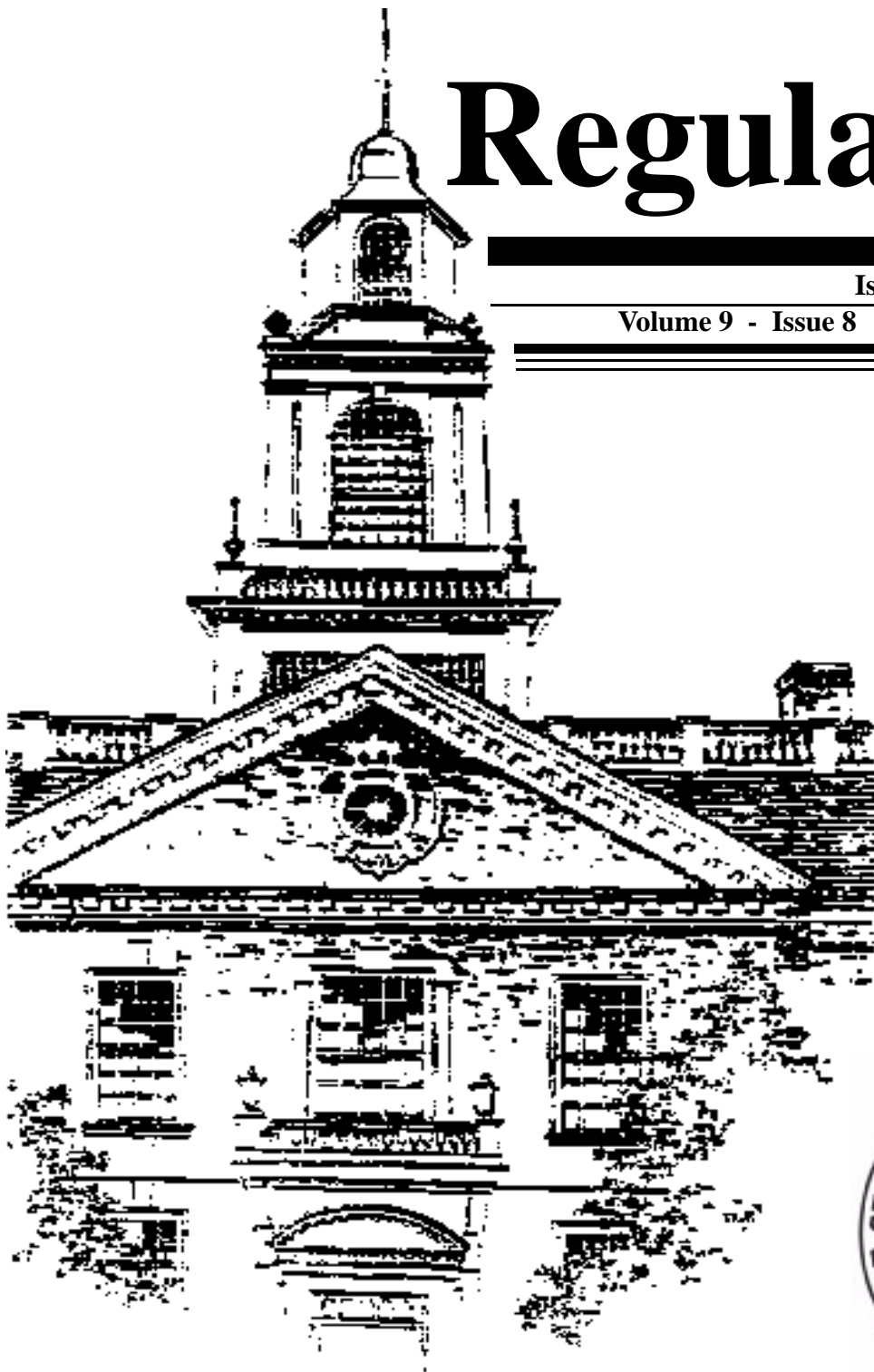

Delaware Register of Regulations



Issue Date: February 1, 2006

Volume 9 - Issue 8

Pages 1113 - 1285

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before January 15, 2006.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 415-420 (09/01/05)

Refers to Volume 9, pages 415-420 of the *Delaware Register* issued on September 1, 2005.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY**

Statutory Authority: 29 Delaware Code,
Section 8051(d) (29 **Del.C.** §8051(d))

**PUBLIC NOTICE
SAN # 2005-11**

- 1. Title of the Regulations:**
104 Green Energy Fund Regulation
- 2. Brief Synopsis Of The Subject, Substance And Issues:**

The purpose of this regulation is to modify the existing regulation relating to the Green Energy Fund. Senate Bill 44 passed by the General Assembly and signed into law by Governor Minner in July 2005 expands the definition of "renewable and alternative energy technologies" to include biodiesel manufacturing facilities, and allows grants to be given for biodiesel technology demonstration projects. The Bill also clarifies that the Green Energy Fund can be used to promote energy efficiency efforts in addition to efforts to promote renewables.

- 3. Possible Terms of the Agency Action:**
There is no sunset date for this regulation.

- 4. Statutory Basis or Legal Authority to Act:**
29 **Delaware Code**, Chapter 80, Section 8051(d).
- 5. Other Regulations That May Be Affected By The Proposal:**
None
- 6. Notice of Public Comment:**
Notice Title: Green Energy Fund Regulation
Public Comment
Division, Program: Office of the Secretary,
Delaware Energy Office
Notice Start Date: 2/01/2006
Notice End Date: 3/01/2006
Notice: DNREC – Delaware Energy
Office

**Notification of Revised Program Regulations for the
Green Energy Fund**

Pursuant to Title 29 **Delaware Code**, Chapter 80, Section 8055, the Secretary is required to promulgate rules and regulations necessary to establish the administration of the Green Energy Fund.

The proposed modification to the Green Energy Fund Program Regulation will be available on the DNREC Website at www.dnrec.state.de.us under "Delaware Energy Office" and will also be available at the Energy Office web site, www.delaware-energy.com.

Comments will be accepted by the Delaware Energy

Office, 146 South Governors Avenue, Dover, DE 19901 via e-mail to charlie.smisson@state.de.us, or fax to 302-739-1527 during the comment period of 2/01/2006 to 3/01/2006.

A Public Hearing has been scheduled at the Delaware Energy Office, 146 South Governors Avenue, Dover, DE 19901 for 6:00 p.m. on March 1, 2006.

7. Prepared By:

Charlie T. Smisson, Jr.,
State Energy Coordinator, Delaware Energy Office
302-739-1530 1/10/2006

104 Regulations for the Green Energy Program

Delaware Energy Office Green Energy Fund Regulations

April 1, 2004 December 29, 2005

1.0 Purpose

The purpose of this regulation is to prescribe procedures relating to the Green Energy Fund pursuant to 29 **Del.C.** Chapter 80, Subchapter 2, the Delaware Energy Act. It is the goal in establishing this regulation to provide a streamlined procedure for distributing Green Energy Funds through the use of grants and loans.

This regulation provides rules of practice and procedure for application and disbursement of Green Energy Fund grants and loans for renewable energy projects and encouraging energy efficiency projects in Delaware.

2.0 Statutory Authority

These regulations are promulgated under authority of 29 Delaware Code, Section 8051(~~dc~~).

3.0 Definitions

For purposes of this regulation, the following words and phrases shall have the meanings set forth below.

“**Department**” means the Department of Natural Resources & Environmental Control, the Delaware Energy Office, or such other agents as the department or Secretary may designate.

“~~Connectiv Power Delivery~~**DP&L**” means the trade name used by Delmarva Power and Light Company.

“**DP&L Service Territory**” means the service territory of Delmarva Power and Light Company, or its successor, as such territory is reflected in the electric service territory maps maintained by the Delaware Public Service Commission under the authority of 26 **Del.C.** §203B.

“**Energy Efficiency Improvement**” means an increase in productivity or output for a given energy input when

compared to conventional technologies or practices. Energy efficiency improvements may include equipment replacement, installation of controls, changes in operating practices, or other measures.

“**Energy Efficiency Information Program**” or “**Information Program**” means a program established mainly to educate or inform energy consumers about the environmental and economic benefits of energy efficiency improvements. Energy efficiency information programs may include the demonstration of new technologies or the novel application of existing technologies in order to establish their environmental and economic benefits.

“**Energy Efficiency Technology**” means a hardware device or system that provides an end-use energy service (e.g., lighting, heating, air conditioning, motion, etc.) using less energy per unit of output than minimum standards allow or available conventional equipment.

“**Fiscal Year**” means the budget and accounting year of the State beginning on July 1 and ending on June 30. Reference to a Fiscal Year by year number means the Fiscal Year ending on June 30 of the named year. For example, a reference to Fiscal Year 2004 means the period beginning on July 1, 2003 and ending on June 30, 2004.

“**Freeze Tolerance Limit**” means the temperature below which a Qualifying System for Solar Water Heating might suffer damage attributable to freezing.

“**Fuel Cell**” is an electrochemical energy conversion device which converts the chemical energy from a fuel directly into electricity and heat.

“**Geothermal Heat Pump**” means either an open or closed loop system or direct expansion system that uses the thermal energy of the ground or groundwater as the heat source and heat sink for residential or non-residential space heating and/or cooling. It may provide both space heating and cooling, cooling only or heating only functions. A closed loop system consists of a ground heat exchanger in which the heat transfer fluid is permanently contained in a closed system. An open loop system consists of a ground heat exchanger in which the heat transfer fluid is part of a larger environment. A direct expansion system consists of a geothermal heat pump system in which the refrigerant is circulated in pipes buried in the ground, rather than using a heat transfer fluid, such as water or antifreeze solution in a separate closed loop, and fluid to refrigerant heat exchanger.

“**Green Energy Fund**” means the fund established by 29 **Del.C.** §80547 and administered by the Department.

“**Grid-connected**”, “**Grid-tied**” or “**Interconnected**” means a condition in which a Qualifying System that is an electrical generating system serves and is electrically connected to an electrical load that is also connected to and served by the local utility electrical grid. The delivery or

ability to deliver, any portion of the generating capacity into the utility electrical grid is not required, nor must the loads served be only alternating current (AC) loads. ~~The Photovoltaic or Wind Turbine s~~Systems need only to be capable of serving electrical loads that would otherwise be served by the local utility.

“**Kilowatt**” means the basic unit of electric power equal to 1,000 Watts.

“**Kilowatt-hour**” means the basic unit of electric energy equal to one Kilowatt of power supplied to or taken from an electric circuit steadily for one hour. One-Kilowatt hour equals 1,000 Watt-hours. Electric energy is commonly sold by the Kilowatt-hour.

“**Nonresidential**” means all classes of customer purchasing electric power for uses other than for individual households. These groups of customers generally purchase electric power for commercial and industrial purposes. When used as an adjective with respect to Qualified Systems or Green Energy Program Grants or Loans, such term refers to systems owned by, or leased to, or grants or loans awarded to Nonresidential persons.

“**Participating Contractor**” is ~~A~~n appropriately Delaware licensed contractor who has submitted to the Department an application designated by the Department with all required attachments and maintains in full force all required insurance and warranties as described in Section 5.2.

“**Passive Solar Design**” means ~~A~~a residential or non-residential building design that uses no external mechanical power, such as pumps or blowers, to collect and move solar heat.

“**Photovoltaic**” means an electronic non-mechanical semiconductor device, most commonly made of silicon that produces direct current (~~de~~DC) electricity from sunlight.

“**Placed in Service**” means installed, operational, and producing output.

“**Professional Engineer**” means “engineer”, as defined in Title 24 **Del.C.**, Chapter 28, *Professional Engineers*, namely, a person who by reason of his or her advanced knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice Professional Engineering, and who is licensed by the Delaware Association of Professional Engineers.

“**Purchaser**” means the purchaser or lessee of a Qualifying System.

“**Qualifying System**” has the meaning as set forth in Section 5.0.

“**Renewable Energy Technology**” shall have the meaning as prescribed in 29 **Del.C.** Chapter 80.

“**Renewable Fuel**” means a non-nuclear fuel that can be

derived from non-fossil energy sources that are naturally replenishing and virtually inexhaustible.

“**Residential**” means the class or classes of customers purchasing electric power for household uses. When used as an adjective with respect to Qualified Systems or Green Energy Program Grants, such term refers to systems owned by, or leased to, or grants awarded to Residential persons.

“**Retailer**” means the vendor or lessor of a Qualifying System.

“**Secretary**” means the Secretary of the Department of Natural Resources and Environmental Control.

“**Solar Pathfinder™**” is a non-electronic instrument that measures the annual solar potential for a given site.

“**Solar Shade Analysis**” means an on site evaluation using a Solar Pathfinder™ or functionally equivalent device that measures the annual solar potential for the given site.

“**Solar Water Heating**” means the heating of water by use of the sun’s energy rather than electricity or gas or some other means.

“**State**” means the State of Delaware.

“**Ton of Capacity**” means 12,000 British Thermal Units (BTU) per hour of cooling capacity.

“**Watt**” means the basic unit of measure of real electric power, or rate of doing work.

“**Watt-hour**” means the basic unit of measure of electric energy consumption. The total amount of energy used in one hour by a device that requires one Watt of power for continuous operation.

“**Wind Turbine**” means a mechanical/electrical system that converts the kinetic energy of blowing wind into mechanical or electric power.

4.0 Green Energy Fund

The Delaware 142nd General Assembly enacted and Governor Minner signed into law Senate Bills 93 and 145, which amended Title 29 of the **Delaware Code** to include new provisions for utilizing the Green Energy Fund. The law was further amended by the Delaware 143rd General Assembly. The law continues to encourage and promote the use of renewable electric generation technologies, ~~and~~ alternate energy technologies, and energy efficiency, by residential and non-residential (commercial) customers. Further, the law amends §8054(d) by dividing the Green Energy Fund into three separate and distinct programs.

The programs outlined in §8054(d) are described in full in this regulation and include the following:

- Green Energy Endowment Program
- Technology Demonstration Program
- Research and Development Program

5.0 Green Energy Endowment Program

5.1 General Provisions

All grants made under the Green Energy Endowment Program are on a first-come first-served basis. Allowable expenditures under the Green Energy Endowment Program and shall not exceed sixty-five percent (65%) of the total revenue collected during the previous fiscal year or sixty-five percent (65%) or the total fund whichever is greater, including energy efficiency education programs. Energy efficiency education programs shall not exceed thirty percent (30%) of allowable Green Energy Endowment Program expenditures. Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Green Energy Endowment Program.

Of the total funds available through Green Energy Endowment Program on an annual basis, the grants made for residential projects shall not exceed 40% of the total funds available and the non-residential grants shall not exceed 60% of the total funds available, including energy efficiency programs.

Up to seven and one-half percent (7.5%) of the moneys deposited in the Green Energy Fund each year may be used for administration of the Fund.

5.2 Eligibility

The Delaware Green Energy Program is available to ~~Connectiv Power Delivery~~ DP&L electric customers or persons in Delaware receiving services from a non-regulated electric supplier which is contributing to the Green Energy Fund. All eligible equipment and products must be installed in Delaware. Energy Efficiency Programs must be implemented in Delaware for the primary benefit of DP&L customers, or persons in Delaware receiving services from a non-regulated electric supplier which is contributing to the Green Energy Fund.

5.3 Renewable Energy Grant Reservation Request

Customers and contractors applying for any grant for a renewable energy project must provide the following information to the Department prior to installing the system:

5.3.1 Completed Grant Reservation Form signed by both customer and contractor

5.3.2 The type of qualifying system

5.3.3 Copy of project estimate, purchase order, or letter of intent

5.3.4 Copy of the customer's recent Conectiv Power Delivery electric bill or a bill from a non-regulated electric supplier which is contributing to the Green Energy Fund

5.3.5 System schematic or line drawing

5.3.6 Plot plan illustrating well, turbine, or module location (wind and geothermal only, photovoltaic when system is ground mounted)

5.3.7 Manual J calculation (geothermal only)

5.3.8 Detailed system design and a predicted performance calculation verified by a Professional Engineer. (Non-residential solar water heating systems only.)

5.3.9 Roof diagram illustrating the following:

5.3.9.1 Roof dimensions (angle, length and width)

5.3.9.2 Location of collectors or modules on roof

5.3.9.3 Location of any roof-mounted or building-mounted equipment

5.3.9.4 Orientation and Tilt of array or collectors

5.3.9.5 Areas of shading (Provide Solar Pathfinder results for all cases where shading occurs between 9:00 a.m. and 3:00 p.m. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.)

5.4 Evaluation of Renewable Energy Grant Reservation Request

Upon receipt of the Grant Reservation Request and supporting documents, the Department will perform an evaluation to check the proposal package for its compliance with the requirements noted above. If the proposal package is complete, the Department will process the Grant Reservation and issue a Confirmation and Claim Form to the applicant. All requirements as outlined in Section 5.3 must be provided to the Department prior to processing the grant reservation.

The Department will reserve the funds for the project described in the Grant Reservation Request for six (6) months from the date of the reservation for residential applicants and twelve (12) months from the date of reservation for non-residential applicants. Since all grants are reserved on a first come-first served basis, viable projects that are not completed within the required time will be placed at the end of the queue and issued an extension of six (6) months from the date of the expired reservation for residential applicants and twelve (12) months from the date of expired reservation for non-residential applicants. To be considered of a reservation extension, the Department will require a project status and summary in writing fourteen (14) business days prior to the expiration of the original reservation.

5.5 Claim for and Distribution of Green Energy Program Renewable Energy Grants

After installation, the customer and contractor must provide the following to the Department:

5.5.1 Completed Confirmation and Claim form signed by customer and contractor

5.5.2 Copy of electrical, plumbing or building inspection

5.5.3 Copy of completed and approved ~~Connectiv Power—Delivery~~ DP&L Interconnection Agreement (photovoltaic, wind, fuel cell) or similar document from a non-regulated electric supplier which is contributing to the Green Energy Fund

5.5.4 Copy of product specification sheets

5.5.5 Copy of final sales invoice (invoice must include actual price paid, itemized list of components, labor, permit fees, method of payment)

5.5.6 Copy of warranty agreement

5.5.7 Copy of verification of completion of installation signed by customer and contractor.

Upon receipt of the completed Reservation Claim Form and all final documentation pertaining to the project as noted in Section 5.5.1-5.5.6, the Department will evaluate the Reservation and Claim Form and the required accompanying documents for consideration of grant approval. The contractor and customer are fully responsible for insuring that all forms and documentation have been supplied and the system meets all program requirements. The Department may make an inspection of the systems prior to final grant approval.

The Department will process the grant within 30 days of receipt of the Reservation and Claim Form and all supporting documentation. The Department will ordinarily process the payment to the purchaser, however, if the purchaser so requests in writing and documentation reflects the grant value was reduced directly from the purchase price, the Department will process the payment to the retailer or installing contractor.

Upon written request, the Department will pay the grant in two installments. Twenty-five percent 25% of the grant paid after the equipment is delivered to the installation site and all required permits, approvals, certifications from all jurisdictions having authority are secured. The remaining twenty-five percent is paid when the system is operational and approved by the utility and/or appropriate inspection agent. The Department reserves the right to review any installation prior to any partial or final grant payment.

5.6 Green Energy Program Renewable Energy Project Participating Contractor Guidelines

5.6.1 Participating Contractor Application

Contractors installing qualifying photovoltaic, solar water heating, geothermal heat pumps, small wind turbines, or fuel cells must complete the Participating Contractor Application prior to installing systems within the Green Energy Program. The application will consist of the following:

5.6.1.1 Name of company and key contact information

5.6.1.2 Brief history and organizational structure of company

5.6.1.3 Education, experience and licensure

5.6.1.4 General liability and statutory worker's compensation

5.6.1.5 Statement of reliability and good standing

5.6.2 Education and Licensure

Participating Contractors shall maintain appropriate education and licenses to insure that only professionally designed systems are installed within the Program. The Participating Contractor must be licensed in the State of Delaware.

Where industry certification programs have been promulgated, grant recipients are encouraged to use industry certified contractors.

5.6.3 Insurance Requirements

The Participating Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times Commercial General Liability Insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS (\$1,000,000) for any occurrence.

5.6.4 Statement of Reliability and Good Standing

Contractor must be reliable and in good standing with a "Satisfactory Record" (or no negative reports) with the Better Business Bureau. The Contractor shall provide a copy of their Better Business Bureau report to the Department upon request. Reports may be obtained at the following address.

BBB of Delaware
1415 Foulk Road, Suite 202
Foulkstone Plaza
Wilmington, DE 19803
Phone: (302)230-0108
Fax: (302)230-0116
Web Site: www.delaware.bbb.org
Email: info@delaware.bbb.org

5.6.5 Limitation of Funds

The Program funds are limited. The Participating Contractor shall follow program guidelines to insure reservation of funds prior to installing a qualifying system.

5.6.6 Owner's Manual Minimum Requirements
Contractors are required to provide each Program participant with an owner's manual. At a minimum, the owner's manual shall include the following:

5.6.6.1 Name and address of the seller

5.6.6.2 System model name or number

5.6.6.3 Identification and explanation of

system components

- 5.6.6.4 Description of system operation
- 5.6.6.5 Description of system maintenance
- 5.6.6.6 Description of emergency procedures
- 5.6.6.7 Vacation procedures
- 5.6.6.8 Systems warranty

5.7 Renewable Energy Project Warranty

All qualifying systems receiving a Green Energy Program grant must have a full 5-year warranty against component failure, malfunction and premature output degradation. The warranty must cover all components for which the program incentive is granted and cover the full cost of repair and replacement of all components of the system. For professionally installed systems, the warranty must cover the labor to remove and replace defective components and systems.

5.8 Renewable Energy Project Code Compliance

All qualifying systems must be installed in accordance with the standards and specifications of the manufacturers of the components in the system, in compliance with all applicable local electric and building codes, local ordinances and these guidelines. Where discrepancies, if any, exist with these guidelines and local codes, local codes shall govern.

5.9 Green Energy Program Renewable Energy Technologies

Renewable energy project equipment must meet the standards described in Section 5.9:

5.9.1 Photovoltaic Systems

5.9.1.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for grid-connected photovoltaic systems installed by qualified contractors and customers up to 50% of the total installed costs. Grants will not exceed \$22,500 per residential dwelling for residential systems and \$250,000 per non-residential facility for non-residential systems. A photovoltaic system may not have eligible qualifying photovoltaic system costs in excess of \$12 per Watt.

5.9.1.2 Accepted Products and Equipment

5.9.1.2.1 Grid Interconnected

All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the most recent version of Underwriters Laboratory Standard 1703.

All qualifying grid-connected systems must comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems, IEEE 1547, Standard for Interconnecting Distributed Resources with the Electric Power Systems and the appropriate generation interconnection requirements of

~~Connectiv DP&L's Power Delivery's~~, Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the ~~Connectiv DP&L~~ Power Delivery System or similar interconnection requirements from a non-regulated electric supplier which is contributing to the Green Energy Fund.

All inverters must be certified by a nationally recognized testing laboratory for safe operation and be certified as meeting the requirements of Underwriters Laboratory Standards 1741, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).

5.9.1.2.2 Non-Grid Interconnected or Stand-Alone

All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the most recent version of Underwriters Laboratory Standard 1703.

All non-grid interconnected or stand-alone systems shall be designed and installed to comply with the National Electric Code (NEC)].

5.9.1.3 Array Orientation and Tilt

Optimum array orientation is a 180° true bearing. However, the program accepts solar arrays oriented between South of due East and South of due West or between 80° and 260° magnetic. Systems installed between 260° and 80° magnetic or North of due East and North of due West are not eligible for a Green Energy Program Grant.

Optimum array tilt is equal to the latitude at the installation site. However, the program accepts array tilt parameters as specified by the module manufacturer which may allow for tilts greater than and less than latitude.

5.9.1.4 Array Shading

Photovoltaic arrays shall be installed such that the array has a minimum of six (6) hours of unobstructed sunshine daily inclusive of solar noon. A "solar window" of eight (8) hours of unobstructed sunshine is preferred.

The installing contractor is responsible for insuring that the system is free from shading. The installing contractor shall perform a "Solar Shade Analysis" to ensure the array meets the minimum daily sunshine requirements. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.

5.9.1.5 Aesthetics

Aesthetics must be considered in the design and mounting of the photovoltaic array. The designing contractor must provide a roof schematic complete with roof

dimensions, array placement, orientation and areas of shading to the Department prior to installation. The designing contractor must make every attempt to configure the modules in an aesthetically pleasing manner free from shading.

5.9.2 Solar Water Heating

5.9.2.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for solar water heating systems installed by qualified contractors and customers up to 50% of the total installed cost. Grants will not exceed \$3,000 per residential dwelling for residential systems and \$250,000 per non-residential facility for non-residential systems.

Solar water heating systems integrated into a radiant heating application are eligible for a grant up to 50% of the installed cost of the solar energy portion of the system. Grants will not exceed \$5,000 per residential dwelling for residential systems and \$250,000 per non-residential dwelling for non-residential systems.

5.9.2.2 Accepted Products and Equipment

A solar water heating system must be designed to reduce or eliminate the need for electric or gas heated water.

All qualifying residential solar water heating systems must be certified to meet the Solar Rating and Certification Corporation's (SRCC) OG- 300, Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems: An Optional Solar Water Heating System Certification and Rating Program and have a Freeze Tolerance Limit of minus 21 degrees Fahrenheit without electrical power.

All qualifying non-residential solar water heating systems and solar energy systems integrated into a radiant heating application must utilize collectors certified to meet the Solar Rating and Certification Corporation's (SRCC) OG-100, Operating Guidelines for Certifying Solar Collectors.

Non-residential solar water heating systems will be required to submit a detailed system design and a predicted performance calculation verified by a Professional Engineer (P.E.)

5.9.2.3 Collector Orientation and Tilt

Optimum collector array orientation is a 180° true bearing. However, the program accepts solar collectors oriented between South of due East and South of due West or between 80° and 260° magnetic. Systems installed between 260° and 80° magnetic or North of due East and North of due West are not eligible for a Green Energy Program Grant.

Optimum collector tilt is equal to the latitude at the installation site. However, the program accepts collector

tilt parameters as specified by the collector manufacturer which may allow for tilts greater than and less than latitude.

