 **"Effluent limitations"** means any restriction imposed by the Secretary on the quantity, discharge rate and concentration of a pollutant discharged from a point source to State waters. Effluent limitations include, but are not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards, discharge prohibitions, "zero discharge" standards and ocean discharge criteria.

2.46 **"Environmental Protection Agency"** ("EPA") means the United States Environmental Protection Agency.

2.47 **"Existing source"** means any source which is not a new source or a new discharger.

2.48 **"Existing uses"** means any use of State waters which has occurred, or which likely has occurred, or which the water quality at any time has been satisfactory to support, on or after November 28, 1975.

2.49 **"Facility"** means any building, any structure, any complex of buildings or structures, or any process, production equipment or machinery, which makes it possible for an activity to be conducted.

2.50 **"Facility plan"** means a report which the owner of a treatment works submits to the Department that consists of those necessary plans and studies directly relating to the construction of proposed sewage treatment facilities or additions to existing sewage treatment facilities where additional treatment capacity is proposed.

2.51 **"Feasible alternatives"** are those alternatives that are available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

2.52 **"Feedlot"** means a confined animal feeding operation or a poultry growing operation for meat, milk or

egg production, or for stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth is not sustained in the area of confinement.

2.53 **"Filtration"** means a mechanical or physical straining process whose principal action is the removal of undissolved matter and shall include, but not be limited to, the following: diatomaceous earth filter, microstrainer, sand, dual and multi-media beds, or other processes capable of equivalent treatment.

2.54 **"General NPDES permit"** means an authorization granted to a category of point source discharges pursuant to Section 9 of these regulations.

2.55 **"Grab sample"** is an individual sample collected in less than 15 minutes.

2.56 **"Groundwater"** means any water naturally found under the surface of the earth.

2.57 **"Hazardous material"** means any element or compound which when discharged onto land or into surface or groundwater, presents an imminent and substantial danger to public health and welfare, aquatic organisms, including but not limited to, fish, shellfish, terrestrial life, shorelines and beaches.

2.58 **"Indirect discharge"** means the discharge or introduction of pollutants from any nondomestic source into a municipal or publicly-owned treatment works.

2.59 **"Industrial User"** - means any industry, manufacturer or business whose liquid waste is discharged to a municipal or publicly owned treatment works; an industrial user is also an indirect discharger.

2.60 **"Industrial wastes"** means any liquid, gaseous, solid or other wastes or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

2.61 **"Intake pollutant"** means an amount of a pollutant that is present in State waters (including groundwater) at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water. "Intake water" means the water used by a facility generally for cooling or process-related purposes from any source: surface water, groundwater, commercial purveyor or other sources.

2.62 **"Interstate agency"** means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by EPA under the Act.

2.63 **"Law"** means Title 7, Delaware Code Chapter 60.

2.64 **"Liquid waste"** means any sewage, industrial waste or other wastes or any combination thereof which may potentially alter the chemical, physical, biological or radiological integrity of surface and/or groundwater from its

natural state. The term, "liquid waste", does not mean storm runoff or storm water.

2.65 **"Load" or "loading"** means an amount of matter or thermal energy that is introduced into a receiving water; as a verb, "load or loading" means to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

2.66 **"Load allocation" or "LA"** means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending upon the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

2.67 **"Loading capacity"** means the greatest amount of loading that a water can receive without violating water quality standards.

2.68 **"Log sorting and log storage facilities"** means facilities whose discharges result from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

2.69 **"Maximum instantaneous concentration" or "MIC"** is the highest allowable measured concentration of a pollutant, obtained by analyzing a grab sample of the discharge.

2.70 **"Medical wastes"** means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes and other disposable medical equipment and material.

2.71 **"Method Detection Limit" or "MDL"** means the lowest concentration of a substance which can be measured with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

2.72 **"Minimum analytical level" or "MAL"** means the lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern. When there is insufficient interlaboratory study data, the "MAL" may be determined through the use of a multiplier of 5 to 10 times the method detection level or "MDL".

2.73 **"Mitigation"** means the following sequence: (a) avoiding the impact altogether by not taking a certain action or part of an action, (b) minimizing impacts by limiting the magnitude of the action to the minimum necessary to effectuate the project need, and (c) in those

cases where impacts cannot be avoided or where minimization has occurred, compensating for the affected resource.