5.9.2.4 Collector Shading

All collectors shall be installed such that the collector array has a minimum of six (6) hours of unobstructed sunshine daily inclusive of solar noon. A "solar window" of eight (8) hours of unobstructed sunshine is preferred.

The installing contractor is responsible for insuring that the system is free from shading. The installing contractor shall perform a "Solar Shade Analysis" to ensure the array meets the minimum daily sunshine requirements. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.

5.9.2.5 Aesthetics

Aesthetics must be considered in the design and mounting of the solar water heating collectors. The designing contractor must complete a roof schematic complete with roof dimensions, collector placement, orientation and areas of shading to the Department prior to installation. The designing contractor must make every attempt to configure the collectors in an aesthetically pleasing manner.

5.9.3 Small Wind Turbines

5.9.3.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers incentives up to 50% of the total installed cost for small grid-connected wind turbines installed by a qualified contractor for a qualified customer. Small wind turbines shall be at least 500 Watts. Grants will not exceed \$22,500 per residential dwelling for residential systems and \$100,000 per non-residential facility for non-residential systems. A qualifying wind turbine system shall not exceed \$5.00 per Watt installed.

5.9.3.2 Capacity Limits

Qualifying wind turbine systems shall be at least 500 Watts.

The Department may reject applications if the location of the proposed wind turbine system has an inadequate wind resource for reasonable utilization of the equipment as recommended by the turbine manufacturer. Wind resources can vary significantly; therefore, the contractor and customer must take care that the location has adequate wind for the turbine selected. It is strongly recommended that a professional evaluation of your specific site be completed. The Department may require additional evidence of feasibility prior to approving the grant reservation.

5.9.3.3 Accepted Products and Equipment

5.9.3.3.1 Grid Interconnected

All qualifying grid-connected small wind systems must use Underwriters Laboratory listed equipment and comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems, IEEE 1547, Standard for Interconnecting Distributed Resources with the Electric Power Systems and the appropriate generation interconnection requirements of Conectiv Power Delivery's, Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System or similar interconnection requirements from a non-regulated electric supplier which is contributing to the Green Energy Fund.

All inverters or other systems used in interconnection must be certified by a nationally recognized testing laboratory for safe operation and be certified as meeting the requirements of Underwriters Laboratory Standards 1741, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).

5.9.3.3.2 Non-Grid Interconnected or Stand-Alone

All qualifying non-grid interconnected wind systems must use Underwriters Laboratory certified listed equipment and systems shall be designed and installed to comply with the National Electric Code (NEC).

5.9.4 Geothermal Heat Pump Systems

5.9.4.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for geothermal heat pump systems installed by qualified contractors and customers at the following rates:

Residential:

\$600 per ton not exceeding \$3,000 per residential dwelling for residential systems installed with an Energy Efficiency Ratio (EER) of 15.0 and Coefficient of Performance (COP) of 3.4 or greater or 50% of the installed cost whichever is lower, or

\$500 per ton not exceeding \$2500 per residential dwelling for residential systems with an Energy Efficiency Ratio (EER) of 14.0 and Coefficient of Performance (COP) of 3.0 or greater or 50% of the installed cost whichever is lower.

Non-residential:

\$600 per ton not exceeding \$25,000 per non-residential facility for non-residential systems with an Energy Efficiency Ratio (EER) of 15.0 and Coefficient of Performance (COP) of 3.4 or greater or 50% of the installed

cost whichever is lower, or

\$500 per ton not exceeding \$25,000 per non-residential facility for non-residential systems with an Energy Efficiency Ratio (EER) of 14.0 and Coefficient of Performance (COP) of 3.0 or greater or 50% of the installed cost whichever is lower.

5.9.4.2 Accepted Products and Equipment

Qualifying geothermal heat pump systems must be sized in accordance with good heating, ventilation and air conditioning design practices for the occupancy, location and structure. Contractor shall provide a Manual J calculation, or other equivalent calculation, to determine proper size of equipment.

All qualifying systems must have a warranty for protection of the integrity and performance of the system for at least five years. All units installed under this program must have a minimum EER of 14.0 and COP of 3.0. Qualifying systems must meet the following:

Closed loop systems shall qualify under rating conditions in accordance with ISO 13256-1.

Open loop systems shall qualify under rating conditions in accordance with ISO 13256-1.

DX systems shall qualify under rating conditions in accordance with ARI 870.

5.9.5 Fuel Cells

5.9.5.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for grid-connected fuel cells installed by qualified contractors and customers up to 50% of the total installed cost for fuel cell systems operating on a renewable fuel source. Grants will not exceed \$22,500 for residential systems and \$250,000 for non-residential systems.

5.9.5.2 Accepted Products and Equipment

5.9.5.2.1 Grid Interconnected

All Qualifying fuel cells systems must utilize a renewable fuel source and meet the National Fire Protection Association (NFPA) 853 for Stationary Fuel Cell Power Plants, the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 519-Recommended Practices and Requirements for Harmonic Control in Electric Power Systems, the most current version of the American National Standards Institute (ANSI) Z21.83 for Fuel Cell Power Plants, and input and output protection functions should be in compliance with ANSI C37.2 Device Function Number Specifications.

All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).

5.9.5.2.2 Non-Grid Interconnected or Stand-Alone

All non-grid interconnected or stand-alone systems shall be designed and installed to comply with the National Electric Code (NEC).

5.10 Energy Efficiency Information Programs

Subject to availability of funds, the Delaware Green Energy Endowment Program offers grants for energy efficiency information programs.

Energy Efficiency Information Programs must be submitted to the Department in the form of a proposal. Proposals will be requested by the Department as needed to address specific energy education requirements, or may be submitted unsolicited. The total of all grants awarded under the Green Energy Endowment Program for Energy Efficiency Education Programs shall not exceed thirty percent (30%) of the allowable expenditures for the Green Energy Endowment Fund.

To be eligible for consideration, an Energy Efficiency Information Program must encourage energy efficiency improvements through education, information, or promotion. Proposals may target groups of consumers, using outreach, communications, technical support, or analytical resources. Energy Efficiency Information Programs may include residential or nonresidential customers.

Newly available energy efficiency technologies or novel applications of available energy efficiency technologies may be included in Energy Efficiency Information Programs to the extent necessary to demonstrate their capabilities and their environmental and economic advantages.

Energy Efficiency Information Programs must include plans to make available and broadly disseminate information to the targeted consumers. Quantifiable goals including estimated annual energy savings, numbers of people or organizations reached, and environmental impacts, must also be included. Other goals may include measurable market transformation indicators, such as penetration of new, high efficiency products into the market place.

Energy Efficiency Information Programs are not intended to provide equipment rebates or funding for technology development. The Department will not provide funding for technology development, general facility or equipment upgrades, or facility renovations.

6.0 Technology Demonstration Program

6.1 General Provisions

Subject to the availability of funds, the Green Energy Fund's The Technology Demonstration Program provides grants to projects that demonstrate the market potential for new renewable energy and energy efficiency technologies and accelerate the commercialization of these technologies in Delaware.

Technology Demonstration Program proposals will be

accepted by the Department on a biannual basis. The total of all grants awarded under the Technology Demonstration shall not exceed twenty-five percent (25%) of all revenue collected for the Green Energy Fund during the previous fiscal year or 25% of the fund balance whichever is greater.

To be eligible for consideration, a project must demonstrate a commercially available technology. Research and Development projects will not be funded under the Technology Demonstration Program. To be eligible for consideration, a project must demonstrate either a novel technology or a novel application of an available technology. Projects must include a public education component, such as integration into an educational program or location at a facility that allows public tours of the installed renewable energy technology.

The Delaware Technology Demonstration Program grants are available to applicants located within the State of Delaware for projects conducted in the State of Delaware.

Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Technology Demonstration Program.

6.1.2 Grant Limits

Subject to availability of funds, the Green Energy Fund's Technology Demonstration Program offers grants to projects that demonstrate the market potential of renewable energy technology in Delaware. Individual grants shall not exceed twenty-five percent (25%) of the cost of the eligible equipment for a renewable energy technology project and will not exceed \$200,000 per project. Grants for biodiesel manufacturing facilities shall not exceed twenty-five percent (25%) of the project cost and no one project may receive more than \$300,000.

In all cases, the cost of the eligible equipment shall include only the costs of labor, overhead expenditures, equipment, materials, and subcontractors incurred during the performance of the Technology Demonstration Program contract. Expenditures made prior to contract award are not eligible.

6.1.3 Code Compliance

All Technology Demonstration Program projects must be installed in accordance with the standards and specifications of the manufacturers of the components in the system and in compliance with all applicable local electric, plumbing, and building codes and local ordinances to be considered for application.

6.1.4 Permits

All Technology Demonstration Program projects must obtain all relevant permits from the Delaware Department of Natural Resources and Environmental Control, other necessary state, local, regional, and federal permits to be considered for application.

6.1.45 Application Process

Technology Demonstration Program proposals will be accepted on a biannual basis. Applicants for the Technology Demonstration Program shall submit their proposals and supporting information in accordance with Requests for Proposals issued by the Department. six (6) copies of the proposal and supporting documentation to the Department and Applicants must receive approval prior to beginning the project.

~~In addition to the requirements in Section 6.2, proposals for grants under Technology Demonstration Program shall include the following:~~

~~6.1.4.1 Detailed project description including location of project, size of project, description of building, structure or site~~

~~6.1.4.2 Experience of project team~~

~~6.1.4.3 Detailed estimate of total project costs~~

~~6.1.4.4 List of project partners~~

~~6.1.4.5 Estimated energy impact~~

~~6.1.4.6 Letter of commitment from building owner or manager~~

~~6.1.4.7 Project schedule including detailed milestones~~

~~6.1.4.8 Design plans~~

~~The Department may request additional information upon review of initial proposal.~~

~~Applications will be reviewed by a committee established by the Department. The Department will determine the eligibility for a grant and will, in particular, consider the education requirements in 6.1. A statement of reservation of funds and authorization to proceed will be issued by the Department upon acceptance as a Technology Demonstration Program project. The Department reserves the right to reject any or all proposals if the information provided is inadequate or incomplete.~~

6.1.56 Distribution of Technology Demonstration Grants

The Department will process the invoices from the grant recipient in accordance with contract terms within 30 days of receipt of invoice and supporting documentation. Invoices may require supporting documentation ~~shall~~ including, e but not limited to, hours worked, receipts for expenditures and a brief progress report.

6.27 Accepted Products and Equipment

All Technology Demonstration Program projects interconnecting with the utility grid must comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems and the appropriate generation interconnection arrangement of ~~Connectiv Power Delivery DP&L's~~, Technical Considerations Covering

Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the ~~Connectiv Power Delivery DP&L~~ System or a similar document from a non-regulated electric supplier.

All inverters must be certified by a nationally recognized testing laboratory for safe operation as well as be certified as meeting the requirements of Underwriters Laboratory Standards 1741- 1999, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

62.7.1 Photovoltaic Systems

Photovoltaic projects located in Delaware use photovoltaic electricity to replace or substitute the need for non-renewable fuel, or include a novel or innovative use of photovoltaic design are eligible to receive a grant under the Technology Demonstration Program.

62.7.2 Solar Thermal

Solar thermal projects located in Delaware that use solar thermal energy to produce electricity, replace or substitute the need for non-renewable fuel, or includes a novel or innovative use of solar thermal design is eligible to receive a grant under the Technology Demonstration Program.

62.7.3 Small Wind Turbines

Small wind turbine projects located in Delaware may apply for a grant under the Technology Demonstration Program.

62.7.4 Fuel Cells

Fuel cell projects located in Delaware using a renewable or non-renewable energy fuel source may apply for a grant under the Technology Demonstration Program.

62.7.5 Hydroelectric Generators

Hydroelectric projects located in Delaware and placed at existing dams or in free-flowing waterways may be eligible for a grant under the Technology Demonstration Program.

6.2.7.6 Storage, Conversion and Conditioning Equipment

Storage, conversion and conditioning equipment, for use with renewable energy products that that include a novel or innovative use of storage, conversion and conditioning equipment may be eligible to receive a grant under the Technology Demonstration Program.

62.7.7 Passive Solar Design

Passive solar designs that implement novel or innovative passive solar products may be eligible to receive a grant under the Technology Demonstration Program. Grants for passive solar projects shall not exceed 25% of the installed cost of the project up to a maximum of \$3000 per residential dwelling for residential projects and \$20,000 per non-residential facility for non-residential projects.

The project shall meet the requirements in Section 6.1 and provide a cost-effectiveness analysis and a Manual J calculation or equivalent that demonstrates the estimated energy impact expected over the industry standards that provide a similar function.

6.7.8 Biodiesel Manufacturing Facilities

Biodiesel manufacturing facilities located in Delaware may apply for a grant under the Technology Demonstration Program.

6.7.9 Energy Efficiency Technologies, Processes and Practices

New energy efficiency technologies are eligible for grants under the Technology Demonstration Program. To be eligible for funding, the applicant must demonstrate that a measurable improvement in energy efficiency can be achieved in comparison to conventional technologies, processes and practices, and that the proposed equipment or approach is not widely available or in use.

7.0 Research and Development Program

7.1 General Provisions

Subject to availability of funds, the Green Energy Fund's Research and Development Program offers grants to projects that develop or improve Renewable Energy Technology in Delaware. The Department will accept proposals for Research and Development Program grants for qualifying projects that improve the engineering, adaptation, or development of products or processes that directly relate to renewable energy technology.

Research and Development Program proposals will be accepted by the Department on a biannual basis. The total of all grants awarded in any one fiscal year shall not exceed ten percent (10%) of all revenue collected for the Green Energy Fund during the previous fiscal year or 10% of the fund balance whichever is greater.

Subject to the future availability of funds, the Department will consider multi-year projects in the Research and Development Program. Proposals seeking grants for multi-year projects shall not exceed fifty percent (50%) of the total annual funds available in the Research and Development Program.

The Delaware Research and Development Program grants are available to applicants located within the State of Delaware for projects conducted in the State of Delaware. Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Research and Development Program.

7.2 Grant Limits

Subject to availability of funds, the Research and Development Program offers grants up to thirty-five percent (35%) of the cost of qualifying projects. Research and

Development Program grants shall not exceed \$250,000 per project. Cost of qualifying projects shall include only the costs of labor, overhead expenditures, equipment, materials, and subcontractors incurred during the performance of the contract. Expenditures made prior to contract award are not eligible.

Research and Development Program proposals will be accepted by the Department on a biannual basis. The total of all grants awarded in any one fiscal year shall not exceed ten percent (10%) of all revenue collected for the Green Energy Fund during the previous fiscal year or 10% of the fund balance whichever is greater.

Subject to the future availability of funds, the Department will consider multi-year projects in the Research and Development Program. Proposals seeking grants for multi-year projects shall not exceed fifty percent (50%) of the total annual funds available in the Research and Development Program.

7.3 Application Process

The Department will accept proposals for Research and Development Program grants for qualifying projects that improve the engineering adaptation, or development of products that directly relate to renewable energy technology. The Department reserves the right to reject any or all proposals if the information provided is inadequate or incomplete.

The following describes the general approach envisioned for these projects. Alternative approaches to achieve the desired results may be considered, provided that the work scope is complete, addresses all of the technical issues, and has a convincing chance for success.

Applicants are to propose projects and tasks that address all issues described in Section 7.1 with care taken to emphasize the unique application advantages and environmental benefits that will result from the proposed project. The proposal should clearly define why this project is an improvement over existing products that provide a similar function.

Research and Development Program proposals will be accepted on a biannual basis. Applicants for the Research and Development Program shall submit their proposals and supporting information in accordance with Requests for Proposals issued by the Department. Applicants must receive approval prior to beginning the project.

Applications will be reviewed by a committee established by the Department. The Department will determine the eligibility for a grant and will, in particular, the eligible costs in 7.2. A statement of reservation of funds and authorization to proceed will be issued by the Department upon completion and acceptance of contract terms.

7.4 Application Submittal

Research and Development Program proposals must be submitted and awarded prior to beginning the project. Failure to respond or follow the instructions regarding the order and content of the application may result in the application being deemed non-responsive, or result in an overall lower score during evaluation. The applicant must submit six (6) complete copies of the proposal to the Department for consideration.

The following describes the general approach envisioned for these projects. Alternative approaches to achieve the desired results may be considered, provided that the work scope is complete, addresses all of the technical issues, and has a convincing chance for success.

7.4 Acceptable Projects

The Department will accept proposals for Research and Development Program grants for qualifying projects that improve the engineering adaptation, or development of products that directly relate to renewable energy and energy efficiency technologies. The Department reserves the right to reject any or all proposals if the information provided is inadequate or incomplete.

Applicants are to propose projects and tasks that address all issues described in Section 7.1 with care taken to emphasize the unique application advantages and environmental benefits that will result from the proposed project. The proposal should clearly define why this project is an improvement over existing products that provide a similar function.

7.5 Application Contents

The applicant must submit six (6) complete copies of the proposal to the Department consisting of a detailed description, a time line, a budget, itemized by task and include the following sections:

7.5.1 Cover Page

The cover page must indicate the name of the organization, location, project title, and points of contact for the applicant, including names, titles, addresses, telephone and facsimile numbers, and electronic mail addresses of key project participants.

7.5.2 Table of Contents

The narrative shall include a table of contents and page numbers corresponding to the elements outlined herein.

7.5.3 Project Summary

A one-page project summary describing, in general terms, the proposed project, the proposed project benefits as a result of the grant, and a total cost estimate including cost shares and federal contribution must be submitted with the application. The summary should be informative and only contain information that is releasable to the public.

7.5.4 Technical Proposal

The Technical Proposal portion shall be structured in accordance with the following sections:

The Technical Proposal section should include the following:

7.5.4.1 Technical concept, goals, and location of project

7.5.4.2 Anticipated benefits as a result of the project

7.5.4.3 Degree to which the proposed project advances the technology and commercial readiness of renewable energy technology in Delaware, including advantages and disadvantages compared to competing technologies

7.5.4.4 Economic viability of the proposed project

7.5.4.5 Estimated energy impact (generation or reduction)

7.5.4.6 Environmental benefits

7.5.4.7 Impact on electricity reliability, noise levels, and suitability for grid interconnection

7.5.4.8 Public benefit and value added to Delaware by successful completion of the proposed project

7.5.4.9 Potential for commercialization and the estimated market potential of project

7.5.4.10 Advantages of the proposed approach compared to alternative approaches.

7.5.5 Work Plan / Statement of Objectives

This section should include the following:

7.5.5.1 Task-oriented Statement of Objectives with complete task descriptions

7.5.5.2 Work plan including decision points and performance-based progress measures

7.5.5.3 Work schedule including intermediate and major milestones

7.5.6 Budget Narrative

An explanation of the proposed project costs including Green Energy Fund proceeds, applicant cost share, and any federal leveraged funds should be provided in this section. The Narrative shall include a budget by each task and include the following:

7.5.6.1 Job title and number of hours for each of the individual personnel proposed

7.5.6.2 Proposed equipment, materials, supplies, overhead and total labor costs.

7.5.7 Organization Qualifications and Personnel Qualifications

This section should include the following:

7.5.7.1 Applicant's current research directly related to the topic proposed

7.5.7.2 Applicant's experience on previous research and development projects similar in size, scope and

complexity and the success in completing similar work-

7.5.7.3 Description of the teaming structure for the project, including the names of the applicant and each participant involved in the project, as well as business agreements between the applicant and participants and the role of each team member-

7.5.7.4 Project management concept with respect to the proposed tasks, including organizational and individual responsibilities for each team member-

7.5.7.5 Education, professional training, and the technical and business related skills and work experience of key personnel, on projects similar in size, scope, and complexity to the topic proposed-

7.5.7.6 Level and reasonableness of the time commitment-

7.5.8 Personnel Resumes

A resume should be provided for all key personnel involved in the proposed project. Each resume is limited to a maximum of two pages.

7.6 8.0 Evaluation of Technology Demonstration and Research and Development Applications

8.1 Compliance Review

Proposals submitted under the Technology Demonstration and Research and Development Programs will receive a thorough compliance review. A compliance review will be performed to check the proposal package for its compliance with the requirements of the Department's Requests for Proposals and the requirements outlined in Sections 6 and 7. The Department will determine the eligibility for a grant and will, in particular, consider the education requirements in 6.1 and the eligible costs in 6.2 and 7.2.

The Department reserves the right to void an application if the information requested is not received within the prescribed timeframe when requested or is inadequate or incomplete.

A statement of reservation of funds and authorization to proceed will be issued by the Department upon completion and acceptance of contract terms.

8.2 Evaluation Committee

A compliance review will be performed to check the proposal package for its compliance with the requirements of the Research and Development Program. All requirements as outlined in Section 7.1 and 7.5 must be provided to the Department to be eligible for the comprehensive evaluation.

The Department reserves the right to void an application if the information requested is not received within the prescribed timeframe when requested or is inadequate or incomplete.

7.6.1 Comprehensive Evaluation

All applications that fulfill the minimum application requirements, as determined under the compliance review, will be eligible for comprehensive evaluation. The comprehensive evaluation of proposals will be performed by the Department and a committee designated by the Department. In evaluating applications, the Department reserves the right to use any assistance deemed advisable, including qualified personnel from federal agencies, other government entities, universities, industry, and contractors. The Department will make every effort to use unbiased individuals and experts on the review committee. These individuals will be required to protect the confidentiality of any specifically identified trade secrets and/or privileged or confidential commercial or financial information obtained as a result of their participation in this evaluation.

The reviewers and their employers, employees, affiliates, and members shall excuse themselves from proposing projects under the Research and Development or Technology Demonstration Programs for the funding period during which they are serving on the reviewing committee.

8.3 Notification

All applicants will be notified in writing of the action taken on their applications. Applicants should allow at least 90 days for the Department evaluation. The status of any application during the evaluation and selection process will not be discussed with the applicant or any of its partners. Unsuccessful application will receive a letter summarizing the committee's decision. Unsuccessful applications will not be returned to applicants.

7.7 Evaluation Criteria of Proposal

7.7.1 Criterion 1: Technical Description:
Weight: 40%

In general, proposals will be evaluated based on the overall relevance to Renewable Energy Technology, including but not limited to any product improving the engineering of, adapting, or development or Renewable Energy Technology either as an independent piece of Renewable Energy Technology or as a component of Renewable Energy Technology.

Specifically, proposals will be scored based on how well they address the following requirements:

7.7.1.1 Technical concept, goals, and location of project

7.7.1.2 Anticipated benefits as a result of the project

7.7.1.3 Degree to which the proposed project advances the technology and commercial readiness of renewable energy technology in Delaware, including advantages and disadvantages compared to competing technologies

7.7.1.4 Economic viability of the proposed project

7.7.1.5 Jobs created as a result of project

7.7.1.6 Advantages of the proposed approach compared to alternative approaches

7.7.1.7 Economic viability of the proposed project

7.7.1.8 Estimated energy impact (generation or reduction)

7.7.1.9 Environmental benefits and impacts of the project

7.7.1.10 Reliability, noise levels, and suitability for grid interconnection

7.7.1.11 Public benefit and value added to Delaware by successful completion of the proposed project

7.7.1.12 Projects ability to leverage federal incentives

7.7.1.13 Projects ability to assist the State in meeting the goals the State Energy Plan

7.7.2 Criterion 2: Work Plan/Statement of Objectives: Weight: 30%

Specifically, applications will be scored based on how well they address the following requirements:

7.7.2.1 Task oriented Statement of Objectives with complete task descriptions

7.7.2.2 Work plan including decision points and performance based progress measures Level and reasonableness of the time commitment

7.7.2.3 Work schedule including intermediate and major milestone

7.7.2.4 Advantages of the proposed approach compared to alternative approaches

7.7.2.5 Intent and commitment to commercialize results of the proposed project

7.7.3 Criterion 3: Organization and Personnel Qualifications: Weight: 30%

In general, applications will be evaluated based on the capabilities of the personnel. Specifically, applications will be scored based on how well they address the following requirements:

7.7.3.1 The applicant's current research directly related to the topic proposed

7.7.3.2 The applicant's experience on previous research and development projects similar in size, scope and complexity and the success in completing similar work

7.7.3.3 A description of the teaming structure for the project, preference will be given to projects involving participants who represent a diversity (types and sizes) of proposing organizations, while meeting the eligibility requirements. The participation of universities, small

businesses, and women or minority owned businesses are particularly encouraged to apply.

7.7.3.4 The project management concept with respect to the proposed tasks, including organizational and individual responsibilities for each team member

7.7.3.5 The education, professional training, and the technical and business related skills and work experience key personnel, including major subcontractors, on projects similar in size, scope, and complexity to the topic proposed

7.7.3.6 The level and reasonableness of the time commitment

7.8 If Selected for Negotiation

If a proposal is selected for negotiation for a grant, additional information may be requested. Any request may specify the documents to be submitted, and to whom they must be submitted and may include, but not limited to detailed financial basis for any participant(s) providing cost sharing. This may include detailed explanation of overhead costs, hourly rate per staff person, and fringe benefits.

The Department reserves the right to void an application if the additional information requested is not received within the prescribed timeframe or is inadequate or incomplete.

7.9-8.4 Grant Award

If upon completion of the Comprehensive Evaluation, the review committee finds that the proposed project fits the criteria of the Technology Demonstration or Research and Development Programs, then a statement of reservation of funds and authorization to proceed will be issued by the Department.

All recipients of Research and Development Program grants may be required to participate in mandatory evaluation meetings on a periodic basis. During each evaluation meeting, the results to date and future plans for the project will be presented by the Recipient to an evaluation panel selected by the Department. The results of each evaluation may be used by the Department to determine whether the project will continue to receive funding. Applicants should assume that at least two meetings per year will be required for evaluation and that up to two additional review meetings may be held at the applicant's location.

7.9-1 8.5 Distribution of Research and Development Grant- Payment for Work Performed

The Department will process the invoices from the grant recipient usually within 30 days of receipt of invoice and supporting documentation. Supporting documentation shall include but not limited to hours worked, receipts for expenditures and a brief progress report. Additional documentation and reporting requirements may be necessary depending on the nature and duration of the work performed.

8 2.0 Proprietary Application Information

Applicants are hereby notified that the Department intends to make all applications submitted available to non-State personnel for the sole purpose of assisting in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified proprietary information obtained as a result of their participation in the evaluation.

Proposals submitted may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want to be used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted, provided the applicant follows the Department's "Request for Confidentiality" procedure contained in the Department's "Freedom of Information Act" or "FOIA" regulation. It is important to understand that this FOIA regulation's confidentiality procedure is a necessary part of this regulation in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in the FOIA regulation.

The burden lies with the applicant asserting the claim of confidentiality to meet the criteria established in the FOIA regulation.

9 10.0 Severability

If any section, subsection, paragraph, sentence, phrase or word of these regulations is declared unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

8 DE Reg. 114 (7/1/04)

DIVISION OF FISH AND WILDLIFE

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

PUBLIC NOTICE

SAN# 2006-01

1. Title of the Regulations:

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management

Board adopted a compliance requirement stipulating that all states in the management regime (Massachusetts through North Carolina) for Black Sea Bass include language in their regulations that clarify the methodology to be used when measuring Black Sea Bass for minimum size determinations. Specifically, each state is required to include language in total length definitions for Black Sea Bass that exclude any caudal filament as part of the measurement. It is proposed to amend tidal finfish regulation No. 3507 (1) and (2) in order to include language regarding the caudal filament.

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 2006. Delaware is obligated to cap the summer flounder recreational harvest at 116,000 fish for 2006. The harvest cap has been adjusted downward 22 percent from the previous year's level of 150, 000 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of the Delaware 2005 harvest indicated that landings of summer flounder were 29 percent below the adjusted cap imposed for 2006. As such, it is anticipated that management measurers for summer flounder in 2006 can be liberalized and still restrain the harvest below the cap target. It is proposed that a suite of management options will be developed that take into consideration the relatively low landings projected for 2005 and adjust the options that were presented in the previous years to reflect 29 percent liberalization in the harvest. These options will include potential minimum size limits ranging between 16.5 and 17.5 inches in combination with various creel limits that can range from 2 to 8 fish per day and also incorporate seasonal closures, if necessary, to restrain the harvest within the 2006 cap. These management options will be reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. Once the technical review is completed, those options that were approved will be presented at a public hearing in order to receive input from the fishing community on the various options.

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) 739-9914. A public hearing on these proposed amendments will be held on March 9, 2006 at 7:30 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 10, 2006.

7. Prepared By:

Richard Cole, (302) 739-4782, January 10, 2006

**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 excluding any caudal filament.

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 excluding any caudal filament.

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.

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.

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.

6.0 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.

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.

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.

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.

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.

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

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

8 DE Reg. 1488 (4/1/05)

**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.)

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

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

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.

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.

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

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)
8 DE Reg. 1488 (4/1/05)

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

300 Board of Architecture
 Statutory Authority: 24 Delaware Code,
 Section 205 (24 Del.C. §306)
 24 DE Admin Code 300

PUBLIC NOTICE

The Delaware Board of Architecture in accordance with 24 Del.C. §306 has proposed changes to its rules and regulations to clarify the late renewal process for continuing education requirements.

A public hearing will be held on March 1, 2006 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architecture, 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.

Pursuant to 29 Del.C. Section 10115 the Delaware Board of Architects is proposing to revise its Rules and Regulations in order to clarify the late renewal process for continuing education requirements. The proposed changes delete the existing Section 6.5 of the Board's Regulations in their entirety and substitute the following:

6.0 Registration

6.1 Duration - Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.

6.2 Continuing Education Requirement For Renewal - For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration

shall complete sixteen (16) hours of continuing education (Professional Development Units or PDUs) acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.

6.3 Content: All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.4 Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal. ~~A licensee that has failed to renew on or before the renewal date may apply to renew their expired certificate of registration within twelve (12) months following the renewal date. Such late renewal application must be accompanied by payment of the renewal fee, payment of a late fee, and documentation of compliance with the continuing education requirement.~~

6.5.1 A licensee that has failed to renew on or before the renewal date may apply to renew their expired registration within six (6) months following the renewal date; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may submit such application within six months of the effective date of this Rule, unless otherwise required by law.

6.5.2 All late renewal applications must be accompanied by:

6.5.2.1 Renewal fee

6.5.2.2 Late renewal fee

6.5.2.3 Documentation of compliance with

the continuing education requirement prior to the renewal date.

6.5.3 A licensee who has failed to complete the continuing education requirement by the renewal date may request an extension of time of up to six (6) months following the renewal date to satisfy the prior license period continuing education requirement; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may satisfy such continuing education requirement with 6 months of the effective date of this Rule, unless otherwise required by law.

6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.

6.6 Not Transferable - A certificate of registration shall not be transferable.

6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

***Please Note: As the rest of the sections were not amended, they are not being published. The complete regulation is available at:**

<http://www.state.de.us/research/AdminCode/title24/300%20Board%20of%20Architects.shtml>

DIVISION OF PROFESSIONAL REGULATION

2000 Board of Occupational Therapy
Statutory Authority: 24 Delaware Code,
Section 2006(a)(1) (24 Del.C. §2006(a)(1))
24 DE Admin. Code 2000

PUBLIC NOTICE

The State Board of Occupational Therapy Practice in accordance with 24 Del.C. §2006(a)(1) has proposed changes to its rules and regulations related to the online renewal and continuing education.

A public hearing will be held at 4:30 p.m. on March 15, 2006 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.

Proposed Regulations

2.0 Licensure Procedures:

2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:

2.1.1 A completed notarized application on the form approved by the Board;

2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.

2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

2.1.4 Fee payable to the State of Delaware.

2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:

2.2.1 A completed notarized application on the form approved by the Board;

2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.2.3 Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);

2.2.4 Fee payable to the State of Delaware.

2.3 To apply for renewal, an applicant shall submit:

2.3.1 A completed renewal application on the form approved by the Board. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;

2.3.2 ~~Evidence~~ Proof of meeting continuing education requirements as designated by the Board in Rule ~~5~~ 3.0;

2.3.3 Renewal fee payable to the State of Delaware.

2.4 To apply for inactive status:

A licensee may, upon written request to the Board,

have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

2.5 To apply for reactivation of an inactive license, a licensee shall submit:

2.5.1 A letter requesting reactivation;

2.5.2 A completed application for renewal;

2.5.3 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;

2.5.4 Fee payable to the State of Delaware.

2.6 To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):

2.6.1 A completed application for renewal;

2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule ~~5.0~~ 3.0 of these rules and regulations;

2.6.3 Licensure and late fee payable to the State of Delaware.

6 DE Reg. 1331 (4/1/03)

3.0 Continuing Education

3.1 Continuing Education Content Hours

3.1.1 ~~Proof of e~~Continuing education (CE) is required for license renewal and shall be ~~submitted~~ completed by May 31st of each renewal year. A licensee who ~~submits~~ completes continuing education that is not approved by the Board will be notified so that he or she may obtain additional CE to substitute before the license expiration date of July 31.

3.1.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 3.0;

3.1.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;

3.1.1.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 3.1.2.

3.1.2 A log of CE on a form approved by the Board shall be maintained ~~and submitted. Documentation of the CE should not be routinely sent with the log but must be retained~~ during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.

3.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:

3.1.3.1 *21 months up to and including 24 months remaining in the licensing cycle requires 20 hours;

3.1.3.2 *16 months up to and including 20 months remaining in the licensing cycle requires 15 hours;

3.1.3.3 *11 months up to and including 15 months remaining in the licensing cycle requires 10 hours;

3.1.3.4 *10 months or less remaining in the licensing cycle – exempt.

3.2 Definition of Acceptable Continuing Education Credits:

Activities must be earned in two (2) or more of the six (6) categories for continuing education beginning in section 5.5.

3.3 Continuing Education Content:

3.3.1 Activities must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.

3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity at least six weeks before it is scheduled. The Board pre-approves continuing education activities sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in Rule 5.5.1 for courses covering documentation for reimbursement or other business matters.

3.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

3.4 Definition of Contact Hours:

3.4.1 "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks.

3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.

3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.

3.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation ~~for~~ for each contact hour of presentation. Credit for preparation shall be give for the first presentation only.

3.5 Continuing Education Activities:

3.5.1 Courses: The maximum credit for course work shall not exceed nineteen (19) hours. Extension

courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in 5.3.1. Excluded are any job related duties in the workplace such as fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.

3.5.1.1 Course work involving alternative therapies shall be limited to five (5) hours,

3.5.1.2 Course work by homestudy/ correspondence shall be limited to ten (10) hours.

3.5.2 Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

3.5.3 Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

3.5.4 Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. Credit will not be given for the presentation of information that the licensee has already been given credit for under another category. Excluded are presentations that are part of a licensee's job duties. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

3.5.5 Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category. Licensees must submit documentation of authorship or letters from authorizing entity to receive continuing education credit.

3.5.6 Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).

3.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

6 DE Reg. 1331 (4/1/03)

***Please Note: As the rest of the sections were not amended, they are not being published. The complete regulation is available at:**
<http://www.state.de.us/research/AdminCode/title24/2000%20Board%20of%20Occupational%20Therapy.shtml#>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

PUBLIC NOTICE

In the Matter of the Investigation, on |
Motion of the Commission, into the |
Terms and Conditions Under Which | PSC
Water Utilities Require Advances and/or | Regulation Docket
Contributions In-Aid-of Construction | No. 15
from Customers or Developers, |
and the Proper Ratemaking Treatment |
for Such Contributions and Advances |
(Opened March 24, 1987; Reopened |
September 24, 1996; and Reopened |
June 17, 2003) |

ORDER NO. 6814

AND NOW, this 10th day of January, 2006, the Commission having considered: (a) the record before Senior Hearing Examiner William F. O'Brien in this matter, including the evidence and post-hearing briefs; (b) the Report of the Senior Hearing Examiner dated November 18,

2005; (c) the written exceptions submitted by the parties to the Commission; and (d) the arguments of the parties at the public hearing held before the Commission on December 20, 2005; now, therefore,

IT IS ORDERED:

1. As and for its summary of the evidence pursuant to 29 **Del.C.** §10118(b)(1), the Commission incorporates by reference the "Appearances," "Procedural Background," "The Proposed Amendment," and "Summary of Evidence" sections (sections I, II, III, IV, and V) of the Report of the Senior Hearing Examiner dated November 18, 2005.

2. The Commission adopts the "Findings and Recommendations" (section VI) set forth in the Report of the Hearing Examiner dated November 18, 2005, however, the Commission finds that the proposed rules may reflect substantive changes from the earlier published rules (Jan. 2005), and may constitute a new proposal within the meaning of 29 **Del.C.** §10118(c). Staff represents that these proposed rules are as set forth in Attachment "A" to the Report. A copy of the Report of the Hearing Examiner with Attachment "A" is attached hereto as Exhibit "A".

3. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the notice attached hereto as Exhibit "B" and the proposed regulations attached to the Hearing Examiner's Report as Attachment "A".

4. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "B" to be published in *The News Journal* and the *Delaware State News* newspapers on or before February 1, 2006.

5. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "B" and the proposed regulations attached to the Hearing Examiner's Report as Attachment "A" to be sent by United States mail to all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

6. All written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations shall be submitted to the Commission on or before March 3, 2006.

7. The Commission will hold a public hearing on March 14, 2006 at 1:00 PM to consider adoption of the proposed regulations attached to the Hearing Examiner's Report as Attachment "A".

8. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

9. The Commission retains the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
 Joann T. Conaway, Commissioner
 Dallas Winslow, Commissioner
 Jaymes B. Lester, Commissioner
 Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**Public Notice of Comment Period and Public Hearing
 and Soliciting Comments Concerning Revisions to
 Regulations**

On May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition with the Public Service Commission ("PSC" or "Commission") asking the Commission to make revisions and amendments to its regulations concerning the *Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment for Such Contributions and Advances* ("the Regulations"). These Regulations were originally adopted in PSC Order No. 2928 (Mar. 15, 1988) and revised in PSC Order No. 4310 (Sept. 24, 1996).

In PSC Order No. 6198 (June 16, 2003), the Commission accepted the DPA's petition to reopen those earlier regulations. In PSC Order No. 6538 (December 7, 2004), the Commission issued a revised set of regulations for public comment and designated a Hearing Examiner to conduct further proceedings. On November 18, 2005, the Hearing Examiner issued a written report with revised regulations that were proposed for adoption by the Commission. On December 20, 2005, the Commission voted to adopt the Hearing Examiner's Report and publish the revised regulations for further public comment.

The revised regulations address the following: (a) the definitions of Contributions In-Aid-Of Construction ("CIAC"), Advances, Facilities Extension, and New Services; (b) the computation of CIAC, including costs categories; (c) the nature of advances; (d) refunds of advances; (e) the ratemaking treatment of advances; (f) the gross-up of CIAC; (g) the ratemaking treatment of CIAC; (h) the true-up of CIAC and advances; (i) that the regulations apply only to Class A water utilities; (j) that the regulations will only have prospective application; and (k) matters necessarily related to the foregoing. The Commission proposes that its Order promulgating the final version of the new regulations will provide that the regulations (and the related docket) will be reopened two years from the effective date of the new regulations to review the new rate-making

methodology, and to assess its effectiveness, the CIAC computation, and related costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications of the regulations.

Copies of the present Regulations, the proposed regulations, and the DPA's petition to reopen are available for public inspection at the Commission's address set out below during normal business hours.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before March 3, 2006. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate on or before March 3, 2006. The Commission will hold a public hearing to consider the proposed regulations on March 14, 2006 at 1:00 PM at its Dover office identified above.

The proposed regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801, and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: November 18, 2005 William F. O'Brien
Senior Hearing Examiner

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 **Del.C.** §502 and 29 **Del.C.** Ch. 101, by Commission Order No. 6538, dated December 7, 2004, reports to the Commission as follows:

I. APPEARANCES

On behalf of Commission Staff:
MURPHY SPADARO & LANDON
BY: FRANCIS J. MURPHY, ESQUIRE

On behalf of the Division of the Public Advocate:
G. ARTHUR PADMORE, Public Advocate

On behalf of Homebuilders Association of Delaware, Inc.:
THE BAYARD FIRM
BY: WILLIAM D. BAILEY, JR., ESQUIRE

On behalf of United Water Delaware Inc.:
MORRIS, JAMES, HITCHENS & WILLIAMS, LLP
BY: NICHOLAS J. CAGGIANO, JR., ESQUIRE

On behalf of Artesian Water Company, Inc.
("Artesian"):
JOHN J. SCHREPPLER, II, ESQUIRE

II. PROCEDURAL BACKGROUND

1. PSC Regulation Docket No. 15 governs the terms and conditions under which regulated water utilities require advances or Contributions In-Aid-Of Construction ("CIAC") from customers or developers who request water service. On May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition to reopen Regulation Docket No. 15 seeking to amend the current regulation to require water utilities to collect CIAC in amounts sufficient to protect existing customers from bearing the costs of system expansion. By memorandum dated May 16, 2003, Commission Staff supported DPA's petition to reopen the regulation docket. Then, by Order No. 6198 (June 17, 2003), the Commission reopened Regulation Docket No. 15 to address DPA's and Staff's concerns.

2. In order to gain assistance in drafting a proposed regulation, Staff met on numerous occasions over the course of many months with representatives of regulated water utilities, developers, and DPA, and received written and oral

comments from these participants, as well as from other interested parties. Although Staff was unable to gain a full consensus from the participants, Staff completed a draft of proposed regulations, which it presented to the Commission in December of 2004. By Order No. 6538 (Dec. 7, 2004), the Commission directed Staff to publish notice of the proposed regulation in the *Delaware Register* (and in *The News Journal* and *Delaware State News* newspapers) and to mail it to all certificated water utilities. The Commission set a deadline of February 4, 2005, for interested parties to file comments on the proposed regulation.

3. In response to the notice, United Water Delaware Inc. (“United Water”), Artesian Water Company, Inc. (“Artesian”), Tidewater Utilities Inc. (“Tidewater”), Home Builders Association of Delaware, Inc. (“HBA/DE”), The Reybold Group (“Reybold”), and Knollwood Development Corporation (“Knollwood”) moved for leave to intervene. In addition, United Water filed substantive comments and HBA/DE filed a Motion to Dismiss the case. Reybold joined HBA/DE in its Motion to Dismiss, which alleged various procedural and substantive defects regarding the proposed regulation. After receiving responses to the Motion, I denied the Motion, in a letter dated March 22, 2005. In the same letter, I granted all of the petitions for intervention.

4. After a period of discovery, Staff, DPA, United Water and Artesian submitted pre-filed direct testimony on May 3, 2005; HBA/DE filed direct testimony on May 24, 2005; and Staff, DPA and United Water filed rebuttal testimony on June 14, 2005. On June 21, 2005, Blenheim Bayberry LLC (“Blenheim”) submitted written comments objecting to the proposed regulation. On June 22, 2005, I conducted a duly-noticed evidentiary hearing, at which representatives from Staff, DPA, United Water, Artesian, and HBA/DE moved their prefiled testimony into the record and made themselves available for cross-examination. Representatives of Tidewater and Blenheim also attended the hearing but did not participate.

5. On June 28, 2005, consistent with the post-hearing schedule, United Water submitted an amended proposed regulation, which Staff, DPA and Artesian endorsed. On or about July 25, 2005, DPA and Staff submitted opening briefs, and Artesian submitted a letter indicating its support for the United Water amendment. With its brief, Staff included its final proposed regulation (“Proposed Regulation”), which included minor revisions to the draft submitted by United Water on June 28, and which United Water supported by e-mail dated September 2, 2005. HBA/DE and Reybold filed answering briefs on August 22, 2005, opposing the Proposed Regulation. On September 16, and September 26, 2005, DPA and staff, respectively, filed their

reply briefs.¹

6. On September 16, 2005, HBA/DE requested oral argument on the post-hearing revisions to the proposed regulation. Staff, DPA, and Artesian opposed the request. By letter dated November 14, 2005, I denied the request for oral argument and entered into evidence Staff’s July 25, 2005 final draft of the proposed regulation (Ex. 12). I then closed the record, which now consists of twelve exhibits and a 198-page *verbatim* transcript of the proceedings.² I have considered all of the record evidence of this docket and, based thereon, I submit for the Commission’s consideration these Findings and Recommendations.

III. THE PROPOSED AMENDMENT

7. Staff’s final proposed regulation, which it submitted as an attachment to its opening brief, is attached hereto as Attachment “A.” In addition, Staff provided the following outline of the Proposed Regulation, which identifies the changes made to the existing regulation:

Section 1.3.14. This section is new and contains the definition of the term “Facilities Extension”. “Facilities Extension” is defined as “the extension of the water utility’s Mains and appurtenances (“Facilities”) for the provision of water service.” The term “appurtenances” includes “valves, hydrants, pumps, sampling equipment and other miscellaneous items appurtenant to a Main extension.”

Section 1.3.15. This section is new and defines the term “New Services” as “the extension of pipe from the water utility’s Mains to the customer’s premises.

Section 3.8. This section has been revised in three respects. First, it requires the water utility to collect CIAC for a “Facilities Extension” to the extent provided in sections 3.8.1 and 3.8.2. Second, it a) incorporates the term “New Services” and b) permits, but does not compel, the water utility to collect CIAC or Advances

1. Staff’s and DPA’s opening briefs will be cited as “Staff OB at ___” and “DPA OB at ___.” HBA/DE’s and Reybold’s answering briefs will be cited as “HBA/DE Br. at ___” and “Reybold Br. at ___.” Staff’s and DPA’s reply briefs will be cited as “Staff RB at ___” and “DPA RB at ___.”

2. References to the Exhibits entered into the evidentiary record of this proceeding will be cited as “(Ex. ___)” or “(Ex. ___ at ___).” References to the transcript of the proceedings will be cited as “(Tr. ___).”

for “New Services”. Third, it permits the water utility to pay for the costs of “New Services” and to include the costs in its rate base.

Section 3.8.1. This section has been revised to require a CIAC when a request for a “Facilities Extension” will require the installation of pipe and/or associated utility plant. The CIAC shall be paid to the water utility as Category 1A, 1B and Category 2 costs, as computed under sections 3.8.2 and 3.8.6, subject to true-up under section 3.8.8. The references to Advances in this section have been eliminated, and the heading of the section has been modified to reflect its new content.

Section 3.8.2. The existing section has been deleted in favor of a new section which delineates how CIAC is to be computed. CIAC is broken down into three cost categories in section 3.8.2. The first, Category 1A costs, are primarily on-site costs directly assignable to a project. The second, Category 1B costs, are off-site costs directly assignable to a project. The third, Category 2 costs, refer to transmission, supply, treatment and/or other plant costs not directly assignable to the new project, where the Category 1 costs are not sufficient to supply water to the project.

Category 1A costs are CIAC and include “all on-site Facilities costs that are directly assignable to a specific project...” Category 1A costs include the costs of such items as “Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and shall include any other items that are necessary for the provision of water utility service.” In addition, Category 1A costs include the cost of “Facilities Extension” from the furthest point of the project site up to a point 100 feet beyond the boundary of the project (in the direction of the utility’s existing Main)....”

Category 1B costs are CIAC. Category 1B costs are intended to capture off-site Facilities costs that are directly assignable to a specific project beyond the 100 feet boundary covered by Category 1A costs. The section specifically exempts Facilities costs that the utility elects to incur for company betterment, that are not needed to supply water service to the project. In computing Category 1B costs, CIAC shall be calculated using a minimum of 8 inch diameter pipe, unless a larger diameter is required by “applicable laws, building or fire codes, or engineering standards to provide water service to the project on a stand-alone basis....”

“Category 2 Costs” are CIAC and the term refers to “transmission, supply, treatment and/or other utility plant costs to supply water to the project” that are not

“directly assignable” to that specific project. Under Category 2, the sponsor of a project, such as a developer, “shall pay \$1,500 per single family residential water meter service” to defray their portion of Category 2 costs. The \$1,500 charge is a set amount that is required for each single family residential water meter service.

The provision dedicated to “Category 2 Costs” requires each water utility to file tariff pages, within 120 days from the effective date of the regulations, containing the charges it will impose for Category 2 Costs for types of metered water service, other than single family residential service. The regulation requires that “[s]uch charges shall be determined based on water meter size or another objective factor.”

The provision about “Category 2 Costs” allows utilities to hold such amounts and defer accounting for them as CIAC until such amounts are actually used to fund capital improvements. At that time, the utility is “entitled to account for the Category 2 Costs as CIAC to the extent it is able to make offsetting entries to the utility’s plant accounts.”

Section 3.8.3. This section describes the nature of Advances. In paragraph (1), the words “constructing the extension” have been changed to “construction”. In paragraph (2), the word “applicable” has been added before the words “Federal income taxes” for consistency with the immediately following passage, which refers to “applicable State taxes”.

Section 3.8.4. This section relates to “Refunds of Advances” and has been modified in several respects. First, a provision describing how the refund of an Advance is calculated has been deleted. Second, the words “if any” have been inserted in the first sentence after the words “plus the tax savings” to clarify that there may not be any tax savings.

The final sentence of the section has been changed in two respects. First, the words “prospective new customer” have been deleted and the words “person(s) making the advance” have been substituted in their place, to clarify that persons other than a new customer may be making an advance. Second, the minimum twenty-year period for the refund of advances has been changed to a maximum five-year period.

Section 3.8.5. This section deals with the ratemaking treatment of advances. It has been changed to add the words “if required” after the words “since the income taxes”. In addition, the word “customer” has been

deleted and the words “person(s) making the advance” substituted in its place. These changes are made for purposes of clarification and consistency.

Section 3.8.6. This section has been rewritten largely to address the gross up of CIAC to account for tax liabilities. In the first sentence, the term “reasonable overhead” has been changed to “the utility’s standard overhead”. In addition, the sentence has been changed to incorporate the defined term “Facilities Extension”.

A new second sentence has been added that allows a utility to gross up the amount of CIAC charged to a project sponsor, if any portion of contributed property is deemed taxable income.

Section 3.8.7. This section deals with “Ratemaking Treatment of CIAC” and allows the utility to add to rate base the Federal and State income taxes associated with CIAC and paid by the utility. A change has been made by adding the words “if required” after the introductory words “The Federal and State income taxes....”

Section 3.8.8. This section has been revised to create a mutual obligation on the part of utilities and persons paying CIAC and Advances to engage in a “true-up” process, in circumstances where there has been an overpayment or underpayment.

Section 3.8.9. This is a new miscellaneous provision. It provides that the regulations shall apply only to Class A Water Utilities, and shall be given prospective effect only. It also requires that the docket be reopened within two years from the effective date of the regulations to review the methodology and assess the effectiveness of the CIAC computation and costs categories.

(Staff OB at 7-11.)

IV. SUMMARY OF PUBLIC COMMENT

8. No individual members of the public offered oral or written comments in this proceeding. Blenheim Bayberry LLC, a real estate developer, however, submitted written comments on June 21, 2005, which was the deadline for written comments from the public. Blenheim objected to the proposed \$1,500 CIAC for residential units (and the unspecified amount for commercial units), alleging that it will “provide free capital with which a water utility may expand its system outside the project in question.”

9. Blenheim stated that it currently has a project underway that: (1) includes properties within the service territories of both Artesian and Tidewater and (2) has an

adequate supply of water on-site. Blenheim recommends that the regulations be amended to allow Blenheim to modify the service territories within its project area to best serve the interests of future homebuyers, based on competing proposals from Artesian and Tidewater. In addition, Blenheim recommends that the regulations permit developers to require water utilities to use on-site supply and to charge the developer only the cost of the on-site system. This requirement would apply to those projects where adequate on-site supply is present and when the cost of the on-site system, per unit, is materially less than the CIAC required by the proposed regulations.

10. Blenheim also recommends that higher-cost utilities, such as Artesian, be held to an established industry standard for CIAC charges, in order to protect consumers from paying arbitrarily high costs for expansion. Finally, Blenheim urged the Commission to apply the new regulation, if approved, only to properties not already subject to water service agreements.

V. SUMMARY OF EVIDENCE

A. Prefiled Direct Testimony

11. **Commission Staff.** Connie S. McDowell, the Commission’s Chief of Technical Services, submitted pre-filed direct testimony on behalf of Staff. (Ex. 3.) Ms. McDowell testified that in the last five years two large water utilities, Artesian and Tidewater, have each filed for two substantial rate increases as a result of the rapid expansion of their service territories during that time. Both Staff and DPA believe that the companies were not collecting enough CIAC or advances from developers to cover the source of supply, pumping equipment and water treatment equipment necessitated by the system expansion. Consequently, existing ratepayers are paying these costs in the form of higher rates. In one of Artesian’s rate cases (PSC Docket No. 02-109), the parties agreed that it would be more appropriate to address the CIAC issue by reopening Regulation Docket No. 15 than to address the issue solely with Artesian in that case.