2.74 **"Municipality"** means a city, town, county, district, association, or other political subdivision created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of the Act.

2.75 **"NPDES"** ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Act.

2.76 **"NPDES application"** means the forms recognized nationally, duly promulgated by EPA pursuant to the Act, including any modifications to such forms required by the Secretary, for application for a NPDES permit.

2.77 **"NPDES Discharge Monitoring Report" ("DMR")** means any EPA approved form, used to summarize and report the results of the permittee's self-monitoring activities.

2.78 **"NPDES form"** means any issued NPDES permit and any uniform national form developed for use in the NPDES program, including any addition to such form required by the Secretary, and prescribed in regulations promulgated by EPA including the NPDES application and the NPDES Discharge Monitoring Report (DMR) forms.

2.79 **"NPDES permit"** means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to Section 6 of these regulations.

2.80 **"National Pretreatment Standard"** or **"Pretreatment Standard"** means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to industrial users.

2.81 **"New discharger"** means any building, structure, facility or installation:

- (i) Which prior to August 13, 1979, had not discharged pollutants;
- (ii) Which had never received a final effective NPDES permit for discharges at that site;
- (iii) From which there is or may be a new or additional discharge of pollutants;
- (iv) Which is an indirect discharger that commences a discharge to State waters; and
- (v) Which does not fall within the definition of "new source".

2.82 **"New source"** means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which

commences:

(i) After promulgation of standards of performance under Section 306 of the Act which are applicable to such source; or

(ii) After proposal of standards of performance under Section 306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

2.83 **"Non-contact cooling water"** is that which is contained within a leak-free system, i.e. has no contact with any gas, liquid or solid other than the container used for transport.

2.84 **"Normal corrosion"** refers to the electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: *Corrosion Data Survey - Metals Section*, National Association of Corrosion Engineers, 1985, as updated through August 29, 2000, or, for applications not specifically addressed in the above reference, such other reliable data.

2.85 **"Normal erosion"** is the progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: *Standard Practice for Liquid Impingement Erosion Testing*, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard.)

2.86 **"Nuisance condition"** is any condition that, as a result of pollutant addition to a surface water, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

2.87 **"Nutrient management plan"** means a plan or program to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

2.88 **"Nutrient removal"** means any method of treatment specifically designed to remove nutrients including, but not limited to, phosphorus, nitrogen or carbon.

2.89 **"Nutrients"** means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

2.90 **"Operations and Maintenance Manual"** means a written document setting forth a step by step procedure for operating and maintaining the treatment facility.

2.91 **"Operator"** means any person employed or appointed by any owner, and who is designated by such owner to be the person controlling the operations of the treatment works, including direct actions, decisions or evaluations which affect the quality of the discharge, and

whose duties include testing or evaluation to control treatment works operations.

2.92 **"Other wastes"** means decayed wood, sawdust, shavings, bark, sand, lime, garbage, refuse, cinders, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any State waters.

2.93 **"Owner"** means the State or any of its political subdivisions, including, but not limited to, sewer or sanitation district commissioners and authorities; any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country; or any person or group of persons acting individually or as a group, and shall include any permittee under a NPDES permit. For the purposes of this regulation, "owner" shall also mean any responsible corporate officer so designated in the permit application. "Owner" may also mean an industrial user as identified or controlled by the requirements of Section 6, Part VII.

2.94 **"Permit"** means the authorization, license or equivalent control document issued by the Secretary or his duly authorized representative to implement the requirements of these regulations.

2.95 **"Permittee"** means any person to whom a permit has been issued by the Secretary.

2.96 **"Person"** means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, federal agency, state, municipality, commission, agency, political subdivision of a state or any interstate body, or an agent or employee thereof.

2.97 **"Pipeline"** means any pipe or system of pipes including, but not limited to, pump stations and other appurtenances utilized for the conveyance of any liquid, gas or solid.

2.98 **"Point source"** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

2.99 **"Pollutant"** means any substance, radioactive material, or waste heat which causes or contributes to, or may cause or contribute to, pollution. The term includes dredged spoil and other dredged materials, fill material, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, product chemicals, and industrial, municipal, agricultural and other wastes discharged into water.