12. Ms. McDowell described the proposed revisions to the CIAC regulations. (*Id.* at 4-5.) If a developer or customer requests a “main extension,” which is defined as an expansion of the system into a location not previously served, then the utility collects a CIAC for both “Category 1” costs and “Category 2” costs. Category 1 refers to all the plant costs directly assignable to the project, including the mains, services, and hydrants, as well as any supply, pumping and treatment plant built specifically for the project. Category 2 refers to supply and treatment plant built that may be used for more than one project. The utility must collect a \$1,500 CIAC for Category 2 costs for residential

water meter service and must calculate, on a case-by-case basis, the amount charged for non-residential service. Both CIAC amounts are subject to challenge by the customer or developer. The utility may collect a refundable advance, rather than CIAC, for a “new service,” which is the connection from a customer’s premises to an existing main.

13. Ms. McDowell testified that she calculated the actual cost, per new customer, to Artesian, Tidewater, and United Water for Category 2 costs for the years 2001 through 2004, and concluded that the proposed \$1,500 CIAC is less than the cost per new customer for each of these utilities for the last two years. (*Id.* at 5-6.) Ms. McDowell asserted that new customers should bear the cost of expansion because they are the “cost causers.” In addition, if new customers do not bear the cost of expansion, then water utilities will continue to file frequent rate cases and water rates will continue to escalate.

14. **DPA.** James D. Cotton, a financial consultant with The Columbia Group, testified on behalf of DPA. In his prefiled direct testimony (Ex. 6), Mr. Cotton testified that developers should pay for the cost of constructing water facilities, just as they pay for other necessary components of homebuilding. (*Id.* at 10.) In most new subdivisions, developers either install the facilities themselves and “contribute” the facilities to the utility, or they contribute cash to the utility to fund the utility’s construction of the facilities, or they contribute some combination of cash and construction. Under any arrangement, however, the objective should be for the developers to pay their own costs of construction.

15. Mr. Cotton testified that the proposed regulations require developers to pay for on-site facilities and off-site facilities. (*Id.* at 11-12.) Mr. Cotton explained that, currently, it is more typical for a developer to tie its subdivision into a larger water supply system, than to construct a stand-alone, on-site system with its own well and treatment plant. When a subdivision is tied into a larger system, however, expansion of the supply source and associated treatment plant may be very costly. The proposed regulation, therefore, provides for a second CIAC charge, for off-site facilities (*i.e.*, Category 2), in the amount of \$1,500 per residential customer. This fee helps to offset the costs of building water supply and treatment facilities that serve many new developments. Mr. Cotton asserted that a flat fee is appropriate because it would be nearly impossible to compute the actual cost per customer in any one development for the investment in common water supply and treatment plant required to serve future customers. The flat fee correlates, therefore, with system needs rather than subdivision needs and provides a more efficient CIAC process. As such, utilizing a flat fee significantly reduces the administrative costs of utility

companies, developers and Commission Staff. (*Id.* at 12.)

16. Mr. Cotton testified that another major benefit of the proposal is that it relies on CIAC, rather than refundable advances. (*Id.* at 13.) The amount of an advance is not known up-front because a utility pays back the advance to the developer over a number of years as new customers are added to the system. The amount of a CIAC, on the other hand, is known by all parties because the transaction is completed up-front, without any refunds. The numerous costs associated with advances, including the additional personnel required to track payments and the litigation expenses incurred when disputes arise, are absorbed by ratepayers. Mr. Cotton also provided a proposed scale for CIAC charges for commercial customers, based on meter size, because Staff’s initial proposal did not include specific CIAC charges for commercial customers. (*Id.* at 15.)

17. **Artesian.** David B. Spacht, Vice President, Treasurer and Chief Financial Officer of Artesian Resources Corporation, submitted prefiled direct testimony on behalf of Artesian. (Ex. 2.) Mr. Spacht testified that Artesian participated in all the workshops conducted in this proceeding and he concluded that the proposed revisions to the CIAC regulations strike a proper balance among the needs of the utility, its customers and the development community. (*Id.* at 3.) He asserted that the \$1,500 fixed contribution was developed to provide consistency among different geographic locations for a water utility and consistency between water utilities for the same geographic location. He asserted that the \$1,500 charge is based on an equal sharing between utilities and developers (so that the utility can maintain an investment in rate base) for construction costs, based on a small facility design. Small facility design costs less per customer than a large facility design. In addition, Mr. Spacht recommended that the regulation include an “equivalent meter table” to establish increasing per-customer contribution amounts for off-site facilities based on the relative size of the services to be installed within a development. (*Id.* at 7.)

18. **United Water.** Nancy J. Trushell, Engineering Manager, submitted prefiled direct testimony on behalf of United Water. (Ex. 8.) Ms. Trushell testified that United Water provides water service to approximately 35,650 customers in northern New Castle County, operating two surface water treatment plants. While its service territory consists primarily of three non-contiguous geographical areas, its entire system is physically interconnected with transmission lines. Because United Water has treatment capacity available from its two existing plants, new sources of supply are not normally part of new facilities projects. New customers are simply connected to the existing plants, which are already included in rate base. (Ex. 8 at 3.) From

2001 to 2004, United Water completed 48 developer projects, adding 1,229 residential, 54 commercial, and 0 industrial customers. United Water requires developers to provide the funds for 100 percent of the cost of the project prior to beginning any phase of a project. As such, United Water does not track revenue from new main extensions, or make refunds to developers, which would be administratively burdensome. (*Id.* at 7.)

19. **HBA/DE.** Francis Julian, Vice President of Benchmark Builders, Inc. and President of HBA/DE, submitted prefiled direct testimony on behalf of HBA/DE. (Ex. 11.) The HBA/DE consists of approximately 95 homebuilders and 320 “associated” members, whom are involved in service to the industry. HBA/DE members employ approximately 10,752 people.

20. Mr. Julian testified that HBA/DE members typically purchase unimproved land for home construction. In most cases, the utility has already obtained the issuance of a Certificate of Public Convenience and Necessity (“CPCN”) to serve the site. As a result, the certified utility holds a monopoly to serve that site even though it may not even have a water source located on that property to use as supply. (*Id.* at 2.) The interested developer, therefore, is barred from exploring an alternative that would be less costly than obtaining service by the certificated utility. Mr. Julian emphasized that the proposed regulation, while purporting to strike a balance between new and old customers for the financing of new plant, ignores the fact that all customers have the burden of paying for the replacement of worn out plant for any particular development. (*Id.* at 7-8.)

21. Mr. Julian noted that before obtaining a CPCN, utility management must have concluded that it could make a profit in the proposed service territory and, before granting the CPCN, the Commission must have concluded that the utility had the means to serve the site. (*Id.* at 2-3.) In fact, the utility may have even paid the original landowner for the right to serve the site. He asserted, therefore, that the utility has voluntarily put itself in the situation about which it now complains.

22. Mr. Julian also objected to the apparent elimination of advances, which are an alternative to CIAC, and which are refunded to the developer over time. (*Id.* at 3.) The denial of any refunds would eliminate the balance struck between a utility, who benefits from cost-free capital, and the homebuilder, who provides the capital and the future income stream. Mr. Julian also questioned the meaning of the language of the proposed rule that recognizes the practice of using refundable advances, while other provisions seem to eliminate advances and refunds.

23. Mr. Julian disagreed with the other parties’ claims

that tracking refunds is administratively burdensome. (*Id.* at 4.) He stated that developers should be required to notify the utility that service to a new customer is subject to a rebate and should also notify the utility of any changes to the payee’s address. He asserted, however, that the Class A utilities have MIS equipment capable of handling this simple procedure without hiring new employees. If a developer fails to keep its contact information up to date, then the refund should be retained by the utility until it is turned over to the state escheator, as required by law.

24. Mr. Julian testified that the cost of extending the main 100 feet beyond the project area is more properly included in Category 2 rather than Category 1. (*Id.* at 5.) Or, if boring is necessary to extend the main, then the cost should be financed with a refundable advance, in order to recognize that the utility benefits by the extension because of the revenues it will receive from its certificated area. Mr. Julian also objected to inclusion in Category 1 of “other costs necessary for the provision of utility water service” because these costs are not defined and because there is no defined procedure for identifying these costs, which should include input from the developer. (*Id.* at 5-6.)

25. Mr. Julian also opposed the inclusion in CIAC of utility overhead costs, because there is no provision for how overhead will be calculated and because there is no justification for marking up every item at the same rate. (*Id.* at 6.) In addition, the proposal does not include a procedure to allow a developer to challenge an overhead rate charged by a utility. Finally, Mr. Julian urged the exclusion from CIAC of those costs from state-mandated drought relief efforts or from the replacement of existing systems because both types of costs should be borne by all customers, whether they are new customers or existing customers. (*Id.* at 8-9.)

B. Prefiled Rebuttal Testimony

26. **Staff.** In response to Mr. Julian’s testimony, Ms. McDowell submitted prefiled rebuttal testimony on behalf of Staff. (Ex. 4.) Ms. McDowell testified that builders benefit from a central water system because county regulations allow for smaller lots with a central system, which means that builders can build more homes per acre. Furthermore, builders can pass the cost of water service on to the homebuyer in the price of the home just as they do for the costs of providing streets, street lights, sidewalks, and wastewater systems. (*Id.* at 2.) In addition, if a builder believes that a utility is charging it for unreasonable overhead costs, the builder can contact Commission Staff to mediate the dispute or it can file a formal complaint with the Commission. Regarding Mr. Julian’s concerns about a utility’s statutory, drought-related investments or its replacement costs for worn out extensions, Ms. McDowell

testified that such costs are not included as CIAC-recovered costs. (*Id.* at 3.)

27. **DPA.** In his prefiled rebuttal testimony, Mr. Cotton responded to many of Mr. Julian's assertions. (Ex. 7.) Mr. Cotton testified that, by arguing that a utility should pay part of the cost of new facilities because a utility expects profits from the associated project, Mr. Julian ignores the impact of the project on ratepayers, who are forced to bear the cost of serving the new development. In addition, Mr. Cotton disagreed with Mr. Julian's assertion that builders generate an "income stream" for the utility, noting that it is the ratepayers who generate the income. He objected to any sharing of costs attributable to a new development because of the adverse impact on current ratepayers. In addition, Mr. Cotton noted that advances must be addressed in the regulations, even if advances are no longer permitted, because utilities still carry advances on their books. Mr. Cotton also asserted that no inequity results from requiring new customers to pay for their own facilities while requiring all customers to pay for facilities replacement because new customers eventually gain the same benefit once the facilities for their system are replaced or repaired. (*Id.* at 2-3.)

28. **United Water.** In her prefiled rebuttal testimony, Ms. Trushell responded to Mr. Julian's testimony as well as to certain statements from Ms. McDowell and Mr. Cotton. (Ex. 9.) Ms. Trushell testified that United Water already requires all costs associated with connecting a new development to the United Water system to be paid up front in a non-refundable CIAC. In this way, new development costs are borne by the cost causer, administrative expenses are limited (*i.e.*, no tracking of refunds is necessary), and all developers are treated equally. (*Id.* at 2-3.) Ms. Trushell noted that by consistently obtaining CIAC to fully fund extensions for new developments, United Water has avoided the need to increase its rates since 1998. (*Id.* at 13.)

29. In addition, Ms. Trushell objected to the provision in the proposal that limits CIAC Category 1 costs for main extensions to 100 feet beyond the project area. (*Id.* at 7.) Ms. Trushell recommended establishing a "Category 1B," under which the utility will recover off-site costs beyond the 100-foot mark. Otherwise, the utility and its ratepayers will be asked to absorb the business risk associated with the proposed development. Ms. Trushell noted that, ironically, the new regulation could force United Water to collect less CIAC than it currently collects, if United Water must bear the construction cost of extensions beyond the 100-foot mark. (*Id.* at 13-14.) As a compromise position, Ms. Trushell recommended allowing developers to pay for these costs with advances, refundable over a 5-year period, as new customers begin to take service.

30. Ms. Trushell disagreed, however, with Mr. Julian's assertion that developers have a "right" to use refundable advances simply because advances are recognized in the current regulation. (*Id.* at 10-11.) According to Ms. Trushell, the distinction between CIAC and advances in the current regulation originated because of differences in federal tax treatment; differences that no longer exist. Ms. Trushell also made several drafting recommendations in order to clarify the proposed regulations.

C. Live Testimony From the June 22, 2005 Hearing

31. **Staff.** At the hearing, Ms. McDowell testified that Staff has accepted certain changes to the proposed regulations as recommended by United Water and she submitted a copy of the revised proposed regulation. (Tr. 452; Ex. 5.) Under the revised proposal, Category 1 costs now include, under "Category 1B," all off-site costs directly assignable to the project, which occur beyond 100 feet from the boundary of the project. "Category 1A" consists of the former Category 1 costs, which are all on-site facility costs directly assignable to the project (occurring within 100 feet from the boundary of the project). Both sub-categories will be financed by the builder via non-refundable CIAC. Ms. McDowell asserted, however, that she would add a provision stating that Category 1B costs, which occur when the utility has to extend a main more than 100 feet from its system, are determined as if the main installed were an 8-inch main. Therefore, if the utility decides to install a 12-inch or a 14-inch main to accommodate future growth, the builder will only pay the cost of an 8-inch main, which is the minimum size main that a utility would extend to a new development. (Tr. 494.)

32. Under the revised proposal, Category 2 still consists of those costs not directly assignable to a project, such as common supply or treatment facilities utilized by the new customers, and are funded via the \$1,500 fee for residential services. (Tr. 445.) Ms. McDowell also agreed with United Water's recommendation that the proposal include a provision that builders will pay Category 2 costs for non-residential services at a rate to be determined by the utility and included in its tariff. Ms. McDowell would strike from United Water's proposal, however, the last statement under "Category 2" costs that provides for an offset to the \$1,500 fee for direct costs for treatment and supply contributed by the builder under Category 1. (Tr. 456.)

33. On cross-examination, Ms. McDowell explained that Staff decided to use a flat fee for Category 2 costs because it would be difficult to calculate an actual cost for each project and because there is a benefit to all parties in knowing the amount up-front. (Tr. 462-463.) In addition, if the cost were calculated on a project-by-project basis, then the developers again would be in a position to negotiate

lower charges, which is what the new regulation was designed to prevent. Taking an average cost for all utilities and requiring all utilities to charge the same flat fee, therefore, was the most equitable solution.

34. Ms. McDowell testified that, based on her compilation of historical Category 2 costs for utilities in Delaware (attached as "Exhibit 1" to her prefiled direct testimony), there is little chance that \$1,500 exceeds the actual Category 2 costs. (Tr. 464.) She noted, however, that even if a builder had a particular project where the fee exceeded actual costs, that builder would likely make up for it with another project where the \$1,500 fee under-compensated the utility for its actual Category 2 costs. (Tr. 465.)

35. When asked if the utilities' under-collection of CIAC charges, under the current regulation, is a result of poor negotiations, Ms. McDowell answered that "it certainly looks that way." (Tr. 547.) She added, however, that under rate base, rate of return regulation, utilities are motivated to under-collect CIAC because whatever capital costs the utility contributes can be added to rate base. By building rate base, a utility can earn more profit. (Tr. 547-548.)

36. Regarding her statement in prefiled testimony that builders can pass CIAC charges along to the homebuyer in the price of the home, Ms. McDowell agreed that she undertook no elasticity of demand studies to support her contention. (Tr. 471.) She simply relied on common business sense. Her point, however, was that by knowing its costs upfront, a builder can price its homes to more accurately reflect its costs. Under the current regulation, the fees are not set out, and so developers "continue to negotiate back and forth with either utility on what the costs would be." (Tr. 473.)

37. On re-direct examination, Ms. McDowell testified that the proposed regulation will reduce the number of rate cases, which are very costly and which add nothing to the quality of water service. (Tr. 485-487.) Artesian's last rate case cost about \$600,000, which is passed on to the customers. She also noted that the regulations only apply to Class A water utilities, which includes only those utilities with more than \$ 4 million in annual operating revenues.

38. Ms. McDowell also testified that the figures that she calculated for the historical cost, per new customer, of the three Class A utilities that she studied do not include transmission or distribution costs. (Tr. 596.) She also noted that the fact that Artesian's per-customer cost has been substantially higher than the other two utilities' per-customer costs, does not mean that Artesian has been inefficient. Artesian's costs have been higher because they utilize more expensive sources of supply, such as wells, and because they have had to address water sufficiency supply issues. (*Id.*)

39. **DPA.** At the hearing, Mr. Cotton testified that he

supports the changes to the proposed regulations, as provided by Staff at the hearing in Exhibit No. 5. (Tr. 511.) On cross-examination, Mr. Cotton asserted that under the proposal utilities will be remain motivated to accept new service territories in order to collect additional rates in between rate cases. (Tr. 514.) In addition, it is the nature of a monopolist to add service territory because, even if it does not add revenues immediately, there will be profit opportunities in the future from facility replacements. Mr. Cotton noted that, historically, those utilities that have expanded the quickest have been the most successful and have made the greatest profits. (Tr. 515.)

40. Mr. Cotton testified that the \$1,500 is a fair number, even though it is very conservative and likely below the actual cost to the utility. (Tr. 529, 540.) Historic costs have averaged \$3,000 per new customer, not including transmission rates, and the trend is upward. He also emphasized that existing customers are currently subsidizing the builder, not the new utility customers. (Tr. 532.)

41. **United Water.** On cross-examination, Ms. Trushell testified that she was satisfied that the most recent changes to the proposal remove the risk to the utility of paying for main extensions beyond 100 feet rather than collecting such costs in CIAC. (Tr. 555.) She noted, however, that she is uncertain where to apply the \$1,500 fee, from an accounting perspective.

42. Ms. Trushell also testified that United Water's practice of requiring CIAC for all direct costs of a project, rather than permitting refundable advances, has not prevented developers from entering into water service agreements. (Tr. 571-572.) She also noted that she knows that there is a significant administrative burden associated with tracking advances because she was personally involved with administering the refunds with United Water Pennsylvania. (Tr. 576.) Ms. Trushell also asserted that while United Water continues to add customers in new subdivisions, it is not seeking additional certificated areas, and has not for at least three years. (Tr. 559, 561, 572.)

43. **Artesian.** On cross-examination, Mr. Spacht testified that Artesian currently uses refundable contracts to finance on-site water mains and hydrants. (Tr. 424.) Under the proposed regulations, Artesian would no longer be able to offer a refundable contract.

44. Mr. Spacht testified that under the proposed regulations, Artesian's rate base would continue to increase over time, for several reasons. (Tr. 426.) First, the \$1,500 contribution for off-site costs was designed as a minimum, and Artesian's capital costs above the \$1,500 would be added to rate base. In addition, Artesian's rate base increases for reasons other than serving new customers, such as relocations, rehabilitation of older systems, and replacement

of treatment facilities. (Tr. 442.) For instance, Artesian recently constructed two transmission lines under the Chesapeake and Delaware Canal, in order to better integrate its system and enhance reliability. (Tr. 444-445.)

45. Mr. Spacht also testified that a water utility is motivated to serve new areas, irrespective of rate base growth, if the expansion promotes regionalization. (Tr. 432-433.) There is not a lot of motivation, however, to serve a customer in a remote location that is not in a growth area. However, if the utility already has a CPCN for that area, then it must serve that customer. (Tr. 440.)

46. **HBA/DE.** At the hearing, Mr. Julian testified that he holds a B.S. degree in finance from the University of Delaware. (Tr. 584.) On cross-examination, Mr. Julian reiterated that when the Commission grants a CPCN, it must expect that the utility can make a profit by serving the territory that is the subject of the CPCN application. (Tr. 586.) In addition, he noted that the long-standing practices followed by utilities and developers regarding CIAC and advances are lawful and he asserted that any new regulations should also follow the applicable statutes. (Tr. 594.)

VI. FINDINGS AND RECOMMENDATIONS

A. Background

47. The Commission reopened this docket to consider amending its CIAC rules to require Class A water utilities to collect CIAC from builders or developers in amounts designed to better protect existing customers from paying for system expansion. PSC Order No. 6538 (Dec. 7, 2004.) According to DPA and Staff, the two large, high-growth water utilities in Delaware (*i.e.*, Artesian and Tidewater) have been collecting insufficient CIAC from developers, relative to their actual costs of system expansion. Because of this under-collection of expansion costs, both utilities have obtained large rate increases in the last five years, which were warranted by the companies' inclusion in rate base of the un-reimbursed portion of the cost of new facilities. As a result, existing ratepayers are, in large part, bearing the cost of system expansion and are therefore subsidizing the builders and developers who cause the costs to be incurred by building the new homes.

48. The current CIAC regulations do not define the amount of CIAC that utilities must charge and, in practice, developers have successfully negotiated CIAC charges with Artesian and Tidewater that are well below actual costs. Possible reasons for the below-cost charges include: (1) poor negotiations (Tr. (McDowell) 547); (2) lower CIAC collected translates into higher rate base, which means more return on rate base to the utility (*Id.*); and (3) competition between Artesian and Tidewater for new service territories,

with respect to those parcels that have yet to be certificated.³

49. United Water, on the other hand, has not experienced the rapid growth seen by Artesian and Tidewater, has not competed with other water utilities for service territory, and, consequently, has consistently charged non-refundable CIAC in amounts sufficient to cover its actual cost of system expansion. As a result, United Water has not filed for a rate increase since 1998. (Ex. 9 (Trushell) at 13.)

50. In order to curb the utilities' ability to under-charge for CIAC, Staff drafted amendments to the current regulation that standardize the determination of CIAC for Class A utilities and that require cost-based contributions from builders or developers. Staff's Proposed Regulation, therefore, limits a utility's flexibility to negotiate lower CIAC amounts with developers and ensures collection of CIAC that more closely tracks actual incremental costs.

51. In general, the Proposed Regulation requires Class A water utilities to collect nonrefundable CIAC from builders or developers in two parts. First, the utility must collect CIAC in an amount equal to all of its construction costs directly assignable to the project in question, both on-site and off-site (*i.e.*, Category IA and IB costs). Second, it must collect \$1,500 per residential service⁴ to help cover its indirect costs, which relate to common plant utilized for supply, treatment, and transmission (*i.e.*, Category 2 costs). Staff selected the \$1,500 figure by reviewing the actual increases in supply and treatment plant, per additional customer, for Artesian, United Water, and Tidewater for the years 2000 through 2004. (Ex. 3 at 5-6.) For the years 2003 and 2004, these per-customer costs exceeded \$1,500 for each

3. Competition for service territory, and the resulting lower cost of water service to the landowner (in the form of lower, negotiated CIAC), was the subject of an August 21, 2005 *News Journal* article that HBA/DE attached to its brief. In addition, Ms. McDowell touched on this dynamic when she referenced a developer's ability to negotiate CIAC with two utilities at once. (TR. 473.) Also, see Blenheim's recommendation, in its June 21, 2005 letter, that it be permitted to receive proposals for water service agreements from both Artesian and Tidewater in order to lower its cost for water service infrastructure.

4. For non residential services, the utilities must file, within 120 days, proposed tariff pages containing the charges it will impose for Category 2 costs. Such charges shall be determined based on meter size or another objective factor. Section 3.8.2.

of the three utilities.

52. In addition, the Proposed Regulation eliminates the practice of refunding contributions for a “facilities extension,” which generally refers to a water main extension to a new subdivision. Refundable advances are still permitted, however, for a “new service,” which refers to the extension of pipe from a main to an individual customer. Utilities may also elect to pay for a new service itself, rather than charging a CIAC or advance. (Section 3.8.)

53. Participating in this case, in varying degrees, were Staff, DPA, three Class A water utilities (*i.e.*, Artesian, Tidewater, and United Water); HBA/DE, Reybold, and Knollwood Development. Staff, DPA, and the water utilities support (or do not object to) the final Proposed Regulation and HBA/DE and Reybold object to the Proposed Regulation. For the following reasons, I recommend that the Commission deny HBA/DE’s and Reybold’s objections, find that the Proposed Regulation is just and reasonable, and therefore adopt the Proposed Regulation.

B. Statutory Authority for the Proposed Regulation

54. Under 26 **Del.C.** §209(a), the Commission may, after a hearing, fix “just and reasonable” standards, regulations, or practices to be followed by any public utility. By requiring water utilities to collect certain levels of CIAC, the Proposed Regulation is fixing a standard or practice to be followed by a public utility. In general, therefore, the Commission is authorized to adopt the Proposed Regulation, as long as it is “just and reasonable.” HBA/DE and Reybold argue, however, that the Commission does not have the authority to adopt the Proposed Regulation because it contradicts other statutory provisions governing Commission regulation of public utilities. (HBA/DE Br. at 12-19; Reybold Br. at 8-9.)

55. 26 **Del.C.** §§102(3)(c) and (e). HBA/DE argues that because the Proposed Regulation eliminates refundable advances, it improperly alters §102(3), which references refunded and non-refunded customer advances in its definition of “rate base.” (HBA/DE at 13-14.)⁵ That section, however, creates no developer entitlement to refunds of CIAC; it only acknowledges the existence of refunded and unrefunded contributions and provides the appropriate ratemaking treatment thereof. By simply providing the ratemaking treatment for different types of contributions, the statute reflects no policy favoring allowance of refunds, and any limitation on such refunds therefore violates no statutory

5. HBA/DE made this argument, and the argument relating to §302 below, in its February 4, 2005 Motion to Dismiss, which I addressed in my March 22, 2005 denial of the Motion.

requirement.

56. To support its argument, HBA/DE cites *In re DNREC*, 401 A.2d 93, 95 (Del. Super. 1978) for the proposition that an agency cannot eliminate something that is permitted by its enabling statute. (HBA/DE Br. at 12.) In that case, however, the applicable statute obligated DNREC to consider permit applications for activities affecting wetlands, and the statute provided specific criteria for approval of such applications. DNREC then adopted a regulation that prohibited all wetlands activities, refusing to even consider permit applications. The Court struck down the regulation because, by denying all wetlands uses without applying the statutory criteria to each proposed use, such denials were “arbitrary and capricious.” (*In re DNREC*, at 95-96.) In this case, the Commission is under no specific statutory obligation to consider requests to use refundable advances instead of CIAC to finance new construction, and no such obligation can be inferred generally from the statute’s delineation of the ratemaking treatment for refundable advances versus CIAC, under §102(3). The *DNREC* case, therefore, does not apply in this instance.