The term, "pollutant", does not mean: "sewage

from vessels" within the meaning of Section 312 of the Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the Secretary, and if the Secretary determines that such injection or disposal will not result in the degradation of ground or surface water resources. This definition encompasses drinking water contaminants that are regulated under Section 1412 of the Safe Drinking Water Act and may be discharged to State waters that are source waters of one or more public water systems. For public water systems served by surface water, source water is any water reaching the intake.

2.100 **"Pollution" or "Water Pollution"** means man-made or human-induced alteration of the physical, chemical, biological or radiological properties of any state waters as will create or is likely to create a nuisance or render such waters:

(i) Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life;

(ii) Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

(iii) Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses;

For the purposes of these regulations, the following are "water pollution":

(A) An alteration of the physical, chemical, or biological properties of State waters or a discharge of sewage, industrial wastes, other wastes or materials to State waters by any person which by itself is not sufficient to cause water pollution but which in combination with such alteration or discharge to State waters by other persons is sufficient to cause water pollution,

(B) The discharge of untreated sewage by any person into State waters, and

(C) The discharge of any pollutant, contaminant or substance that causes or contributes to the contravention of water quality standards duly established by the Secretary.

2.101 **"Pollution Control Strategy" or "PCS"** means a plan that specifies the necessary pollutant load reductions and actions that must be taken through voluntary and regulatory means to ensure the resultant pollutant loadings are less than or equal to the "total maximum daily load" or "TMDL" for a given waterbody. Pollution trading between different sources of pollution, geographic targeting and pollution prevention may all be considered as part of a "Pollution Control Strategy" or "PCS".

2.102 **"Pollution prevention"** means any practice which results in a lesser quantity of emissions released or discharged prior to out-of-process recycling, treatment or

control, as measured on a per-unit-of-production basis.

2.103 **"Ponds"** means all natural and/or man-made lakes or other bodies of water fed directly by springs, groundwater, tidal or non-tidal streams.

2.104 **"Pretreatment"** means the reduction or elimination of pollutants, or altering the nature of the pollutants prior to discharging or otherwise introducing such pollutants to a treatment works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means.

2.105 **"Pretreatment program"** means the legal, technical and administrative framework for effectively controlling the introduction of pollutants into a publicly owned treatment works (POTW).

2.106 **"Pretreatment requirement"** means any substantive or procedural condition, obligation or requirement related to pretreatment, other than a national pretreatment standard, imposed on any industrial user.

2.107 **"Pretreatment standard"** means any pollutant discharge limitation promulgated by the EPA in accordance with §307(b) and (c) of the Act, or by the Secretary, which applies to industrial users. This term includes the prohibitions and discharge limitations outlined in Section 6.71 of these regulations.

2.108 **"Process wastewater"** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

2.109 **"Professional engineer"** means a person who has been duly registered as a Professional Engineer by the Council of the Delaware Association of Professional Engineers.

2.110 **"Public Hearing"** means any fact-finding proceeding pursuant to §6006 of the Law, held by the Secretary to afford interested persons an opportunity to submit factual data or evidence, views, and arguments to the Secretary.

2.111 **"Publicly owned treatment works"** ("**POTW**") means a treatment works as defined herein, which is owned by the State or a municipality, city, town, county, district or other public body created by or pursuant to the laws of the State, including any sewers, pipes or other conveyances that connect to such treatment works.

2.112 **"Radioactive Material"** means those radioactive materials not encompassed in the definitions of source, byproduct or special nuclear materials in the Atomic Energy Act of 1954, as amended through August 29, 2000.

2.113 **"Residues" or "residuals"** means the solids, sludges, and precipitates separated from or created by the unit processes of a treatment works.

2.114 **"Rock crushing and gravel washing facilities"** means facilities which process crushed and broken stone, gravel and riprap.

2.115 **"Schedule of compliance"** means a listing of necessary measures with target dates, including an enforceable sequence of interim requirements, actions or operations, leading to compliance with an effluent limitation, other limitation or requirement, prohibition, regulation, performance standard, or water quality standard.

2.116 **"Secondary treatment"** means any combination of unit processes that will consistently remove 85% or more of the organic and suspended material in domestic sewage and produce an effluent of sufficient quality to satisfy the requirements of Section 7 of these regulations.

2.117 **"Secretary"** means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

2.118 **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

2.119 **"Sewage"** means the water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments or other places together with such groundwater infiltration, subsurface water, storm inflow, admixture of industrial wastes, or other wastes as may be present.

2.120 **"Sewage from vessels"** means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Act.

2.121 **"Sewage sludge"** means any solid, semi-solid or liquid residue removed during the treatment of municipal wastewater or domestic sewage, including but not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet pumpings and sewage sludge products.

2.122 **"Significant industrial user"** means that (industrial user) which reasonably has the potential to adversely affect a POTW's operation; that which reasonably has the potential for violating any pretreatment standard or requirement; that which discharges an average of 25,000 gallons per day or more of process wastewater to a POTW; that which discharges process wastewater in such an amount or strength that constitutes 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; that which is designated as such by the POTW; that which is subject to federal categorical pretreatment standards as outlined in 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.

2.123 **"Silvicultural point source"** means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage

facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into State waters.

2.124 **"Site"** means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

2.125 **"Sludge"** means the accumulated semi-liquid suspension, settled solids, or dried residue of these solids removed by any surface water or groundwater treatment facility or any liquid waste treatment facility or works, whether or not such solids have undergone treatment.

2.126 **"Source"** means any building, structure, facility, installation or establishment from which there is or may be a discharge of pollutants.

2.127 **"State"** means the State of Delaware.

2.128 **"State waters"** or **"Waters of the State"** means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d).

Waste and stormwater treatment systems including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not "State waters" or "Waters of the State".

2.129 **"Stream"** means the natural watercourse flowing in a defined bed or channel with bank and sides having permanent sources of supply, uniform or interrupted, temporarily diminished or suspended, but usually containing running water.

2.130 **"Surface water"** means water occurring generally on the surface of the earth.

2.131 **"Technology-based"** generally refers to those requirements or limitations, established by these regulations or in accordance with §301 of the Act, that reflect the achievable performance or pollutant removal capability of the technology, treatment process or equipment employed.

2.132 **"Total maximum daily load"** or **"TMDL"** means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background

sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

2.133 **"Toxic Pollutant"** means any pollutant listed as toxic in Delaware's Surface Water Quality Standards.

2.134 **"Treatment works"** means any devices and systems used in the storage, treatment, recycling, and/or reclamation of sewage or industrial wastes, or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; however, "treatment facilities" shall include only those mechanical devices necessary for the transmission and treatment of wastes (e.g., unit treatment processes and pump stations).

2.135 **"Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. The basis for specific effluent limitations can be found in the fact sheet, as provided for in Section 6.18. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2.136 **"Variance"** means a permitted deviation from an established rule, regulation, plan, standard or procedure. With respect to the NPDES program, it means any mechanism or provision under Sections 301 or 316 of the Act, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements or time deadlines of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors, the establishment of alternative discharge limitations, treatment requirements or control measures pursuant to Sections 301(c), 301(g), 301(h) or 316(a) of the Act, or extensions of compliance deadlines pursuant to Sections 301(i) or 301(k) of the Act, where appropriate.

2.137 **"Warm water aquatic animals"** include, but are not limited to, the Ameiuride, Centrarchidae, and Cyprinidae families of fish, e.g., respectively catfish,

sunfish, and minnows.

2.138 **"Wasteload allocation"** or **"WLA"** means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

2.139 **"Water quality"** means the physical, chemical and biological characteristics of water with respect to its suitability for a particular use.

2.140 **"Water quality-based"** generally refers to those requirements or limitations designed to achieve a given water quality objective, e.g. compliance with any applicable water quality standard, without regard to treatment technology.

2.141 **"Water quality criterion"** is an element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

2.142 **"Water quality standard"** means any rule or limit established by the Secretary which consists of a designated use or uses for waters of the State and the water quality criteria for such waters based upon such designated uses.

2.143 **"Wetlands"** are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetland areas are as delineated under and through 7 Del.C. Chapter 66 and the "Corps of Engineers Wetlands Delineation Manual", dated January, 1987.

2.144 **"Wetlands creation"** means the establishment, through human intervention, of wetlands at a site where wetlands did not historically exist.

2.145 **"Wetlands enhancement"** means the net increase, through human intervention, of wetland function or value within an existing wetland.

2.146 **"Wetlands restoration"** means the reestablishment, through human intervention, of wetlands at a site where wetlands historically existed but were subsequently lost.