57. Furthermore, the proposed regulation in this case does not eliminate advances and the §102(3) definitions, therefore, continue to have effect. First, as noted by DPA, Class A water utilities in Delaware carry millions of dollars of advances on their books, and §102(3) will continue to apply to the ratemaking treatment of such advances. (DPA RB at 5.) Second, the Proposed Regulation allows for the use of refundable advances to finance new services (as opposed to facilities extensions), which will continue to receive ratemaking treatment in accordance with §102(3). Third, those non-Class A water utilities that are not governed by the Proposed Regulation may continue to refund advances, even for facilities extensions, if they so choose. Section 102(3), therefore, continues to have effect in numerous instances and, as such, HBA/DE’s contention that the Proposed Regulation runs contrary to §102(3) should be rejected.

58. 26 **Del.C.** §§203C(e)(3) and 403(b). Next, HBA/DE argues that the Proposed Regulation is “out of harmony with the new CPCN statute, §§[203C(e)(3)] and 403(b), which together require the water company to establish and certify their ability to supply new customers with water at the house and at the pressure of at least 25 pounds.” (HBA/DE Br. at 16.) According to HBA/DE, this provision is inconsistent with “transferring all costs away from the utility that has by its own volition obtained a monopoly over the site.” I agree with DPA and Staff, however, that these sections have no bearing whatsoever on the Commission’s authority to adopt the Proposed Regulation. (Staff RB at 7-8; DPA RB at 6-7.)

59. First, the requirement that a utility be able to supply water to new customers at a certain pressure says nothing about how the utility funds the incremental infrastructure required to serve the customers. After all, no one argues that the current CIAC regulation, under which utilities have been requiring some level of contribution, violates the CPCN statute. In fact, United Water already requires 100 percent of its direct costs, up-front and nonrefundable, for its projects. (Ex. 9 (Trushell) at 2-3.) The Proposed Regulation simply standardizes, across utilities, the CIAC calculation and ensures that adequate amounts are collected. As noted by Staff, if HBA/DE's reading of the CPCN statute were correct, then builders could simply demand installation of water service infrastructure at the sole expense of the utility. (Staff RB at 7.) Second, the Proposed Regulation does not transfer "all costs away from the utility." It is undisputed in the record that the \$1,500 charge will not cover the actual Category 2 costs expended, over time, for each new customer. (Staff RB at 8.)

60. 26 **Del.C.** §§314 and 1307. Next, HBA/DE argues that the "attempt in the [Proposed Regulation] to bar rate base growth is 'out of harmony' with" §314 (creating the DSIC rate)⁶ and §1307 (relating to Water Supply Coordinating Council ("WSSC") projects).⁷ (HBA/DE Br. at 16-17; see also Reybold Br. at 8-9.) According to HBA/DE, because these statutory provisions authorize rate increases (by way of rate base growth) for certain types of capital improvements, any Commission action intended limit rate increases (by limiting rate base growth), must violate public policy. The Proposed Regulation, however, is not intended to limit rate increases, although that likely will be one of the positive consequences. It is intended to effect a more equitable allocation of expansion costs between existing ratepayers and the developers that are causing expansion to occur. The public policy invoked in this proceeding, therefore, is not "low rates." It is "just and reasonable" rates, which *is* the stated policy of the legislature. (26 **Del.C.**

6. The DSIC ("distribution system improvement charge") statute allows water utilities to recover DSIC costs without incurring the expense of a rate case. DSIC costs relate to improvements to the utility's distribution system that do not increase revenues but which are eligible for rate base treatment. (Staff RB at 5, *citing* § 314(4)a and b.)

7. Section 1307, which relates to drought relief, allows water utilities to recover the cost of twater supply enhancement projects identified by the WSSC as being necessary to assure adequate water supplies for Delawareans. (Staff RB at 6.)

§§303, 309, 311.)

61. 26 **Del.C.** §302. Next, HBA/DE argues that §302, "presents legislative policies and principles contrary to the principles that underlie" the Proposed Regulation. (HBA/DE Br. at 17; see also, Reybold Br. at 8.) Section 302 requires that the Commission include as rate base, in a rate case, all utility facilities that serve existing customers or customers "reasonably anticipated to be added" within three years, without imputation of revenues. According to HBA/DE, by permitting rate base inclusion of unused infrastructure, the legislature established a policy of rate base treatment of new facilities, which the Proposed Regulation thwarts. HBA/DE argues that the Proposed Regulation "makes impossible the operation of §302 because of its requirement of CIAC treatment in every instance," which is an improper interference with the utility/developer relationship. (HBA/DE Br. at 18.)

62. I agree with Staff and DPA, however, that the determination of rate base and imputation of revenues in a rate case, under §302, in no way affects whether the Commission can require a water utility to charge a CIAC for new construction. (Staff RB at 4-5; DPA RB at 7-8.) While §302 may have the effect of burdening ratepayers, rather than shareholders, with a portion of the cost of new construction, it does not prevent the Commission from reasonably allocating a portion of the cost of new construction to developers rather than existing customers. The Proposed Regulation and §302 involve, therefore, two different sets of competing interests.

63. In other ords, that Class A utilities will no longer need to invoke §302 in rate cases, under the Proposed Regulation, does not mean that the Proposed Regulation contradicts the policy behind §302. In enacting §302, the legislature was protecting utility shareholders from losing their return on new infrastructure that the Commission might have excluded from rate base because it was not yet being used for utility service. Under the Proposed Regulation, however, utility shareholders remain protected. The Proposed Regulation merely adds protection for existing ratepayers from subsidizing system expansion. Furthermore, §302 will remain effective in rate cases involving non-Class A water utilities. For these reasons, § 302 has no impact on the Commission's authority to adopt the Proposed Regulation.

64. 26 **Del.C.** §512. Next, HBA/DE argues that the Commission's "attempt to eliminate negotiations between the utility and the developer, is plainly inconsistent and out of harmony with the encouragement of negotiations to resolve [Commission] matters found in 26 **Del.C.** §512." (HBA/DE Br. at 19.) Section 512 directs the Commission to encourage the resolution of matters brought before it through

the use of settlements and authorizes the Commission to adopt such settlements, as long as they are found to be in the public interest. Section 512, however, relates to matters brought before the Commission, not to the private negotiations between developers and water utilities. (Staff RB at 9; DPA RB at 9.) Section 512, therefore, has no bearing on the Commission's authority to adopt the Proposed Regulation.

65. In fact, the policy underlying §512 actually supports the Commission's adoption of the Proposed Regulation. As noted by DPA, §512 allows the Commission to avoid expensive and lengthy litigation, by permitting resolutions by settlement. (DPA RB at 8-9.) Similarly, § 314, which permits rate increases for DSIC improvements without going through a rate case, serves to avoid expensive and lengthy litigation. The Proposed Regulation, which is expected to reduce the number of rate cases filed by the high-growth Class A water utilities, follows this principle.

C. The \$1,500 Flat Fee for Indirect Costs

66. HBA/DE argues that the \$1,500 fee in the Proposed Regulation for recovery of Category 2 costs is improper. (HBA/DE Br. at 20-23.) According to HBA/DE, by paying for costs not directly assignable to a specific project, the developer is subsidizing all other customers, in addition to the utility stockholders. HBA/DE also argues that the provision in the Proposed Regulation that allows for deferred accounting of the \$1,500 fee, to be used for *any* capital improvements, shows that the \$1,500 will be over-compensate the utility for actual Category 2 costs attributable to the developer. (*Id.* at 21-22.) As possible solutions, HBA/DE recommends, among other things, that: (1) the \$1,500 fee not be imposed by a utility that does not have Category 2 costs against which to record the fee and (2) the accounting deferral period be limited to some set period (e.g., three years), after which the fee is returned to the developer.

67. First, just because a cost is not directly assignable to a specific project, does not mean that the cost was not caused by the project. If a utility employs transmission, supply and treatment plant that serves numerous subdivisions, and additions or upgrades to that plant are required, in part, to serve additional subdivisions, then it is appropriate to allocate a portion of those costs to the developers, just as costs directly assignable to a specific project are allocated to the developers.⁸ After all, not all common capital costs will be recovered by the \$1,500 fee

8. As Mr. Cotton put it, the \$1,500 flat fee "looks at system needs rather than subdivision needs." (Ex. 6 at 12.)

and those that are not recovered will be funded by the utility and added to rate base. (Tr. (Spacht) at 426, 442, 444.) In other words, the \$1,500 fee was not sized to recover all common capital costs, only those attributable to system expansion. As specified in Section 3.8.2, the fee recovers from developers "*their portion* of transmission, supply, treatment and/or other utility plant costs made available by the water utility." (Emphasis added.)

68. Second, the deferral of accounting of the \$1,500, until the funds are actually used, was added in response to United Water's concerns that it may not incur Category 2 costs contemporaneous with the construction of new facilities, and it did not want to be faced with decreasing its rate base. (Tr. (Trushell) 564; Tr. (McDowell) 496, on cross-examination by counsel for United Water.) Even if the accounting is deferred, however, the fees will eventually be used for Category 2 costs, which are driven largely by system expansion. Moreover, it is unknown whether, in practice, deferred accounting will be used to any significant degree. After all, since 2003, none of the Class A utilities studied has incurred less than \$1,500 per new customer, on an annual basis, for Category 2 costs.⁹ And since the Proposed Regulation includes a mandatory reopening of this docket after two years, the amount of the fee can be modified in the unlikely event that actual Category 2 costs fall below \$1,500 per new customer.

69. HBA/DE also warns that the provision under which the utility, rather than the developer, will pay for Category 1B costs (off-site direct costs) that constitute "company betterment" "promises to be a battlefield." (HBA/DE Br. at 20.) No other party, however, expressed any concern that the "company betterment" clause would lead to a significant number of disputes. Even if it does, however, the "company betterment" provision, like any other, will be subject to clarification or revision upon the mandatory reopening of the docket in two years. In the meantime, parties may contact Commission Staff for prompt assistance in resolving a dispute or a party may file a complaint with the Commission for formal adjudication. (Ex. 4 (McDowell) at 2-3.)

70. HBA/DE also notes that while Section 3.8.8 of the Proposed Regulation calls for true-up of the Category 1 CIAC charge, Section 3.8.2 defines Category 2 CIAC to include those Category 1 costs that have not been collected

9. For 2003 and 2004, Artesian has paid \$3,241 and \$6,082 per customer, United Water has paid \$1,574 and \$1,637 per customer, and Tidewater has paid \$1,861 and \$1,836 per customer. (Ex. 3 at "Exhibit 1.") These figures do not include transmission costs, so total Category 2 costs would be higher.

under the Category 1 charge. (HBA/DE Br. at 20.) If the costs are true-up, however, then there should be no need to include any un-collected costs in another category. The Section 3.8.2 clause including un-collected Category 1 costs, therefore, appears to be unnecessary. I do not, however, find this minor discrepancy, if it is one, to warrant rejection of the Proposed Regulation. In practice, as long as the Section 3.8.2 true-up takes place, Category 2 costs will exclude all Category 1 costs anyway.

71. In its brief, Reybold argues that the proposed \$1,500 fee is unjustly discriminatory, because it applies to customers who purchase a new home and it does not apply to customers who purchase an existing home. (Reybold Br. at 6, 7.) As argued by DPA, however, the fee is charged to developers, not homebuyers, and it is applied equally to all developers. (DPA RB at 14-15.) The fee, therefore, is not discriminatory. Whether or not the builder raises the price of the home in an amount equal to the fee does not alter this conclusion. Even if the fee is considered a charge to new water service customers, however, the utility does not charge buyers of existing homes the \$1,500 because the costs that the fee are designed to recover are the costs associated with adding new infrastructure, and no new infrastructure is added for an existing home. Under either perspective, therefore, the charge is not unjustly discriminatory.

72. Moreover, it would be impossible to determine the "perfect" allocation of common capital costs between new and existing customers. As such, while the \$1,500 fee is not perfect, it more accurately (and therefore more fairly) allocates the cost of system expansion to those who cause system expansion in comparison to the current regulation. In so doing, the fee simply lessens the substantial burden placed on Artesian's and Tidewater's existing ratepayers who, under the current CIAC regulation, have been subsidizing new development for years. According to Staff, DPA, and Artesian, \$1,500 is a conservative figure, in that a higher amount would be justifiable based on the actual incremental costs of system expansion. (Staff RB at 8; DPA RB at 13; Tr. (Spacht) 426.)

D. Conclusion

73. Under 26 Del.C. §209(a), the Commission has the authority and jurisdiction to fix "just and reasonable" regulations governing any public utility. The Proposed Regulation is "just" because it lessens the subsidy that flows from existing ratepayers to developers under the current regulation and because it promotes equal treatment by all Class A utilities for all builders and developers. The Proposed Regulation is "reasonable" because for Category 1 costs, it requires collection of only the actual, direct costs of a specific project (subject to true-up) and, for Category 2 costs, it requires a flat \$1,500 fee, which reflects the low end

of the range of Category 2 costs historically incurred by the Class A utilities per new customer added. The Proposed Regulation is also reasonable in that it likely will reduce the number of rate cases, thereby avoiding substantial litigation costs, which are borne by the ratepayers and which do not add value to the water service provided.

74. For all of the above reasons, I recommend that the Commission adopt, as just and reasonable, Staff's proposed regulation, as seen in Attachment "A" hereto.

Respectfully submitted,
William F. O'Brien, Senior Hearing Examiner
Dated: November 18, 2005

STAFF'S OPENING BRIEF – EXHIBIT C STAFF'S 7/25/2005 PROPOSAL

"CLEAN" VERSION OF PROPOSED REGULATIONS

1.3.12 CONTRIBUTION IN-AID-OF CONSTRUCTION ("CIAC")

Cash, services, funds, property or other value received from State, municipal, or other governmental agencies, individuals, contractors, or others for the purpose of constructing or aiding in the construction of utility plant and which represent a permanent infusion of capital from sources other than utility bondholders or stockholders.

1.3.13 ADVANCES FOR CONSTRUCTION OF SERVICES ("ADVANCES")

Cash, services, funds, property or other value received by the utility which would be CIAC but for an agreement by the utility to refund in whole or in part the amount received so that the Advances initially represent a temporary infusion of capital from sources other than utility bondholders or stockholders.

1.3.14 FACILITIES EXTENSION

"Facilities Extension" means the extension of the water utility's Mains and appurtenances ("Facilities") for the provision of water service. As used in this definition, "appurtenances" include valves, hydrants, pumps, sampling equipment and other miscellaneous items appurtenant to a Main extension.

1.3.15 NEW SERVICES

"New Services" means the extension of pipe from the water utility's Mains to the customer's premises.

3.8 CONTRIBUTIONS IN-AID-OF CONSTRUCTION AND ADVANCES

A utility shall require CIAC for Facilities Extensions to

the extent provided in §§3.8.1 and 3.8.2 herein below. Nothing contained herein shall prevent a utility from requiring CIAC, or Advances, or neither, for the provision of New Services. Nothing herein shall prevent any utility from paying for, and including in its rate base, the costs of New Services.

3.8.1 CIAC REQUIREMENT FOR FACILITIES EXTENSIONS

A utility shall require a CIAC when the request for a Facilities Extension will require the installation of pipe and/or associated utility plant. All charges henceforth to contractors, builders, developers, municipalities, homeowners, or other project sponsors, seeking the construction of water Facilities from a water utility company shall be in the form of a CIAC to be paid to the water utility as Category 1A, 1B and Category 2 costs, as computed under §§3.8.2 and 3.8.6, subject to true-up under §3.8.8.

3.8.2 COMPUTATION OF CIAC

Category 1A Costs.

All on-site Facilities costs that are directly assignable to a specific project are Category 1A costs and shall be designated by the utility and paid for by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as CIAC, with no refunds. These costs include such items as Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and shall include any other items that are necessary for the provision of utility water service. The cost of a Facilities Extension from the furthest point of the project site up to a point 100 feet beyond the boundary of the project (in the direction of the utility's existing Main) shall be considered a Category 1A Cost.

Category 1B Costs.

All off-site Facilities costs that are directly assignable to a specific project from such point 100 feet beyond the boundary of the project and continuing to the utility's existing Main are Category 1B Costs and shall be designated by the utility and funded by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as a CIAC not subject to refund. These costs include such items as Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and shall include any other items that are necessary for the provision of utility water service. Notwithstanding the foregoing, Category 1B Costs shall not include, and the utility shall be entitled to pay for and include in its rate base, any additional Facilities costs elected to be incurred by the utility in connection with the Facilities Extension for company betterment. In determining whether Category 1B Costs are directly assignable to a project, or elected as company betterment, the CIAC shall be

calculated based on the cost of installing Mains using a minimum of 8 inch diameter pipe, *provided, however*, that where Mains of a larger diameter are required by applicable laws, building or fire codes, or engineering standards to provide water service to the project on a stand-alone basis, the CIAC shall be calculated based on the cost of installing Mains using such larger diameter pipe.

Category 2 Costs.

Category 2 Costs refer to transmission, supply, treatment and/or other utility, plant costs that are not directly assignable to a specific project or where the Category 1 costs have not included sufficient direct costs for transmission, supply, treatment, and/or other utility plant costs to supply water to the project. The contractor, builder, developer, municipality, homeowner or other project sponsor shall pay \$1,500 per single family residential water meter service for their portion of transmission, supply, treatment and/or other utility plant costs made available by the water utility. These costs will be contributed by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as CIAC, with no refunds. Within one hundred and twenty (120) days following the effective date of these regulations, each water utility shall file with the Commission proposed tariff pages containing the charges it will impose for Category 2 costs for single family residential and other types of metered water service. Such charges shall be determined based on meter size or another objective factor. The utility may account for such amounts by applying such amounts to pay for or offset any capital costs, including new and/or replacement plant, whether incurred in connection with the project or otherwise. The utility shall be entitled to hold amounts received as Category 2 Costs, and defer accounting for them as CIAC, until such amounts are actually used to fund capital improvements, at which time the utility shall be entitled to account for the Category 2 Costs as CIAC to the extent it is able to make offsetting entries to the utility's plant accounts.

3.8.3 ADVANCES

An Advance may consist of the following components:

1. An amount equal to the entire estimated cost (including reasonable overhead costs) of construction; plus
2. Any applicable Federal income taxes, and applicable State taxes, that may be generated to the account of the utility as a result of the Advance.

3.8.4 REFUNDS OF ADVANCES

By April 30th of each year, the utility will refund a portion of the Advance representing each additional customer connected during the previous calendar year based on a standard formula developed by the utility (the "net

refund amount") plus the tax savings, if any, which the utility receives from deducting the Advance refund payment (the sum of which is referred to as the "gross refund amount"). In no event shall the total amount refunded by a utility (the sum of the gross refund amounts) exceed the amount received by such utility as an Advance (as finally determined by the utility after compliance with Rule 3.8.8). At the end of the negotiated refund period, no further refunds or payments will be made. If, at the end of such refund period, an Advance has not been fully refunded, the remaining un-refunded Advance will be considered a CIAC and will be treated for accounting and ratemaking purposes as a CIAC. The utility and the person(s) making the Advance shall determine the period in which the refund of the Advance may occur, but such period shall not exceed five (5) years.

3.8.5 RATEMAKING TREATMENT OF ADVANCES

An Advance will be considered as a non-taxable transaction for ratemaking purposes since the income taxes, if required, will be provided by the person(s) making the Advance.

3.8.6 GROSS UP OF CIAC

A CIAC will consist of an amount equal to the entire estimated cost, including the utility's standard overhead costs, of constructing the Facilities Extension. If any portion of property contributed by the contractor, builder, developer, municipality, homeowner, or other project sponsor is deemed taxable income to the utility, the utility shall be permitted to gross up the amount of the CIAC to include such tax liability.

3.8.7 RATEMAKING TREATMENT OF CIAC

The Federal and State income taxes, if required, associated with the CIAC and paid by the utility receiving the CIAC, may be added to rate base, at which time the utility will have an opportunity to earn a fair return on this amount.

3.88 TRUE-UP OF CONTRIBUTIONS AND ADVANCES

Where the estimated amount of the CIAC or Advance exceeds the finally determined cost of the Facilities Extension or New Services, that excess amount shall be returned to the person making the CIAC or Advance.

Where the estimated amount of the CIAC or Advance falls short of the finally determined cost of the Facilities Extension or New Services, that shortage amount shall be paid to the utility by the person making the CIAC or Advance.

3.8.9 MISCELLANEOUS; CLASS A WATER

UTILITIES AFFECTED; PROSPECTIVE APPLICATION; REOPENING OF DOCKET

The regulations governing CIAC and Advances shall:

1. apply only to Class A Water Utilities, and
2. apply prospectively and therefore shall not affect or apply to circumstances where the water utility has already entered into a water service agreement with the contractor, builder, developer, municipality, homeowner, or other person, regarding the construction of water facilities.

PSC Regulation Docket 15 shall be reopened two years from the effective date of the revised regulations governing CIAC and Advances to review the extension methodology and to assess its effectiveness, and the CIAC computation and costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

PUBLIC NOTICE

In the Matter of the Adoption of Rules |
to Govern Remedies Available in the |
Event of Alleged Breaches of Inter- | PSC
Connection Agreements Between | Regulation Docket
Telecommunications Carriers (Opened | No. 52
April 16, 2002; Reopened December 20, |
2005) |

ORDER NO. 6801

This 20th day of December, 2005, the Commission determines and Orders the following:

1. In PSC Order No. 5933 (Apr. 16, 2002), the Commission felt that it might be prudent to explore whether the Commission should adopt specific rules governing what actions are, or are not, permissible in the case of an alleged breach of the terms of an interconnection agreement and what procedures, including notice to the Commission and Commission approval, might have to precede any such actions. The premise for such rules would be to ensure that consumers not suffer the consequences of contractual disputes between carriers and find themselves disconnected or limited in their choices. Therefore, the Commission opened Regulation Docket No. 52.

2. Since that time, Staff has developed a few different versions of proposed rules and have had discussions with the various telecommunications carriers concerning these rules. As a result of those discussions, Staff is now requesting the Commission to consider the rules as set forth in Exhibit "A."

3. The proposed rules simply instruct telecommunications carriers that during disputes between carriers, the companies cannot terminate or suspend service which would affect Delaware consumers and instruct telecommunications carriers who want to abandon service of the process of informing customers and relevant parties before terminating service.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 **Del.C.** §§209 and 703(3), the Commission proposes to consider the rules as set forth in Exhibit "A" to this Order.

2. That, pursuant to 29 **Del.C.** §§1133 & 10115, the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the *Delaware Register of Regulations*.

3. That, pursuant to 26 **Del.C.** §209 and 29 **Del.C.** §10115(a)(2) & (b), the Secretary shall cause the form of public notice attached as Exhibit "B" to be published in two-column format, outlined in black, in the following newspapers on the following dates:

The News Journal (January 10, 2006)

Delaware State News (January 11, 2006)

In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission's rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by February 15, 2006.

4. That interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before Friday, March 3, 2006. Pursuant to 26 **Del.C.** §209(a), the Commission, through its designated Hearing Examiner, will hold a public hearing on the proposed amendments on Wednesday, March 22, 2006, beginning at 10:00 a.m. in the Commission's office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10117, the Commission designates Hearing Examiner Ruth Ann Price to organize, classify, summarize, and make recommendations concerning the rules proposed by this Order in light of the submitted materials and public hearings. Hearing Examiner Price is specifically authorized to conduct further hearings or direct submission of additional

documents if deemed necessary or appropriate.

6. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jeffrey J. Clark, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

PUBLIC NOTICE OF PROPOSED RULES

In PSC Order No. 5933 (Apr. 16, 2002), the Commission felt that it might be prudent to explore whether the Commission should adopt specific rules governing what actions are, or are not, permissible in the case of an alleged breach of the terms of an interconnection agreement and what procedures, including notice to the Commission and Commission approval, might have to precede any such actions. The premise for such rules would be to ensure that consumers not suffer the consequences of contractual disputes between carriers and find themselves disconnected or limited in their choices. Therefore, the Commission opened Regulation Docket No. 52.

Staff has developed rules to address the Commission's concerns by instructing telecommunications carriers that during disputes between carriers, the companies cannot terminate or suspend service which would affect Delaware consumers and instructing telecommunications carriers who want to abandon service of the process of informing customers and relevant parties before terminating service.

The text of these proposed rules are attached to PSC Order No. 6801. That Order and the exhibits are reproduced in the February 2006 edition of the *Delaware Register of Regulations*. The Order and exhibits can also be reviewed on-line at the PSC's website at www.state.de.us/delpsc. You can also obtain a paper copy of the Order at the PSC's Dover office. Those paper copies will cost \$0.25 per page.

You can file written comments, suggestions, briefs, compilations of data, or other materials concerning these proposed amendments to the Telecom Rules. Such material (10 copies) must be submitted to the Commission on or before Friday, March 3, 2006. Send the material to the Commission's Dover office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. No. 52

In addition, the PSC will conduct a public hearing on these proposed changes on Wednesday, March 22, 2006, beginning at 10:00 AM. The hearing will take place in the Commission's Office located at the address denoted above. You may also submit additional materials then.

If you are handicapped and need assistance or aids in participating in this matter, please contact the PSC to discuss the needed assistance or aids. You can contact the PSC with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You can also send inquiries by Internet e-mail addressed to karen.knickerson@state.de.us.

EXHIBIT "A"

RULES TO GOVERN IN THE EVENT OF ALLEGED BREACHES OF INTERCONNECTION AGREEMENTS BETWEEN TELECOMMUNICATIONS CARRIERS AND THE PROCESS FOR CARRIERS TO ABANDON SERVICE TO ITS DELAWARE CUSTOMERS

Rule 1. Unless permitted by Order of the Commission, no party to a telecommunications interconnection agreement ("party" or "carrier") may refuse to comply with the terms of the interconnection agreement in a manner that affects service to a Delaware customer (including refusal to terminate the other party's traffic, suspension of inter-carrier services, and refusal to execute customer carrier-selection or other service orders), even if such party believes that the other party has breached their interconnection agreement.

Rule 2. Any party to a telecommunications interconnection agreement who believes that the other party has breached their agreement must promptly notify the other party and Commission Staff in writing of the dispute. The carriers shall then provide Commission Staff with a monthly status report regarding the dispute until such time that the carriers resolve the matter or until a Formal Complaint or mediation request is filed with the Commission.

Rule 3. If the carriers cannot resolve their dispute, then either carrier may file a Formal Complaint or may request

mediation of the dispute in accordance with the Rules of Practice and Procedure of the Delaware Public Service Commission.

Rule 4. Any carrier who wishes to abandon its telecommunications services to end-users in Delaware must first file an application with the Commission for approval, in accordance with the Commission's Rules for the Provision of Telecommunications Services. On the same day of filing its application, the carrier shall send notification of its request for abandonment to its Delaware customers and to the Division of the Public Advocate. Such notice shall direct customers to select a replacement carrier by a specified deadline (no less than 45 days from the date of notice) and shall include a list of certificated telecommunications carriers that can be selected by the Delaware customer. No later than seven days before the deadline, the carrier shall provide to Commission Staff a list of those customers (including addresses and telephone numbers) who did not select a replacement carrier. In the event a customer cannot be reached or fails to respond, the Commission may assign a local exchange carrier on a market pro rata share basis or other basis deemed appropriate by the Commission. In no event may the abandoning carrier terminate any Delaware customer unless permitted by Order of the Commission.

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code,
Section 302 and 29 Delaware Code, Chapter 101
(21 Del.C. §302 and 29 Del.C. Ch. 101)

PUBLIC NOTICE

The Delaware Department of Transportation Division of Motor Vehicles, pursuant to 21 Del.C. §302 and 29 Del.C. Chapter 101, Subchapter II, proposes to repeal thirty-three rules and regulations previously enforced by the Division, and described in detail below this notice. The repeals are proposed because these rules and regulations are either obsolete under later-enacted state or federal laws, or have already become part of state law. Written comments concerning this proposed repeal should be sent by March 2, 2006 to Jack Eanes, Chief of Operations, Division of Motor Vehicles, 303 Transportation Circle, P.O. Box 698, Dover, Delaware 19903.

Regulations to be Repealed

~~Delaware Motorist Protection Act~~~~Regulation Number 1~~~~May 24, 1974~~~~Concerning: Issuance of an Insurance Identification Card
Concerning: Notice of Cancellation or Termination~~~~1. INSURANCE IDENTIFICATION CARD~~~~Effectively immediately, all companies licensed to write Automobile Insurance in the State of Delaware must furnish insurance Identification Cards to all named insureds. The size, weight, color, and content of the card shall be as follows:~~

- ~~A. Size: Approximately 3 1/2" x 2 1/4".~~
- ~~B. Weight: Optional.~~
- ~~C. Color: White.~~
- ~~D. Content: Information shall include the following:~~

~~1. Company Name. Group name may be shown instead, if it will identify the specific Company involved.~~~~2. Named Insured. Must be the same as that shown on the motor vehicle registration.~~~~3. Address Optional.~~~~4. Policy Number.~~~~5. Effective Date. Good indefinitely. No expiration date to be shown.~~~~6. Vehicle(s) Insured. Information may be completed by indicating any of the following, depending on the type of policy or coverage involved:~~~~a. Year, Make and Vehicle Identification Number of the vehicle(s) insured. Model of the vehicle may be shown as the. Make, Year and Make of the vehicle may be abbreviated, but the complete VIN must be shown. If only a portion of the VIN is available, this should be shown with instructions to the insured to fill in the missing digits. Otherwise, the insured should be instructed to fill in the entire VIN; or~~~~b. "All Owned Vehicles"; or~~~~c. "Fleet";~~~~7. Named Insured's Signature. Optional.~~~~The order of the information to be contained on the ID Card may be rearranged at the option of the Company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a Company.~~~~Additional information may also be printed on the bottom or reverse side of the ID Card, provided this information is appropriately captioned.~~

This Notice shall be of the following specifications:

A. Size: 6" x 3 1/2"

B. Color: Green.

C. Weight: Optional.

D. Content: Information shall be shown as in the following example:

~~DELAWARE NOTICE OF CANCELLATION OR TERMINATION~~~~Insurance Company and Address~~~~Policy Number~~~~Named Insured and Address~~~~Effective Date of~~~~Cancellation or~~~~Termination~~~~Year Make~~~~Identification Number~~~~To be filed with the Division of Motor Vehicles, Safety Responsibility Section, P. C., Post Office Box 698, Dover, Delaware 19901.~~~~The order of information to be contained on the Notice may be rearranged at the option of the Company.~~~~The Notice must be filed with the Division of Motor Vehicles immediately after the effective date of actual cancellation or termination.~~~~Upon receipt of the Notice, the Division of Motor Vehicles will send to the registrant a form letter with instructions for him to complete and return the insurance verification statement at the bottom of the letter. Except under unusual circumstances warranting investigation, which the Division believes will be very infrequent, certification by the registrant is not expected to be, sent to the Company for verification.~~~~POLICY REGULATION NUMBER 2~~~~FEBRUARY 20, 1975~~~~Concerning: STANDARDS WHICH MAY BE APPLIED BY THE MEDICAL ADVISORY BOARD~~~~In accordance with Title 21, Chapter 27, Section 2722, Delaware Code, the following standards are to be implemented immediately:~~~~The Executive Secretary of the State Board of Health, members of the Medical Advisory Board, and the Motor Vehicle Division may accept and employ evaluations made by the Division of Alcoholism Services, a Division of the Department of Health and Social Services, in matters concerning alcoholism and excessive alcoholic beverage consumption.~~~~The Board may also act upon other reliable relevant information and recommendations concerning whether a drinking problem does or does not exist while they are~~

arriving at an opinion, or making recommendations to the Division of Motor Vehicles.

(The purpose of this Policy Regulation is to enable the Division of Motor Vehicles and the Division of Alcoholism Services to provide pertinent facts to the Board when action has been taken by the Motor Vehicle Division against a driver or applicant.

POLICY REGULATION NUMBER 4

MARCH 6, 1975

SUBJECT: Change of Name on Drivers' Licenses

Effective immediately, whenever a change of name on a driver's license is applied for and a new photo license is issued, a fee of \$1.00 is to be charged.

This new policy is implemented to help cover the photo and administrative costs of issuing such new license.

POLICY REGULATION NUMBER 7

MARCH 25, 1975

AMENDED ON MARCH 6, 1979

SUBJECT: Vanity Tags for Commercial Vehicles

To Be Changed From:

Effective immediately, vanity tags may be issued on any commercial registered motor vehicle which has a gross weight not exceeding 5,000 pounds.

To Be Changed To:

Effective March 6, 1979, vanity tags may be issued on any commercial registered motor vehicle which has a gross weight not exceeding 8,000 pounds.

POLICY REGULATION NUMBER 9

APRIL 8, 1975

SUBJECT: Waiver of Requirement of Inspection for Certain Vehicles

Whereas, many vehicles are traded or transferred, and

Whereas many license tags on these vehicles are retained onto newly purchased vehicles other vehicles, thus, making the traded-in vehicles unregistered, and

Whereas many of these traded-in vehicles were just inspected prior to such trade-in, and

Whereas the Motor Vehicle Division is not only interested in safety, but also saving fuel and other costs not only for the Division but also the citizens and businesses in this State

The following policy will be implemented immediately:

If a Delaware certificate of title on a registered vehicle, for which there are 6 full months or more remaining on the registration is presented to the Motor Vehicle Division for a tag retention, thus making the surrendered title an "U" title (unregistered vehicle), the title clerk is to enter the previous expiration date and her initials in the expiration block on the face of the new "U" title prior to returning the title to the owner.

If the title is presented back to the Delaware Motor Vehicle Division for registration within three months after the date of issue shown on the face of the "U" title, no inspection card required.

POLICY REGULATION NUMBER 10

MAY 30, 1975

Concerning: Authorized Emergency Vehicles

Effective immediately, the following motor vehicles are hereby designated as authorized, emergency vehicles, as specified under Section 4106, Title 21, of the **Delaware Code**:

Any motor vehicle used by a fire chief, assistant fire chief, fire engineer or fire policeman, when such motor vehicle is being operated with blue lights flashing and in the performance of their duties.

POLICY REGULATION NO. 11 (RESCINDED)

January 28, 1982

M E M O R A N D U M

TO: Lane Managers
Title Supervisors
Registration Supervisors
Cashiers
T. Marvel Everett
Betty Knotts

FROM: Robert J. Voshell, Director
Division of Motor Vehicles

RE: Policy Regulation No. 11 (Rescinded)

Effective immediately, Policy Regulation No. 11 issued on September 25, 1975, regarding Fee For A Duplicate Antique License Plate is hereby rescinded.

Since the Division is now issuing antique license plates which are similar to the other license plates which we issue and are the same in cost, the \$15.00 fee is no longer necessary.

The fee for a duplicate antique license plate shall be \$3.00, which is the same fee for all duplicate license plates. Please mark Policy Regulation No. 11 "Rescinded" as of January 28, 1982.

Please be advised that the Division no longer issues the porcelain antique license plates.

POLICY REGULATION NUMBER 13

January 9, 1976

Concerning: ~~Driver License Reinstatement Standards~~

In accordance with Title 21, Chapter 3, Section 302, ~~Delaware Code~~, the following standards may be implemented immediately.

The Director of the Motor Vehicle Division and those persons, designated to act on his behalf in the performance of duties, rules, regulations, and of duties, rules, regulations and policies of the Division may accept and employ professional evaluations made by the Division of Alcoholism Services, a Division of the Department of Health and Social Services, in matters concerning alcoholism and excessive alcoholic beverage consumption.

The Division may act upon reliable relevant information and recommendations concerning whether a 'drinking problem does or does not exist while they are problem does or does not exist while they are arriving at a decision for the purpose of reinstatement after suspension or revocation or licensing a new applicant.

In all cases where the Division delays licensing for the purpose of obtaining a professional evaluation or refuses to issue a license to an applicant or suspends or revokes the privileges of a licensed driver in matters concerning the excessive use of alcoholic beverages, the opportunity of a hearing shall be granted upon written request to the Director.

POLICY REGULATION NUMBER 16

APRIL 20, 1976

SUBJECT: Use Of Blue Lights

In accordance with Section 302, Chapter 3, Title 21, of the ~~Delaware Code~~, the Division of State Police is hereby authorized to use blue lights in conjunction with red and white lights on Tactical Accident Control (TAC) patrol cars.

POLICY REGULATION NUMBER 20

OCTOBER 18, 1976

Concerning: ~~NOTICE OF TRANSFER OF OWNERSHIP OF A VEHICLE~~

In accordance with Title 21, Chapter 25, the transferor of any vehicle must notify the Division of Motor Vehicles of such transfer if the transfer is to someone other than a licensed Delaware dealer.

Because of the growing number of telephone notifications we have been receiving; and because of the possibility of errors in handling notifications verbally; and because of the growing concern over presenting verbally taken notifications of transfers in future court actions, the following Regulation Is effective immediately.

The notice of transfer, of a vehicle must be submitted in writing by the transferor. The notice should include: license plate number, make of vehicle, year of vehicle, serial number (if available), date and time of transfer, purchaser's name and address and seller's name and address.

This notice is not required if the owner appears at the Motor Vehicle Division to transfer the title to the new owner or if the transfer is to a registered dealer.

However, the Division recommends a notice of transfer to be submitted if the transfer is to a dealer.

The computer record will be flagged as transferred, and the written statement will be attached to the title background file.

POLICY REGULATION NUMBER 22

APRIL 22, 1977

SUBJECT: Posting Traffic Violations For Juveniles

Effective immediately, no traffic violations will be entered on the driving records of those individuals who have not reached 16 years of age, unless the traffic violation is related to alcohol or drugs.

All traffic violations will be entered on the driving records of those individuals who are 16 years of age or older, regardless of the driver license status or eligibility.

The Motor Vehicle Division will, however, abide by Orders issued by the Family Court pursuant to Title 10, Section 937 (b-16) and enter the appropriate information on the driving record as directed, regardless of age.

This Regulation is the result of a meeting held on April 20, 1977, between Robert D. Thompson, Chief Judge of the Family Court for the State of Delaware, and John R. Downey, Manager of the Driver Improvement Section, concerning conflicting laws in Title 21 and Title 10, Section 937, which relates to "Delinquency".

POLICY REGULATION NUMBER 28

APRIL 26, 1976

~~SUBJECT: Salvaged Vehicles, Scrapped Vehicles, Junked Vehicles, Rebuilt Vehicles, Dismantled Vehicles~~

~~As Required By Title 21, Delaware Code:~~

~~Section 1. Responsibilities of vehicle owner when a vehicle is scrapped or dismantled beyond repair (Section 2512, Title 21)~~

~~"Whenever any motor vehicle for which a title has been issued by the Delaware Motor Vehicle Division, whether such vehicle is registered or unregistered, is scrapped, permanently dismantled, damaged or destroyed beyond repair or otherwise made perm unusable as a motor vehicle, the owner thereof within 30 days shall remove the registered plate and shall immediately give or send such plate and the certificate of title to the Motor Vehicle Division for cancellation.~~

~~The Department shall upon receipt of the certificate of title, issue and send to the own non-negotiable receipt for the vehicle described on the certificate of title. Such non-negotiable receipt shall be deemed to meet all State proofs of ownership requirements."~~

~~Procedures to be followed:~~

~~(a) If the owner scraps, permanently dismantles, damages or destroys a vehicle, and there is no settlement with an insurance company on the basis of total loss, the owner must comply with the requirements under Section 1 above.~~

~~(b) When an insurance company as a result of having paid a total loss claim acquires a certificate of title to a vehicle and obtains possession or control of the vehicle fore cause other than theft, such company must comply with the requirements under Section 1 above.~~

~~(c) Within 30 days of a theft of a vehicle, if an insurance company has acquired a certificate of title to a vehicle and obtains possession of the vehicle in settlement of a theft lost claim, and upon recovery of the vehicle it is determined that the vehicle has been damaged to an extent that it would be considered a total loss under the provisions of comprehensive and collision insurance, such insurance company "must comply with requirements under Section 1 above.~~

~~(d) Whenever any owner sells or transfers a vehicle, whether registered or unregistered which is considered to be scrapped, permanently dismantled, damaged or destroyed beyond repair or otherwise made permanently unusable as a vehicle, such owner shall comply with the requirements under Section 1 above.~~

~~(e) Whenever any vehicle, Whether registered or unregistered, is acquired, either from in state or from another state, and the vehicle was purchased as salvage,~~

~~junked or to be dismantled, the purchaser must comply with the requirements under Section 1 above. However, if the seller of the vehicle has complied with those requirements, and the new purchaser has in his possession a non-negotiable receipt for a salvage vehicle, no further requirements are necessary.~~

~~Section 2. Procedures to follow when a junked vehicle (for which a non-negotiable receipt has been issued) is sold to another party:~~

~~(a) Assign the non-negotiable receipt for a salvage vehicle on the reverse side to the purchaser.~~

~~(b) Purchaser must retain non-negotiable receipt at the office or location where vehicle maintained.~~

~~Section 3. Procedures to follow if the junked vehicle is to be retitled or re-registered.~~

~~(a) Vehicle must be inspected by Delaware State Police Auto Unit. Non-negotiable receipt must be presented.~~

~~(b) Vehicle must pass safety inspection at Motor Vehicle Division Inspection Lane.~~

~~(c) Vehicle will be retitled as the original manufacture and year for which it was previously titled, unless, the Auto Theft Unit determines that enough different components have been used to classify it as an assembled vehicle.~~

~~(d) When the new Delaware certificate of title is typed, the word RECONSTRUCTED will entered in the "use" block on the face of the title.~~

~~Section 4. Fees~~

~~(a) If a non-negotiable receipt (salvage title) is desired, there is , a fee of \$2.00 \$15.00 to be paid at the time of application.~~

~~(b) If owner submits the title as being 'junked, salvaged, etc. and there is no further nec of a won-negotiable receipt (salvage title), the Motor Vehicle Division .will send a letter to the owner acknowledging receipt of the title and tag. There is no fee for this. However, this vehicle can never be titled again. The letter must be maintained on file and produced upon request by any authorized agent of the Motor Vehicle Division or labor enforcement agency.~~

POLICY REGULATION NUMBER 33

DECEMBER 10, 1979

~~(Replaces and Supersedes Policy Regulation 33 Issued August 10, 1978)~~

~~OCTOBER 15, 1982 (Revised)~~

~~CONCERNING: Designation of Representative of the Secretary for Holding Administrative and/or Implied Consent Hearings~~

Approved employees are:

- Motor Vehicle Director
- Driver Services Chief
- Driver Improvement Manager
- Driver Improvement Assistant Manager
- Employees classified as Driver Services Officer III
- Employees classified as Driver Services Officer IV
- Vehicle Services Chief

POLICY REGULATION NUMBER 38

MARCH 15, 1979

~~CONCERNING: Vehicle Document Fees~~

Pursuant to Title 30, Section 3003, ~~Delaware Code~~, the following regulation is established, effective immediately.

The word "transfer" as utilized in Section 3002, Title 30, shall include the following:

- Change of business entity status
 - Examples: Haven Trucks to Fast Express
 - John Doe Trucks, Inc. to John Doe, Inc.
 - Joe Smith Buses to Smith Buses, Inc.
 - Joe Smith to Smith Buses
- Change ownership between private individuals
 - Examples: Joe Smith to Tom Jones
 - Joe Smith to Harry Smith &/or Tom Smith
 - Helen Jones to Ralph Jones

The above listed types of transfers must be accompanied by a notarized bill of sale pursuant to Section 3002(b) or a notarized affidavit. If neither a notarized bill of sale or a notarized affidavit is available, the document shall be based on the current NADA book value.

The word "transfer" shall not include the following:

Change of name of a private individual because of marriage, divorce or legal requirements

When a co-owner is being dropped or added to the owner as listed on the title

- Examples: Joe Smith to Joe Smith &/or Mary Smith
- Joe Smith &/or Mary Smith to Mary Smith
- Joe Smith &/or Smith Bus Lines to Smith Bus

Lines

No notarized bill of sale or affidavit is required for these types of transfers.

Other types of transfers not covered by this regulation will be processed as prescribed in Title 30, Chapter 30, **Delaware Code**.

POLICY REGULATION NUMBER 39

MARCH 5, 1979

~~CONCERNING: Reinstatement of Drivers' Licenses/Privileges~~

Unless otherwise provided by law, a suspension or revocation of a driver's license or driving privileges shall not be extended or continued for the reason that our Division has not received the driver's license.

The suspension/revocation period is effective as stated on the official notice of suspension/revocation, and the Division of Motor Vehicles has no statutory means to extend or continue a suspension for failing to surrender a license.

POLICY REGULATION NUMBER 42

MARCH 5, 1979

~~CONCERNING: Hearings Prior to Mandatory Driver License Revocations/Suspensions~~

A hearing is not required prior to a mandatory driver license suspension and/or revocation unless the conviction does not apply to the person suspended/revoked.

Mandatory revocations are for those offenses cited in Section 2732(a) and Section 2732 (c) of Title 21.

Mandatory suspensions are for those offenses cited in §2732(b); §314 (uncollectable check); §2733(h); §2733(k); §2942; §2118(k).

POLICY REGULATION NUMBER 44

MARCH 14, 1979

~~CONCERNING: Reinspection Of Vehicles Rejected At Time Of Inspection~~

Whereas, the conservation of fuel is becoming more and more important; and

Whereas, many vehicles are rejected at time of inspection for items that are not really significant in relation to highway safety;

Therefore, be it resolved that the following Regulation is adopted by the Department and shall remain in effect until rescinded:

(A) Vehicles which are rejected at time of inspection for brakes, wheel alignment, or any front end problems which require the vehicle to be hoisted in the Lane, must pass through the inspection lanes for their rechecks and approval.

(B) Vehicles which are rejected at time of inspection for items other than those mentioned in the above paragraph (A)

do not have to pass through the Lanes for recheck and approval.

(1) These vehicles may be presented at the exit end of the Lanes for checking by inspectors; or

(2) A repair order, statement, or bill showing that the rejected items has been repaired' is acceptable proof to approve the vehicle. The repair order, statement, or bill must be on pre-printed business forms, showing the name and address of the business responsible for the repairs. A note on plain paper or a telephone call is not acceptable.

This regulation does not apply to school bus inspections.

POLICY REGULATION NUMBER 47

Issued May 30, 1979
Revised September 24, 1979
Revised May 13, 1980
Revised April 2, 1982

CONCERNING: School Bus Operator License Eligibility

To be eligible for a school bus operator endorsement on a driver's license, the applicant must:

(1) Comply with the provisions of Title 21, Sections 2708 and 2709.

(2) For purposes of definition, a "satisfactory driving record" as mentioned in Sections 2708 and 2709 shall be as follows:

- (a) a record that has a "point: total of 8 points or less during the immediate past 3 years; and
- (b) no "driving while under the influence of liquor or drugs" convictions during the immediate past 5 years; and
- (c) no entries of "Trial Waiver" (4177B) during the immediate past 5 years; and
- (d) no revocation of driver's license or driving privileges during the immediate past 5 years; and
- (e) no conviction of vehicular assault during the immediate past 5 years.

(3) All non-resident applicants (both initial applicants and those applying for renewal) shall present to the Division of Motor Vehicles and official copy of their driving record from the state where they are licensed. No application or renewal shall be accepted without such driving record.

(4) All non-residents applications must be qualified pursuant to the provisions of Section 2708, Title 21, **Delaware Code**.

(5) The out-of-state driving record shall be screened with the same criteria as used for Delaware resident school bus drivers.

(6) Form MV-1E is to be completed and used as the photo license input card.

(7) The 3-point credit for attending the Defensive Driving Course shall not be considered when determining the eligibility of a school bus operator.

MEMORANDUM

To: T. Marvel Everett _____ Title and Registration Clerks
_____ Lane Managers _____ Cashiers
_____ Title Supervisors _____ Information Clerks
_____ Registration Supervisors _____ Inspectors

FROM: _____ Robert J. Voshell, Director
_____ Division of Motor Vehicles

SUBJECT: _____ H.B. 71 as amended _____ Inspection of Motor Vehicles Built Prior to 1943

Pursuant to H. B. 71 enacted on April 17, 1979, the attached Policy Regulation is to be implemented effective immediately.

If the Antique Vehicle Inspection Form is properly completed, simply use it in lieu of the inspection card. Validate it as you would a normal inspection card and return it to Betty Knotts' office in the daily work.

If the vehicle is inspected by our employees, use an inspection card, as in past procedures.

The law, and these procedures apply to all motor vehicles built in 1942 and prior.

This includes those vehicles already registered as antique vehicles and those Delaware registered vehicles which are not registered as antiques.

All inspections for pre 1943 vehicles being registered for the first time in Delaware must be performed by employees of the Division of Motor Vehicles.

Inspections for renewals of the pre 1943 vehicles can be performed by those designated persons on the attached list.

for renewals of pre 1943 vehicles can be performed by those designated persons on the attache.

Attachment

POLICY REGULATION NUMBER 48

AUGUST 6, 1979

CONCERNING: Inspection of Antique Vehicles Built Prior To 1943

Pursuant to House Bill No. 71 as amended, enacted on April 17, 1979, which amended Section 2199, Chapter 21, Title 21, **Delaware Code**, the following types of safety inspection shall apply to pre-1943 vehicles:

1. Normal inspection performed at the Division of Motor Vehicles' Inspection Lanes.

OR

2. Off-site inspection by a qualified employee of the Division of Motor Vehicles. There shall be an inspection fee of \$5.00 for an off-site inspection. An appointment must be made in advance by the owner, with the Lane Manager.

OR

3. Inspection performed by designated inspection officers of the recognized antique vehicle clubs in Delaware. The inspection officers will complete forms as required by the Division of Motor Vehicles. These forms are to be given to the antique vehicle owner, who must submit the form to the Division of Motor Vehicles at time of renewal of registration.

All inspections for the initial registration in Delaware must be performed by employees of the Division of Motor Vehicles.

POLICY REGULATION NUMBER 49

AUGUST 15, 1979

Concerning: Issuance Of Conditional' Driver Licenses To Non-Residents

Pursuant to Title 21, Section 302, 4177 B, 4177 C, and 4177 D, the following regulation and procedures are established effective immediately.

1. A non-resident driver, who qualifies as a first offender pursuant to § 4177 B (d), may elect to voluntarily enroll in

—an approved course of instruction and/or program of rehabilitation in order to obtain a conditional license.

2. The non-resident applicant, in addition to compliance with the provisions under 4177 C, must present the Division a current copy of his/her driving record from the state of residence (which issued his/her current driver's license).

3. The out-of-state driver's license must be surrendered to the Division for the period of revocation.

4. A notice of the revocation will be forwarded to the licensing authority in the applicant's home state.

5. All other provisions of Title 21, ~~Delaware Code~~, will apply.

POLICY REGULATION NUMBER 52

JUNE 20, 1980

CONCERNING: Period of Revocation of Driver's License/ Driving Privileges Pursuant to Section 4202(b), Title 21

Upon receiving a conviction for a violation of Section 4202(a) the driver's license and/or driving privileges shall be revoked for a period of one (1) year under Section 4202(b), Title 21 ~~Delaware Code~~.

POLICY REGULATION NUMBER 54

DECEMBER 12, 1980

CONCERNING: The Issuance Of A Subsequent Occupational Driver's License After A Conviction For Violating The Provisions Of Such Occupational License

Whereas, Title 21, Chapter 27, Section 2733(h) states the following:

"(h) The Department, upon receiving a record of convictions of any person upon a charge of operating a motor vehicle in violation of the restriction imposed upon said occupational license during the period of "such occupational license, shall immediately extend the period of such suspension for an additional like period and shall forthwith direct such person to surrender said occupational license to the Department." and;

Whereas; Title 21 does not set forth exactly when a subsequent occupational license can be issued;

The following policy is hereby adopted pursuant to Title 21, Chapter 3, Section 302:

No application for a subsequent occupational license will be accepted prior to the expiration of the suspension period for which the cancelled occupational license was issued.