2.147 **"Whole effluent toxicity"** means the aggregate toxic effect of an effluent or discharge measured directly by a toxicity test.

2.148 **"Work plan"** means a list of all necessary actions and corresponding time schedule which is included in the facility plan or operations and needs review to ensure that an owner's sewage system maintains effluent limits.

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SIXTY-TWO**

**RE: Establishing a Task Force on Surface Water
Management**

WHEREAS, in recent years, several areas of the State have been subject to chronic flooding and drainage problems; and

WHEREAS, such flooding and related problems can threaten the health, safety and welfare of our State's citizens, can damage private property, and can impose substantial costs on State and local governments, in the form of emergency response activities, property damage and infrastructure improvements; and

WHEREAS, it is appropriate to coordinate efforts within the State to ensure the best use of resources in enhancing flood prevention and control efforts and to develop a comprehensive strategy to address drainage and stormwater management issues.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as the Governor of the State of Delaware, do hereby declare and order as follows:

1. The Task Force on Surface Water Management is created. Members of the Task Force shall include representatives of State and local governments and persons with special expertise on the issues of drainage, flood control and water management. Members of the Task Force shall be appointed by the Governor and serve at the Governor's pleasure.

2. The Task Force is directed to:

a. Develop a statewide surface water management strategy to integrate drainage, flood control and stormwater management;

b. Explore potential costs and funding sources for implementing a statewide surface water management strategy;

c. Recommend appropriate changes to State or local laws, regulations and policies as appropriate;

d. Recommend a statewide organizational structure to coordinate surface water management strategies and to respond to citizen, community and county needs;

e. Integrate surface water management policies with federal and State clean water requirements; and

f. Recommend strategies to preserve and enhance aquifer recharge, community, local government and State open space use and implement green infrastructure policies and goals, where applicable.

3. The Task Force is directed to submit its recommendations to me not later than April 1, 2005.

APPROVED THIS 17TH DAY OF DECEMBER, 2004.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SIXTY-THREE**

**RE: Amendment to Executive Order Number
Forty-Nine**

WHEREAS, the Community Notification Working Group (the "Working Group") was created by Executive Order Number 49; and

WHEREAS, the Working Group is responsible for making recommendations concerning sex offenders by April 30, 2004; and

WHEREAS, it is important to have further study before the Working Group makes those final recommendations;

**I, RUTH ANN MINNER, GOVERNOR OF THE
STATE OF DELAWARE, HEREBY ORDER ON THIS
20TH DAY OF DECEMBER, 2004:**

Paragraph 4 of Executive Order Number 49, dated September 4, 2003, is hereby deleted in its entirety, and replaced with the following:

"4. The Working Group shall make its recommendations by February 15, 2005."

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Developmental Disabilities Council	Ms. Mary T. Anderson	12/27/2010
	Ms. Diann Collins	12/27/2010
	Ms. Aileen D. Fink	12/27/2010
	Ms. Joanne M. Koston	12/27/2010
	Ms. Lorraine Y. Loera	12/27/2010
Governor's Council on Agriculture	Mr. Kenneth Wicks	12/14/2007

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS**

Notice of Public Hearing

The Delaware Board of Dental Examiners in accordance with 24 **Del.C.** §1106(1) has proposed changes to its rules and regulations as mandated by Senate Bill # 229 (74 **Del. Laws** c. 262) to identify crimes that are substantially related to the provision of dentistry and dental hygiene. The change also clarifies who is eligible to take the practical (clinical) examination in dentistry or dental hygiene.

A public hearing will be held Thursday, March 10, 2005 in the second floor conference room A 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 Dental Examiners, 861 Silver Lake Boulevard, 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.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHYSICAL THERAPISTS AND ATHLETIC
TRAINERS**

Notice of Rescheduled Public Hearing

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 **Del.C.** §2604(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of physical therapy and athletic training. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, on December 1, 2004.

The public hearing originally scheduled for January 18, 2005 at 6:30 p.m. has been rescheduled to March 15, 2005 at 6:30 p.m. The public hearing will be held in the second floor Conference Room A 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 Examining Board of Physical

Therapists and Athletic Trainers, 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.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF OCCUPATIONAL THERAPISTS**

Notice of Public Hearing

The State Board of Occupational Therapy Practice in accordance with 24 **Del.C.** §2006(b) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of occupational therapy.