This policy does not alter the total number of occupational licenses (three) that an individual can be issued pursuant to Section 2733(g) of Del. Code 21.

POLICY REGULATION NUMBER 55

FEBRUARY 17, 1981

CONCERNING: Waiver Of Examinations For Driver Education Students

The examination required by 21 ~~Del.C.~~ §2713(a) of an applicant for an operator's license may consist of an examination of proof that the applicant has successfully completed a course in driver education in a public or private high school in this state if such a course is approved by the State Board of Education and meets the standards for such courses described by that Board. The visual acuity test will be administered to all applicants.

POLICY REGULATION NUMBER 58

AUGUST 21, 1981

~~CONCERNING: Driver Licenses (Towing Mobile Homes & Goosenecked Trailers)~~

~~Whereas, there have been many questions from law enforcement officials, Motor Vehicle Division employees and Delaware licensed drivers regarding the proper class of licenses required for pulling mobile homes with tractors and pulling goosenecked trailers with pickup trucks; and~~

~~Whereas, the Delaware laws are not specific in defining these types of vehicles; and~~

~~Whereas, these two types of vehicles were not considered as tractor and semi-trailer combinations when the classified driver license system was implemented;~~

~~The following Departmental Policy Regulation is effective immediately:~~

~~The type of license required for any operator of a motor vehicle who is towing a mobile home or a goosenecked trailer shall be governed, by the registered gross weight of the towing vehicle.~~

~~For purposes of the classified license system, these two types of vehicles shall not be considered tractor-trailer combinations.~~

POLICY REGULATION NUMBER 59

~~SEPTEMBER 16, 1981~~

~~CONCERNING: Driving Experience For School Bus Operators~~

~~Whereas the current laws do not provide for driving experience prior to obtaining a school bus operator's driver's license or endorsement; and~~

~~Whereas the current laws do provide that the minimum age for a school bus driver applicant shall be at least 18 years of age and not over 70 years of age; and~~

~~Whereas Section 2707(a) of Title 21 requires at least one year's previous driving experience prior to obtaining a Class B or Class C license; and~~

~~Whereas the Department believes prior driving experience should also be required for the operation of school buses;~~

~~The following Policy Regulation is hereby adopted pursuant to Title 21, Sections 302 and 2708, **Delaware Code**:~~

~~No person shall be issued a school bus operator's endorsement or school bus license unless such person has held a valid driver's license for at least one year prior to the application for such school bus endorsement or school bus license.~~

POLICY REGULATION NUMBER 64

~~DECEMBER 3, 1981~~

~~CONCERNING: Establishing A Fee For Changing A Driver's License Number~~

~~Whereas, the Division of Motor Vehicles has changed the driver's license numbers for many drivers during the past few years just to give such drivers a better license number; and~~

~~Whereas this service is not required since the driver has a properly assigned licensed number; and~~

~~Whereas there is a cost to the Division for typing an application, taking a photo, using film, using plastic chip, keypunching, verifying and processing the new record to the computer, and deleting the old record from the computer from the computer~~

~~Be it therefore resolved that effective immediately the following fees are to be assessed for a change of driver's license number:~~

~~\$1.00 Cost of Material~~

~~-10.00 Service Charge~~

~~\$11.00 Total~~

POLICY REGULATION NUMBER 66

~~FEBRUARY 22, 1982~~

~~CONCERNING: School Bus Drivers License/Renewals~~

~~Pursuant to Title 21, Chapter 27; Section 2708(b), of the **Delaware Code**, a *school bus* driver's license shall be renewed annually, prior to the start of the school year, at a time set by Department regulation.~~

~~In accordance with the above mentioned law, the Department has determined that, school bus drivers' licenses or endorsements shall expire on August 31 each year.~~

~~An eye test is required at time of renewal.~~

~~A school bus operator may apply for a renewal of the school bus endorsement anytime beginning July 1. A blue D.P.I. card must be submitted to the Division. The driving record will be reviewed.~~

~~A new applicant applying on or after July 1 will be issued a school bus endorsement/license expiring August 31 of the following year.~~

~~A new applicant applying before July 1 will be issued a school bus endorsement/license expiring August 31 of the current year.~~

~~If the applicant's school bus endorsement /license has expired over one year, the applicant must present a blue card issued by the Department of Public Instruction and submit to an eye test, written examination and road test. The applicant does not have to re-attend the required classroom training. If~~

the applicant fails any part of the test/examination, such applicant must wait 10 days before being retested.

POLICY REGULATION NUMBER 67

FEBRUARY 22, 1982

(Revised February 26, 1982)

CONCERNING: Issuance Of 30-Day Permits To School Bus Operators

Pursuant to Title 21, Chapter 27, Section 2708(a-7), the Division of Motor Vehicles is authorized to issue a temporary nonrenewable permit for 30 calendar days to an applicant for a school bus driver's licenses/endorsement, upon recommendation of the area transportation supervisor and after the applicant has passed the road test, physical examination and eye test.

In accordance with the above mentioned law the following, policy and procedures are hereby adopted:

The Transportation Supervisor, upon receipt of the valid physical examination form, will supply the applicant with a Delaware School Bus Driver's Handbook, a Division of Motor Vehicles Driver's Manual, and the pink card:

The applicant, after studying the Handbook and Manual, can take the pink card to the Motor Vehicle Division office and request and eye test, written test, and road test. Upon satisfactory completion of the three tests, the applicant will be eligible to receive a temporary 30-day school bus operator's permit.

When the holder of the 30-day permit completes the required classroom training, he will be issued the yellow card.

The yellow card will be presented to the same Motor Vehicle Division office and the school bus operator's endorsement will be issued without any further testing, provided the temporary permit is still valid. If the permit has expired, the applicant must meet the same requirements as any other applicant.

POLICY REGULATION NUMBER 68

MARCH 15, 1982

CONCERNING: Types of Driver Licenses Required For The Operation of School Buses

Pursuant to Title 21, Section 2708, a valid school bus endorsement shall be required on the driver's license of an operator of a school bus when such school bus is transporting pupils. Such school bus endorsement can be issued on a "Class A", "Class B", or "Class C" drivers license and is to be considered legal when operating a school

bus regardless of the gross registered weight of such school bus.

Pursuant to Title 21, Section 2708(e), a school bus license or endorsement is not required when the school bus is being operated for other than school activities. However, when the school bus is being operated for other than school activities, the operator must be properly licensed with the appropriate class license for the gross registered weight of the school bus.

Example: An operator of a school bus, such school bus having a gross registered weight of 21,000 lbs., operating a school bus for other than school activities must hold a valid "Class B" or "Class C" driver's license.

If the gross registered weight, in the example, is 20,000 lbs. or less, operator can hold a valid "Class All, "Class B" or "Class C" driver's license.

For "other than school activities" the normal Classified Driver's License System applies.

POLICY REGULATION NUMBER 69

MARCH 18, 1982

CONCERNING: Exempt Registration Fees For Disabled Veterans

Title 21, Section 2164 of the **Delaware Code** reads as follows:

"2164. Registration and inspection of motor vehicles of disabled veterans.

A motor vehicle owned by a disabled veteran who obtained such a vehicle pursuant to 38 U.S.C.A. § 1901 et seq. or Public Law 538, 93rd Congress shall be registered, but shall be exempt from the payment of registration fees. The Secretary shall furnish, without cost, number and registration plates for all such vehicles of such design as will distinguish them from other plates for which fees are paid. Nothing herein contained shall be construed as exempting such vehicles from the requirement of inspection."

Upon a written request to the Division's Deputy Attorney General dated January 11, 1982, the following clarification of the federal law was received dated January 26, 1982, from Deputy Attorney General James J. Hanley:

"Section 2164 is limited to registration of a motor vehicle:

1. Owned by a disabled veteran who obtained such a vehicle pursuant to federal law. The provisions of 38 U.S.C. 91903 state that the federal law entitles a disabled veteran to receive only one car. Since he can only obtain one car with federal money, he can only benefit from the exemption in 21 Del. C. 92164 one time.

2. Federal law also provides for adaptive equipment to be installed in a car. This benefit is not limited to one time. The veteran can have the equipment installed on a car that he subsequently purchases without any federal assistance in the purchase.

3. Since Delaware law is only concerned with a car purchased with federal assistance, and not with cars provided adaptive equipment, the exemption of 21 ~~Del.C.~~ §2164 is a one time privilege."

Based on the above clarification an exempt vehicle registration is to be given on one vehicle only for a disabled veteran.

Example: John Doe received a one-time payment from the Veterans' Administration toward the purchase of a vehicle. The registration fee (and only the registration fee) for this vehicle is exempted for as long as this disabled veteran owns the vehicle. However, the vehicle must be inspected for safety each year. If John Doe (owner) trades this vehicle in on another vehicle at some point in the future, the newly acquired vehicle does not qualify for an exempt registration fee. The newly acquired vehicle still does not qualify for an exempt registration fee even though the disabled veteran may receive federal funds for payment to install special adaptive equipment or to replace or repair such special adaptive equipment.

Prior to granting any future exemption for registration fee at the time a certificate of title is issued it will be required that the applicant submit to the Division a letter from the Veteran Administration stating the following:

"Division of Motor Vehicles
P.O. Box 698
Dover, Delaware

Dear,

This is to certify that a service-connected disabled veteran, has received a one-time payment in the amount of \$4, 400. 00 toward the purchase of an automobile or other conveyance.

The veteran is also entitled to payment for the adaptive equipment, its repair, replacement or re-installation required because of disability for the safe operation of the vehicle purchased with VA assistance or for a previously or subsequently acquired vehicle.

These entitlements are pursuant to 38U. S. C. 1901 and following.

Sincerely,"

The above letter has been drafted by the Veterans Administration and will be provided by them to persons receiving the one-time payment toward the purchase of a vehicle. It will be amended to include the date of the grant.

POLICY REGULATION NUMBER 80

NOVEMBER 6, 1986

CONCERNING: School Bus Driver Applicants

Pursuant to 21 ~~Del.C.~~ §.2708, amended on July 8, 1986, the following policy regulation becomes effective immediately.

(a) Applicants training to be school bus drivers pursuant to 21 ~~Del.C.~~ §.2708(a)(4) may drive a school bus with a valid Delaware Class A, B or C license or a comparable valid out-of-state operator's license in preparation for taking the road test at the Delaware Motor Vehicle Division to qualify for a 30-day non-renewable temporary permit, provided they are accompanied by a certified Delaware School Bus Driver Trainer as an instructor and no other passengers are aboard.

When applicants are prepared to take the written test, eye test and road test in the school bus, they may drive the bus to the Motor Vehicle Division alone provided they possess a pink card issued by the local Transportation Supervisor.

Upon satisfactory completion of all three tests administered by the Division of Motor Vehicles, the applicant will receive a 30-day non-renewable temporary permit issued by the Division of Motor Vehicles. The permit will enable the applicant to drive's school bus with children aboard for 30 calendar days during which time the complete 12 hours of classroom instruction and 6 hours of on-bus training under the supervision of a Certified Delaware School Bus Driver Trainer must be completed. When the required 18 hours of training and all other requirements have been met, the applicant may apply to the local transportation supervisor for a yellow card. The yellow card will enable the applicant to go to the Motor Vehicle Division to get a "school bus endorsement" added to the Delaware license or be issued a specific school bus driver's license when an out-of-state license is involved.

(b) A person road testing a school bus, providing emergency service, going to and from the Motor Vehicle Division Inspection Lanes or providing other required maintenance or service may drive a school bus without a school bus license provided there are no children aboard.

House of Representatives
133RD GENERAL ASSEMBLY
HOUSE BILL NO. 163
AS AMENDED BY

House Amendment No. 1

PROPOSED REGULATIONS

~~AN ACT TO AMEND CHAPTER 27, TITLE 21 OF THE DELAWARE CODE RELATING TO THE QUALIFICATION FOR SCHOOL BUS DRIVERS LICENSES.~~

~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE~~

POLICY REGULATION NUMBER 85

June 1, 1990

~~CONCERNING: DENIAL OF TEMPORARY LICENSE IN CERTAIN CIRCUMSTANCES~~

~~Pursuant to 21 Del.C. Sections 302, and 2742, and Polity Regulation Number 3, the following Policy Regulation is hereby adopted:~~

~~Whereas, 21 Del.C. Section 2742 (e) states; "The officer shall take the Delaware license or permit of the driver in any such case and issue a temporary license effective only for 15 days with a provision for an additional period if a written request for hearing is received by the Division of Motor Vehicles within the 15 day period." and; s~~

~~Whereas, Policy Regulation Number 3 promulgates rules and procedures for licensing which defines "good behavior" as a basis for licensing.~~

~~Therefore, be it resolved that when an individual requests a hearing pursuant to 21 Del.C. Section 2742 for Probable Cause or Refused Chemical Test the hearing shall 1 granted. However, driving authority of any type shall not be issued in the following circumstances:~~

~~1. The individual's license is currently suspended and/or revoked.~~

~~2. The violation for which the hearing is being requested is within one (1) year after the date of license reinstatement from an alcohol and/or drug offense.~~

~~3. The violation for which the hearing is being requested is within six (6) months after the date of license reinstatement from a suspension or revocation other than alcohol and/or drugs. A further violation following reinstatement of a suspension and/or revocation shows an apparent disregard for the licensing authority.~~

~~4. The individual is currently driving on a conditional, restricted, temporary, or other type of limited license.~~

POLICY REGULATION NUMBER 86

JANUARY 1, 1991

~~SUBJECT: Fees For Furnishing Computerized Lists Of Vehicles Or Drivers~~

~~Whereas the State of Delaware enacted legislation increasing certain fees by 15 percent (House Substitute 2 for House Bill No 724); and~~

~~Whereas the fees for computerized lists of vehicles and/or drivers have not begin increased since approximately 1975; and~~

~~Whereas the cost of supplying these lists have escalated during the past 15 years;~~

~~The following fees are effective immediately whenever the Division Furnishes computerized lists:~~

~~***Initial set up fee -- \$375.00~~

~~(must be paid in advance and submitted with the request)~~

~~***Records charge -- \$11.50 per 1,000 records or portion thereof (Requestor will be billed for this amount which must be paid prior to the release of the information.)~~

~~All checks are to be made payable to the "Division of Motor Vehicles"~~

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 EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,
Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 101

ORDER**101 Delaware Student Testing Program****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** 101 Delaware Student Testing Program in order to reflect the changes made to 14 **Del.C.** §152 concerning the granting of high school diplomas for the years 2005 through 2008 and beyond. The changes made to 14 **Del.C.** §152 reflect the requirements set by Senate Bill 72 and House Bill 3 from the deliberations of the 143rd General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 2, 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** in order to reflect the changes made to 14 **Del.C.** §152 concerning the granting of high school diplomas for the years 2005 through 2008 and beyond as per the requirements set by Senate Bill 72 and House Bill 3 from the deliberations of the 143rd General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 101. Therefore, pursuant to 14 **Del.C.** §152, 14 **DE Admin. Code** 101 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 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** 101 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 101 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.** §152 on January 19, 2006. 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 19th day of January 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of January 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham, Esquire

Gregory A. Hastings

Barbara Rutt

Dennis J. Savage

1.0 Definition

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 Levels of Performance

There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. In reading, writing and

mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the cut points for Exceeds the Standard and Meets the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance

Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 **Del.C.** §153(d)(2) and 153(d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

7 DE Reg. 325 (9/1/03)

4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.1.1 Students assessed on the DSTP in grades 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized

Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a [v~~ocational~~ career] technical school district or charter school that district or charter school may provide summer school services.

8 DE Reg. 425 (9/1/04)

6.0 High School Diploma Index as Derived from the 10th Grade Assessments Pursuant to 14 Del.C. §152

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index for a distinguished diploma as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

6.4 Students shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 ~~provided that the student has attained a Performance Level 3 or higher in each content area~~ and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:

6.4.1.1.1 SAT Verbal score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;

6.4.1.1.2 SAT Verbal score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;

6.4.1.1.3 SAT Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;

6.4.1.1.4 SAT Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;

6.4.1.1.5 SAT II Writing score between 554 and 646 representing a Performance Level 4 [on the writing portion of the diploma index];

6.4.1.1.6 SAT II Writing score of 647 or higher representing a Performance Level 5 on the writing portion of the diploma index;

6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and

6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.

6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.

[6.4.1.1.10 Other nationally administered tests which have scores that can be converted to the SAT scale may be used if the converted score is equal to or higher than the SAT cut score.]

6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.

6.4.2.3 A student shall be awarded a ~~Standard~~ traditional State of Delaware Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that

the student has met all other requirements for graduation as established by the State and local districts or charter schools.

~~6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.~~

6.5 Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

7.0 Security and Confidentiality

In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the **Delaware Code** and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 **Del.C.** §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and

Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.

4 DE Reg. 464 9/1/00

5 DE Reg. 620 (9/1/01)

8 DE Reg. 425 (9/1/04)

9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar

days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit

a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin. Code** 103.2.4 unless their medical condition prevents them from being in school during the testing period.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

5 DE Reg. 2115 (5/1/02)

8 DE Reg. 425 (9/1/04)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,
Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 235

ORDER

235 Teacher of the Year Award

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 235 Teacher of the Year Award in order to clarify in 1.4 the required status of a district or charter school nominee for the Teacher of the Year award during their nominated year.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 2, 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 235 in order to clarify in 1.4 the required status of a district or charter school nominee for the Teacher of the Year award during their nominated year.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 235. Therefore, pursuant to 14 **Del.C.** Ch. 89, 14 **DE Admin. Code** 235 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 235 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** 235 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 235 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.** Ch. 89 on January 5, 2006. 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 5th day of January 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

1.0 Qualifications

~~To be considered for the Teacher of the Year award, a person shall have taught, continuously or intermittently, for an accumulative period of three years or more previous to the date of such person's nomination; shall have been formally nominated; and be actively teaching in this state at the time of nomination. A nominee shall have met all the requirements for a Standard Certificate for the position held, as approved by the Professional Standards Board, Department of Education and the State Board of Education.~~

To be considered for the Teacher of the Year award a person shall:

1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware

public school previous to the date of such person's nomination.

1.2 Have been formally nominated.

1.3 Be actively teaching in their district or charter school in this state at the time of their nomination.

1.4 Continue to actively teach in the nominating district or charter school for the duration of the [school] year of their nomination.

1.4.1 If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.

1.5 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, Department of Education and the State Board of Education.

7 DE Reg. 1178 (3/1/04)

2.0 Nominations

The following shall apply in preparing nominations in accordance with the requirements of the Act.

2.1 The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program and the ~~coordinator~~ representative for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools.

2.1.1 Nominees shall be skillful and dedicated teachers, pre-kindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.

2.2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. Format will be based on the National Teacher of the Year program.

2.3 Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year ~~Nomination Information Document~~ Program Guide that is updated each year. Another group of Department of Education Staff members shall be assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year ~~Nomination Information Document~~ Program Guide. Based

on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.

2.4 The panel of judges shall include: the current State Teacher of the Year; the President of the State Congress of Parents and Teachers; the President of the State Student Council Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.

2.5 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.

3 DE Reg. 104 (7/1/99)

7 DE Reg. 1178 (3/1/04)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,
Section 1220(a) (14 Del.C. §1220(a))
14 DE Admin. Code 710

ORDER

710 Public School Employees Work Day

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to reauthorize 14 **DE Admin. Code 710** Public School Employees Work Day. As part of the five year cycle of review for all of the Administrative Code for education this regulation has been reviewed and requires reauthorization.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 2, 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 reauthorize 14 **DE Admin. Code 712**. As part of the five year cycle of review for all of the Administrative Code for education this regulation has been reviewed and requires reauthorization.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code 712**.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 712 attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 712 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** reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 712 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 5, 2006. 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 5th day of January 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

1.0 Required Work Hours

Absent an existing collective bargaining agreement to the contrary, district employees who work less than the specified time shall have their annual salary adjusted accordingly. Upon ratification of a new or extension of an existing collective bargaining agreement, the local district shall establish hours and days worked that are consistent with those specified below. Otherwise, effective July 1, 2001 a workday for public school employees shall be defined as follows:

1.1 Teacher - minimum of 7 1/2 hours, inclusive of 1/2 hour for lunch, plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (14 **Del.C.** §1305 defines the number of teacher workdays per year and 14 **Del.C.** §1328 defines the duty free period.)

1.2 Aide/Paraprofessional - minimum of 7 1/2 hours inclusive of 1/2 hour for lunch.

1.3 Custodian - minimum of 8 hours inclusive of 1/2 hour for lunch.

1.4 Administrator - minimum of 7 1/2 hours exclusive of lunch plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school.

1.5 Food Service Manager - minimum of 7 hours exclusive of lunch.

1.6 Secretary - minimum of 7 1/2 hours exclusive of lunch.

3 DE Reg. 1077 (2/1/00)

4 DE Reg. 1254 (2/1/01)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
Section 1250-1252 (14 **Del.C.** 1250-1252)
14 **DE Admin. Code** 1518

ORDER

1518 Special Institute for Teacher Licensure and Certification

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** 1518 Special Institute for Teacher Licensure and Certification. It is necessary to adopt this regulation to provide regulatory guidance for the implementation of the Special Institute for Teacher Licensure and Certification, pursuant to 14 **Del.C.** §§1250 through 1252. This regulation concerns the establishment by one or more of Delaware's institutions of higher education of a special institute for teacher licensure and certification for individuals who hold a bachelor's degree in an area other than education to participate in course work and other experiences necessary to be eligible for teacher licensure and certification in critical needs areas, including special education. Comments received from the Governor's Advisory Council for Exceptional Children recommended that the timeline for repayment of tuition in the event an individual does not work in a Delaware school be changed. That has been addressed and a period of one year is now provided for repayment of tuition.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

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** 1518 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 5TH DAY OF JANUARY, 2006

Harold Roberts, Chair
Norman Brown
Edward Czerwinski
Karen Gordon
Bruce Harter
Carla Lawson
Gretchen Pikus
Carol Vukelich

Sharon Brittingham
Heath Chasanov
Angela Dunmore
Barbara Grogg
Leslie Holden
Mary Mirabeau
Karen Schilling Ross

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 19th day of January, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President
Mary B. Graham, Esquire
Gregory A. Hastings
Barbara Rutt
Dennis J. Savage
Dr. Claibourne D. Smith

1518 Special Institute for Teacher Licensure and Certification**1.0 Content**

This regulation shall apply to the Special Institute for Teacher Licensure and Certification, pursuant to 14 **Del.C.** §§1250 through 1252.

2.0 Definitions

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.

"**Educator**" means a person licensed and certified by the State under chapter 12 of 14 **Del.C.** to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board, but does not include substitute teachers.

"**Emergency Certificate**" means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

"**Examination of Content Knowledge**" means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

"**Examination of General Knowledge**" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing, such as PRAXIS™ I and which, for the purposes of this regulation, means a pre-professional skills test.

"**Initial License**" means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

"**Major or Its Equivalent**" means no fewer than thirty (30) credit hours in a content area.

"**Secretary**" means the Secretary of the Delaware Department of Education.

"**Standard Certificate**" means a credential issued to verify 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.

“Standards Board” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

“State Board” means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 Special Institute for Teacher Licensure and Certification

One or more of Delaware’s teacher training institutions may establish a Special Institute for Teacher Licensure and Certification to provide a program for college graduates without a license and/or certificate to become licensed and certified to teach in Delaware public schools. Tuition may not be charged to participants.

3.1 Candidates for admission to a Special Institute for Teacher Licensure and Certification shall:

3.1.1 Hold a bachelor’s degree in a field other than Education from a regionally accredited college or university, with a major or its equivalent in a content area that has designated as a critical needs area by the Department.

3.1.2 Have a grade point index in the major field of the bachelor’s degree which is two-tenths of a point higher than the grade point index required for students entering regular teacher education programs at the teacher education institution(s).

3.1.3 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 DE **Admin. Code** 1510.

3.1.4 Must agree to teach at least one (1) year in a Delaware public school for each year funding was received. Such service must be completed within five (5) years of successful completion of the Special Institute for Teacher Licensure and Certification program.

3.1.4.1 Failure to meet the requirement set forth in 3.1.4 above shall result in the individual within sixty (60) days arranging for repayment of a sum equivalent to the tuition which would have been paid for the coursework leading to licensure and certification; or

3.1.4.2 An individual may also satisfy the requirement set forth in 3.1.4 above by providing a notarized statement, accompanied by evidence of unsuccessful applications, that the individual has made a good faith effort to seek employment in at least five (5) Delaware public school districts, but has been unable to secure a teaching position in any of those districts.

3.1.4.3 An individual whose license and certificate have been revoked for cause prior to fulfilling the

service set forth in 3.1.4 shall, within sixty (60) days, arrange for repayment of their remaining obligation.

4.0 Format of the Special Institute for Teacher Licensure and Certification

4.1 A Special Institute for Teacher Licensure and Certification in a secondary content area which corresponds to the major field of study in the bachelor’s degree program shall consist of:

4.1.1 One (1) summer of courses in the Special Institute;

4.1.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and

4.1.3 Additional coursework as set forth by the teacher training institution which constitutes the program of study leading to initial licensure and certification.

4.2 A Special Institute for Teacher Licensure and Certification in elementary or special education shall consist of:

4.2.1 Two (2) summers of courses, one (1) immediately before and one (1) after a student teaching experience or one year of full-time teaching experience;

4.2.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and

4.2.3 Additional coursework as set forth by the teacher training institution which constitutes a program of study leading to initial licensure and certification.

5.0 Examination of Content Knowledge

Prior to completion of the Special Institute for Licensure and Certification, participants must successfully pass the appropriate examination of content knowledge, such as the PRAXIS™ II examination, if applicable and available.

6.0 Licensure and Certification of Special Institute Participants

6.1 The Department shall issue an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Special Institute and an Emergency Certificate to an individual employed to complete the one (1) year of full-time teaching experience in lieu of student teaching.

6.2 Upon successful completion of the Special Institute for Teacher Licensure and Certification program, an individual shall be issued an Initial License valid for the balance of the three (3) year term, and a Standard Certificate.

**DEPARTMENT OF ELECTIONS FOR
NEW CASTLE COUNTY**

Statutory Authority: 15 Delaware Code,
Section 5522(b) (15 Del.C. §5522(b))

ORDER**Security and Integrity of the Absentee Voting Process**

The proposed regulation regarding *Security and Integrity of the Absentee Voting Process* was published in the *Register of Regulations* in conformity with Delaware law. One written comment was received, it was not pertinent to the proposed regulation.