A public hearing was held on November 17, 2004 after which the Board decided to review its propose. A revised list of related crimes was developed on January 12, 2005 which includes deletions, additions and clarifications that are substantive. Changes from the proposal originally published in the Register of Regulations on October 1, 2004 are noted.

A second public hearing will be held on March 16, 2005 at 4:30 p.m. in the second floor conference room A 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 State Board of Occupational Therapy Practice, 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.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Notice of Rescheduled Public Hearing

The Delaware Board of Examiners of Psychologists in accordance with 24 **Del.C.** §3506(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related

to the provision of psychology services. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, on December 1, 2004.

The public hearing originally scheduled for January 3, 2005 at 9:30 a.m. has been rescheduled to March 7, 2005 at 9:30 a.m. The public hearing will be held in the second floor conference room A 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 Examiners of Psychologists, 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.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, February 17, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

PUBLIC NOTICE

Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.C. Ch. 60d

The Division of Revenue proposes to adopt the following regulation concerning **Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.c. Ch. 60d**. Written comments or other written materials concerning the proposed regulation must be received by the Division of Revenue no later than 4:30 p.m., Tuesday, March 15, 2005, and should be addressed to Deputy Attorney General Drue Chichi, Esquire, c/o Department of Finance, Division of Revenue, 820 North French Street, Wilmington, DE 19899-8911 or sent by fax to (302) 577-8202 or Email to drue.chichi@state.de.us.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Notice of Public Hearing

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) 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 is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to joint application processing.

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, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 2, 2005.

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

DEPARTMENT OF INSURANCE

Notice Of Public Hearing

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday, March 3, 2005 at 10:00 a.m. in will be held on Thursday, March 3, 2005 at 10:00 a.m. in Room 112 of the Tatnall Building, William Penn St., Dover, Delaware. The hearing is to consider amending Regulation 1310 relating to Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services.

The purpose for amending Regulation 1310 is to speed resolution of health care providers' claims and simplify the current process for resolution of those claims. The proposed amendments provide for a 30 day time period for insurers to process all clean claims and limits the number of times an insurer can request additional information from a provider. The proposed amendment also redefines a clean claim and changes the penalty provisions for violations of the regulation. The hearing officer shall also consider any non-substantive technical changes that may presented at the time of the hearing.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures

Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday March 2, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

Notice of Public Hearing

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 2005 are a 12.0 inch minimum size length with a 25 fish creel limit and no closed season. Delaware currently has a twelve (12) inch minimum size limit, a 25 fish creel limit and a closed season during September 8 through September 21 and December 1 through December 31. It is proposed to amend Tidal Finfish Regulation No. 3507 to eliminate the current closed season in order to be in compliance with the Atlantic States Marine Fisheries Commission's FMP.

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 2005. Delaware is obligated to cap the summer flounder recreational harvest at 150,000 fish for 2005. This is 29,000 more fish than were estimated to have been landed in 2004. 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 2005; it is unadvisable to significantly alter the management measures that were in place for 2004. However, landings information suggests that

by increasing the season to adjust for the eight percent increase in the harvest cap projected landings will continue to remain below the 2005 limit. As such, it is proposed that the eight management options that were presented for the 2004 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. Options one through six, which have seasonal closures, are being adjusted to include additional days in order to compensate for the eight percent increase in the harvest cap. The adopted management approach for 2004 included a 17.5 inch minimum size, and 4 fish creel limit. It is anticipated that the minimum size limit of 17.5 inches will once again be an effective restraining factor in 2005.

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, 2005 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 4, 2005.

Prepared By:

Richard Cole, (302) 739-4782, January 10, 2005

**DEPARTMENT OF
TRANSPORTATION
DIVISION OF MOTOR VEHICLES**

Notice of Public Comment Period

Notice is hereby given that the Department of Transportation, Division of Motor Vehicles, in accordance with 21 Del.C. 83 proposes changes to the current chapter to the Rules and Regulations Governing the Licensing of Commercial Motor Vehicle Training Schools and Instructors for those schools offering motorcycle training titled Motorcycle Rider Education Courses Provider Requirements.

The public comment period will be open until March 2, 2005. Any persons wishing to present views may submit them in writing, by March 2, 2005, to Coordinator Delaware Motorcycle Rider Education Program, P.O. Box 698, Dover, DE 19903

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