Summary of the Evidence and Information Submitted

The proposed regulation was promulgated to describe the process for insuring the security and integrity of the absentee voting process in New Castle County. The written comment suggested that the Department provide absentee ballots in alternative formats to meet the needs of disabled persons. The comment does not pertain to the proposed regulation and the Department will forward it to the Commissioner of Elections and the Departments of Elections for Kent and Sussex Counties for discussion.

Findings of Fact

15 Del.C. §522 (b) requires that the Department of Elections for New Castle County promulgate a regulation regarding the security and integrity of the absentee voting process. The proposed regulation meets or exceeds that requirement.

Decision and Order

Based on the provisions of 15 Del.C. §5522 (b) and the record, we hereby adopt Regulation 2006-001 to be effective ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

Text and Citation

The text of this regulation appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 855-859, December 1, 2005.

IT IS SO ORDERED by unanimous vote this 10th day of January, 2006.

**BOARD OF ELECTIONS FOR NEW CASTLE
COUNTY**

Orval L. Foraker, Jr. President
Noel H. Kuhrt, Acting Secretary
William A. Baker, Sr.
Helen M. Dudlek
Marilynn Parks
Paul F. Lanouette
James A. Sterling
Marilyn P. Whittington

* Please note that no changes were made to the regulation as originally proposed and published in the December 2005 issue of the Register at page 855 (9 DE Reg. 855 (12/01/05)). Therefore, the final regulation is not being republished. Please refer to the December 2005 issue of the Register or contact the Department of Elections for New Castle County.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL
ASSISTANCE**

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

**Notice of Withdrawal of Proposed Regulation
Long Term Care Medicaid**

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 512, notice is hereby given that the proposed regulation published in Volume 9, Issue 6, Number 859 of the December 1, 2005 issue of the *Delaware Register of Regulations* is withdrawn.

Summary of Withdrawal

On December 1, 2005, the Division of Medicaid and Medical Assistance (DMMA) published for public comment a proposal to amend the rules in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance. DMMA proposed to expand the terms at DSSM 20910.1 and DSSM 20910.2 to clearly define who is an institutionalized spouse and who is a community spouse to include persons receiving (20910.1) and not receiving (20910.2) Medicaid under any of the Medicaid Long Term Care Programs. The clarifications will assist

staff in determining if a spousal calculation needs to be completed. These changes will enable the Social Worker to process the case in a more accurate and timely manner.

In response to the public notice, the Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below.

First, both proposed Sections 20910.1 and 20910.2 "carve out" "Assisted Living Waiver" as a distinct program from "Home and Community Based Services". This is inconsistent with attached Section 20100, which includes "Assisted Living Waiver" as a form of HCBS. This creates an unnecessary inconsistency in the regulatory scheme.

Second, the attached Section 3710 of the CMS State Medicaid Manual allows application of the long-term care and spousal impoverishment standards to §1915(c) HCBS waiver participants. Delaware accepted this option in 1993. See attached Section 20900. By analogy, it may be inappropriate to define community spouse as someone participating in HCBS programs apart from §1915(c) waivers. Specifically, the reference to "any of the Long Term Care Medicaid programs such as..." may be overbroad since it encompasses more than §1915(c) waivers. The CMS definition of "community spouse" in attached Section 3710 is simply a spouse "not living in a medical institution or nursing facility." There is no authorization to limit "community spouse" to someone receiving any form of Medicaid LTC assistance.

DMMA withdraws its proposed regulation published on December 1, 2005 at 9 DE Reg. 859 as of February 1, 2006.

Long Term Care Medicaid

DMMA NOTICE OF WITHDRAWAL #06-01

REVISIONS:

20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility and who is not receiving HCBS. Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver.

20910.2 Community Spouse

~~An individual who is married to an institutionalized spouse and who does not receive HCBS~~ An individual who

is not receiving Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver and is married to an institutionalized spouse.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3).0 (16 Del.C. §122(3).0)
16 DE Admin. Code 4202

ORDER

4202 Control of Communicable and Other Disease Conditions

Nature of the Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Sections 122; 128; 129; 504; 505; 507; 702 and 707.

On December 1, 2005 (Volume 9, Issue 6), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 3, 2006, 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."

Findings of Fact

Based on comments received, non-substantive changes were made to the proposed regulations. 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 Regulations for the Control of Contagious

and Other Disease Conditions are adopted and shall become effective February 10, 2006, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, January 13, 2006

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed amendments to the Department of Health and Social Services (DHSS) Regulations for the Control of Communicable and Other Disease Conditions were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (December 1, 2005 through January 3, 2006). Entities offering written comments included:

- State Council for Persons with Disabilities (SCPD)
- Bayhealth Medical Center Infection Control Department
- Delaware Health Care Facilities Association
- Christiana Care Health System Infection Control
- Delaware Regional APIC
- Nemours duPont Hospital for Children Infection Control
- Blood Bank of Delmarva

Public comments and the DHSS (Agency) responses are as follows:

Multiple statutory provisions in Title 16 (Chapters 5 and 7) and Title 20 (Chapter 31) covering reporting of communicable diseases, voluntary and involuntary treatment, and due process procedures sometimes overlap and are not uniformly consistent. There are multiple provisions which indicate that the Title 20 (public health emergencies) provisions supersede any inconsistent provisions in Title 16. See, e.g., Title 16 **Del.C.** §§505(c), 508(g), and 532. This “loose” integration of statutes undermines the development of a single set of regulations.

Agency Response: The agency is not authorized to change statute. A purpose of the proposed regulations is to provide more consistency between the regulations and the statute.

The definition of “epidemic or outbreak” merits review. Literally, the declaration of a state of emergency due to a widespread illness cannot be considered an epidemic or outbreak. It is recognized that Title 20, **Del.C.** §§3137, 3138,

and 3140 grant certain emergency powers in the event of a state of emergency. However, Title 20 does not contain mandatory reporting provisions. By including a “state of emergency” in the definition of “epidemic or outbreak”, the regulations would reinforce the mandate in Section 3.0 that health care providers report “outbreaks”, “clusters of illness”, and all cases related to a health emergency. Alternatively, perhaps a definition of “public health emergency” (Section 3.2) could be included which would include diseases/conditions identified in a state of emergency declaration.

Agency Response: The agency will amend the definition of “Epidemic” or “Outbreak” and add the definition of public health emergency to the regulation.

Section 4.4: This section authorizes, but does not require, primarily non-medical persons to report notifiable diseases. The preface indicates that the section is intended to supplement the mandatory reporting provisions in the regulations. The proposed revision in this section deletes “every nurse”, ostensibly since nurses are within the definition of “health care provider” who would be subject to mandatory reporting. However, the term “dentist” is retained in Section 4.4 despite the inclusion of dentists in the definition of “health care provider”. The term “dentist” should logically be deleted from Section 4.4.

Agency Response: The agency will delete “dentist” from Section 4.4

There is some inconsistency between Sections 3.1 and 3.2.1 and Section 4.4. Sections 3.1 and 3.2.1 require any person identified in Section 4 to report knowledge of a notifiable disease. In contrast, Section 4.4 literally makes such reporting by many persons optional, i.e., reporting is “requested and authorized” but not required. This creates ambiguity in the regulatory scheme.

Agency Response: The agency will amend the regulation such that Section 3.1 reads “Any health care provider having knowledge of any outbreak...shall report...”

The term “engaged in sensitive situations” in Section 5.3.1 is grammatically odd. How does one engage in a setting? DPH may wish to consider alternative terminology.

Agency Response: The phrase “engage in sensitive situations” has been part of the regulations since their inception. Experience suggests that it appears to be well understood.

The Section 6.0 quarantine and isolation due process procedures are derived from Title 20 **Del.C.** §3136 which is

only applicable to public health emergencies. The Code directs that DPH regulations extend similar rights to persons quarantined under Title 16 Del.C. §§505-506. However, there are separate due process procedures for quarantine for sexually transmitted diseases which contemplates J.P. Court proceedings [Title 16 Del.C. §§704-705]. There are also separate due process standards applicable to quarantine for tuberculosis [Title 16 Del.C. §§526 and 529]. The proposed regulations make no such distinctions and ostensibly apply one set of due process standards to all quarantines.

Agency Response: The agency will add Section 6.10 to the regulation to address additional due process rights.

Section 11.1: Recommend Universal precautions be changed to Standard Precautions throughout the document and defined per CDC. Universal Precautions addressed only bloodborne Pathogens. Standard Precautions is designed to reduce the transmission risks of all communicable diseases.

Agency Response: The agency will change all references to “universal precautions to “standard precautions.”

Section 11.3.2.2: Air-borne needs to be either defined in the data dictionary or changed. The term is confusing with the CDC list of air-borne organisms. For example, meningitis from *N. meningitidis* or *Haemophilus influenzae* is considered Droplet precautions per CDC, not air-borne. If the term air-borne is used to describe “organisms that travel by air”, that should be defined in the data dictionary to prevent confusion.

Agency Response: The agency will change all references to “air-borne” to “air-borne and droplet spread.”

Appendix II Organisms and Samples to be sent to the Division of Public Health Laboratory. Sending isolates of *Staphylococcus aureus*, sterile sites, Methicillin resistant, and Vancomycin resistant Enterococci VRE will significantly increase the workload for all of the clinical laboratories around the state and the Delaware State Public Health Lab without improving care to our population. CCHS disagrees with the utility of sending those isolates and demographic data. What is being done with the information, especially the patient demographics? Can the requirement for demographic information on the resistant organisms be delayed until DERSS is fully operational and can download this information automatically? Can we continue with our current method of reporting resistant organisms?

Agency Response: The agency will revise the proposed regulations so as to not require sending isolates to the agency laboratory for: “staphylococcus aureus, sterile sites, Methicillin resistant,” and “Vancomycin resistant

Enterococci (VRE) sterile sites.” The agency will provide a provision that reporting of demographic information for antimicrobial resistant organisms can be delayed until such information can be reported through electronic means.

Under definitions, add Isolation Precautions, as defined by the CDC Isolation Guideline: Airborne Precautions; Droplet Precautions; and, Contact Precautions. Also include types of Personal Protective Equipment (PPE) needed to work safely within each type of Isolation Precaution.

Agency Response: The agency considers the regulation of hospital infection control to be beyond the scope of these regulations.

Replace the old terminology of ‘nosocomial’ with Healthcare-Associated Infection (HAI) as defined by the CDC Isolation Guideline.

Agency Response: The agency will include this terminology in the definition of nosocomial infection.

In the definition of Contagious Diseases add ‘vector-borne’ since infections such as Lyme Disease, Rocky Mountain Spotted Fever, and Malaria are considered Notifiable.

Agency Response: The agency considers this to be included in “animal-to-person,” which is part of the definition of contagious diseases.

In the definition of Bloodborne Pathogens, add ‘Tissue, CSF, Synovial fluid, Peritoneal fluid, Pericardial fluid, and Amniotic fluid’.

Agency Response: The agency is assuming that this comment pertains to Section 11.3.3.1. The agency will add the suggested language.

In reporting of Varicella, is Infection Control required to report ‘confirmed cases’ only? If clinically diagnosed cases are to be included, we will need to create processes for information capture on the Hospital side (likely, a manual process).

Agency Response: Section 2.1 states that the “occurrence or suspected occurrence” of notifiable diseases listed in the Appendix shall be reported. Therefore non-confirmed varicella shall be reported if that diagnosis is clinically suspected.

Under definitions ‘Resistant Organism’ is now referred to as ‘Multi-Drug Resistant Organism (MDRO)’.

Agency Response: The agency will include this terminology in the definition of resistant organism.

Section 11.10: Under ‘Testing of Patients for Infection’, will this prevent testing a source patient when an exposure event occurs to a medical care provider (Post Exposure Testing for HIV and Hepatitis)? Our understanding is *Delaware Law*, Chapter 12 does allow for source patient testing when related to an exposure event. Can this be clarified?

Agency Response: Section 11.10 pertains only to the provisions of Section 11.0 (Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases” and does not explicitly prohibit patient testing (it just does not authorize it). Title 16, Chapter 12 of the **Delaware Code** still applies.

Appendix II Organisms and Samples to be sent to the Division of Public Health Laboratory: Should ESBLs isolated from sterile samples also be sent to the DPHL?

Agency Response: The agency reviewed this comment in the context of other comments made on sending antimicrobial resistant isolates to the Division’s laboratory. The agency concluded that the inconvenience and time necessary to send ESBL does not justify the potential for disease control.

Enteric Pathogen infections in Health Care Personnel – the CDC Guidelines for Health Care Personnel allows return to work after symptoms resolve, unless local Regulations require exclusion from duty. What is the DPH reference for Enteric infection Regulation? The citation appears to be missing..

Agency Response: The agency is not clear about what section of the proposed regulation is being commented upon. A hospital employee with an enteric infection would be a matter of hospital infection control and generally outside the scope of these regulations. However, the agency can provide recommendations addressing this situation.

The document language does not make clear the level of Hospital participation with DERSS. There is no clarity regarding ‘automatic electronic transfer’ of epidemiologically-important information from Hospital to DERSS. Automatic electronic transfer addresses accuracy and timeliness of the information. It also addresses the timeliness of Emergency Room Syndromic Surveillance Reporting, which may be 24-72 hours behind when using the current reporting mechanisms.

Agency Response: The regulations will be clarified to indicate that the agency will provide technical specifications, and that the hospital must make a good faith effort to conform to such specifications.

Section 3.0 Report of Outbreaks: The regulation never stipulates what constitutes an outbreak, i.e. 3 cases on one wing or 3% of the whole house-wide population. It indicates an increase above the expected number, however, no specific guidance for what that average number is has been supplied. The section is extremely vague and does not include disease specific guidelines, i.e. one case of active TB = an outbreak, 3 cases of gastrointestinal illness on the same unit or 3% of the facility population.

Agency Response: The definition states “clearly in excess of normal expectancy.” The agency asserts that this definition is sufficiently specific.

Section 4.0 Persons/Institutions required to report: What is the definition of “unattended death” and why is it reported by the medical examiner? What about extended care facilities, group homes, etc, where a medical examiner is not usually present?

Agency Response: The regulations will be revised to make clear that the medical examiner will report the occurrence of a notifiable disease for all cases he or she examines.

Section 4.3.3 Reporting of antibiotic resistant organisms: Is the lab required to report first, and how does the care facility/hospital know if it has been reported? Who is required to report this? One organism could be reported multiple times if this section is followed. Why are they reporting every case? MDRO’s are becoming endemic and usually the only time they are reported is in an outbreak situation or if a new genetic shift/drift is identified.

Agency Response: See previous comment and response on this Section. The facility can develop their own procedures to report.

Section 5.3 Sensitive situations: What does this mean? Reference to definition in “Part II I” is not in the document. The definition does not include specific examples, which makes following very difficult. Too vague and needs more information.

Agency Response: The phrase is defined in Section 1.0. The inaccurate reference to Part II I will be changed.

Section 6.0 Quarantine and Isolation: There is no difference in the proposed definitions, so one term needs to be used only. It is assumed this section is not referring to MDRO’s, but is referring to epidemiologically significant infections, i.e. E.bola, Avian flu, SARS, etc. By current guidelines we “isolate the organism”, not the patient, for illnesses other than those types. Section 6.3.2 makes absolutely no sense, as it states “isolated individuals must be

confined separately from quarantined individuals.” What is the difference? The term Isolation applies to Standard and Transmission based precautions, and in this case, is different from quarantine, but is referenced inappropriately in this section as being interchangeable.

Agency Response: The terms are separately defined in Section 1.0. Quarantine refers to exposed, well persons who may be infected. Isolation refers to ill, infected persons. Section 6.3.2 indicates that quarantined persons must be confined separately from isolated patients. Isolation and quarantine, under this regulation, may be implemented at the discretion of the agency in the community or in a hospital. However, unless so ordered by the agency, it does not supersede hospital isolation procedures. The agency asserts that this section is sufficiently clear.

Section 7.5.3.1 Diagnostic examination (TB): Why would gastric contents be considered for screening? Extra pulmonary cases of TB are not transmissible person to person, so this section should focus on screening and diagnosis of laryngeal or pulmonary TB only. Why doesn't this section speak to admission screening and annual symptom surveillance for inpatients? There is no clear guidelines how to screen, only dealing with active disease. Is there a separate regulation/guideline for this?

Agency Response: The reporting of gastric contents would be required for diagnosis only at the discretion of the agency. The agency asserts that the section appropriately requires diagnosis of extra-pulmonary TB. Even though it is not communicable, it contributes to understanding of the epidemiology of TB in Delaware and it may indicate the need to investigate the source of the extra-pulmonary TB for adequate disease control. However, as the comment indicates, extra-pulmonary TB is usually not infections. Therefore the word “infectious” will be stricken from 7.5.3.1. Regulation of admission screening and annual symptom surveillance for inpatients is a matter hospital infection control procedures and is beyond the scope of these regulations.

Section 11.1 Definitions: The term “Universal Precautions” must be stricken from the regulation, as it has not existed since November of 1996. Standard and Transmission based Precautions is the correct verbiage and the section must reflect this changes made in the 1996 HICPAC guidelines. Barrier precautions not required at all times, the verbiage reads “as necessary”. One does not use full PPE to walk into a patient room any longer. The guidelines are very clear, including the grid fro what type/how often precautions are needed. Please review the documents to update the regulation.

Agency Response: “Standard precautions” will replace “universal precautions.” Because the regulations use the word “appropriate” barrier precautions, the agency asserts that the section is sufficiently clear.

Section 11.2.1.6 Exposure to communicable disease: Use of safety sharps, unless a reasonable alternative is not available needs to be included, yet is not mentioned. This is an OSHA mandate.

Agency Response: The words, “and safety sharps” will be added.

Section 11.3.3.2.1 Airborne pathogens: Varicella should be but is not mentioned in this section and it is an airborne pathogen. Meningococcal disease and H. flu are not spread by airborne means, but by large droplet nuclei, which fall under the category of Droplet Precautions, not Airborne. Airborne illnesses require N95 masks/respirators prior to entering a resident's room. Droplet Precautions require a surgical mask within 3 feet of the infected individual. Therefore, they are different processes and entities.

Agency Response: See previous comment and response on this Section. The agency will conduct a more extensive review of this section in the near future.

Section 11.10 Testing of Patients for Infection: Again, screening for TB needs to be addressed. Why are there no provisions for post acute/non hospital settings?

Agency Response: The Section does not specifically authorize testing (including TB), but does not prevent it. Section 1.1 defines receiving medical facility as a hospital or similar facility who receives a patient for continued medical care. This definition would include post acute/non hospital settings.

It is unclear as to the significance of sharing specimens or culture results for agents causing certain diseases listed. The question is what exactly are they going to do with such results, or specimens? There isn't a problem referring agents of bioterrorism (the document should define what those are), or even Vanco I/R Staph aureus, but routine MRSA's, or Strep pneumonias's don't seem significant. We are confident in our abilities to accurately detect these organisms, thus it is not clear as to why they are wanted.

Agency Response: See previous comments and responses on antimicrobial resistant organisms.

It looks like a version of our antibiogram (pg 6) “In addition, the number of susceptible and non-susceptible isolates...shall be reported monthly...”. We pull our antibiogram yearly, not quite sure why this information

would need to be reported monthly.

Agency Response: The data that is requested monthly is only the total number of susceptible and non-susceptible isolates by organism. No personal identifying, susceptibility patterns, or other information is required on this report denominator data that is utilized to determine incidence and prevalence rates.

Section 1.0 Definitions: A better definition of Resistant Organism would be necessary.

Agency Response: Since no specific concern about the definition was submitted with this comment, the agency will leave the definition as is. However, based on another comment, the agency updated the definition of Resistant Organism by adding Multi-Drug Resistant Organism to the definition.

Under Sections 2.2 and 7.3.2.3, there is a concern about 48 hour reporting, since IC is not a 24 hour department and generally does the reporting. We would recommend 3 or 4 “working days” as better time/terminology.

Agency Response: The agency’s mission would be impaired by further delaying disease reports. The development of electronic reporting should make it easier for hospitals and laboratories to report timely. Section 7.3.2.3 pertains to STD. Title 16, Chapter 702 of the **Delaware Code** requires reports of STD to be made within one working day.

Under Section 4.2.2 took away the definition of practitioner in 4.1, but referred to it in this section.

Agency Response: The phrase “attending practitioner” will be replaced by “health care provider” in Section 4.2.2

Under 4.3.3 defining antibiotic resistant organisms, since IC reports electronically will the labs be able to interface, the requirements to report MIC/Zone. There may not be enough space in the current DERSS 100 character field. SSN is not listed here as a reporting requirement. Can the total number of susceptible and non-susceptible isolated be entered on the line? Referral to the “reporting officer” is mentioned. It would be beneficial if the state could provide the reporting officer for a facility, or even one per county.

Agency Response: The concerns are procedural in nature and not a matter of regulation. The agency is working on plans to accommodate reports. Section 4.2 refers to a reporting officer who shall be appointed by each hospital. Reporting officers are not provided by the state.

In Section 4.4, jail and prison are used interchangeably. Are they the same?

Agency Response: The word “jail” in Section 4.4 will be changed to “prison.”

Under Section 7.4.2.4, we usually call HIV with the report, will that continue to be acceptable?

Agency Response: As specified in this Section, other means of reporting are permitted upon approval of the Division.

Section 11.4.1, requires every employer of an EMS provider and every organization that supervises volunteer EMS providers to register a designated officer. Under the current system, there does not seem to be an ongoing maintenance of this system, and we would recommend including how this should be done and who is responsible for overseeing this so that the Medical Facility can notify the appropriate designated officer as per the form that was approved by the State Board of Health. Ongoing education with these designated officers should also be addressed in this document.

Agency Response: The agency will conduct a thorough review of Section 11.0 in the near future.

Under the new listing of reportable organisms, what is the significance of reporting CMV. We think at best we should only be reporting neonatal infections with CMV. Additionally, we also have concern over the requirement for reporting ESBL resistance. We don’t know the significance and potentially would be talking about a large number of reports. The other issue we have is why is it important that MRSA and VRE be reported in 48 hours? A great percentage of these isolates are colonization not infection and are not significant enough to require 48 hour reporting. It would be almost impossible to report all STD’s within 24 hours.

Agency Response: The agency will change the proposed reportable disease list to include only neonatal CMV. Reporting of ESBL, as well as other antimicrobial organisms is necessary for the agency to understand its epidemiology in Delaware. The agency will include a provision that the requirement to report demographic information for antibiotic resistant organisms may be delayed until electronic reporting mechanisms are in place for this purpose. The time frame for STD reporting is specified in law (Title 16, Chapter 702). The agency is not authorized to change this requirement..

Clinical labs will be unable to meet 24 hour deadline to send isolates to the Public Health Lab. 3 to 4 working days would be more realistic. What forms need to be submitted with the isolates since they go to the lab and not the epidemiology section? Also, will the state courier service be

available all of this time?

Agency Response: The agency will be unable to effectively fulfill its disease control mission if isolates are delayed 3 or 4 days. Forms and courier service questions should be directed to the Division of Public Health Laboratory and are not a matter of regulation.

Under the definition section if the word "carriers" is used, it should be co-jointly with the terminology colonization.

Agency Response: A carrier may be infected as well as colonized with a pathogen. The definition is consistent with "Control of Communicable Disease Manual", 18th edition, published by the American Public Health Association.

Section 1.0 Definitions: "HIV Infection" to include HIV NAT (Nucleic Acid Testing) as an option.

Agency Response: The definition in Section 1.0 provides examples only. HIV NAT would therefore be included.

Section 2.0, subsection 2.2.1, specifies that reports pursuant to this subsection shall be made electronically, telephonically, facsimile, or in writing within 48 hours of recognition to the Division Director or designee, except as otherwise noted in these regulations or specified in the Appendices to these regulations. The Blood Bank of Delmarva's policy is to notify the office of Division of Public Health immediately after mailing a letter to the donor regarding his/her confirming test results, which usually occurs within 72 hours from receipt of confirmatory test results.

Agency Response: The agency cannot effectively fulfill its mission for disease control without timely reports. The Blood Bank has the choice of notifying the donor sooner, or notifying the Division first.

Section 7.3, subsection 7.3.2.2 states that a donor's race and the name of the physician to be included in the report submitted to the Division of Public Health. The Blood Bank of Delmarva does not document the donor's race and his/her physician's name.

Agency Response: Section 2.2.2 indicates that such information is only required when available.

Section 7.4, subsection 7.4.2.2 states that the blood bank has to include the race of the donor and laboratory findings including all CD4 T-lymphocytes percentage and test results and viral load detection test results (detectable and non detectable), and the name and address of the health care provider and that of the processing laboratory. The Blood

Bank of Delmarva does not document the donor's race and his/her healthcare provider's name. The CDC T-lymphocyte and viral load detection test results are not available to the Blood Bank of Delmarva, Inc., these results may be available to the donor's physician or the clinic that conducts diagnostic testing recommended by the donor's physician.

Agency Response: Section 2.2.2 indicates that such information is only required when available.

Section 7.4, subsection 7.4.2.4 states that reports of HIV/AIDS shall be routed to the Division of Public Health office with 48 hours of diagnosis or treatment. The Blood Bank of Delmarva, Inc., only tests a donor's sample for the presence of the virus and anti-bodies, the diagnostic test for HIV/AIDS is performed by the donor's physician.

Agency Response: The words "positive test" will be added to Section 7.4 to clarify the intent

Appendix I to include West Nile Virus disease.

Agency Response: West Nile Virus is an arbovirus, which is reportable. Appendix I will be modified to make this clear.

In addition to non-substantive amendments mentioned above, many minor grammatical corrections were made to further clarify the proposed regulations.

The public comment period was open from December 1, 2005 to January 3, 2006.

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.

4202 Control of [~~Communicable~~ Contagious] and Other Disease Conditions

~~1.0~~ **Applicable Codes**

~~These regulations are adopted by the Department of Health & Social Services pursuant to 16 Del. C. §122(1), (2), (3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations were originally adopted on August 2, 1984 effective September 1, 1984, and subsequently amended.~~

1.0 Definitions

The following terms shall mean:

"**Carrier**" A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.

"Case" A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.

"Child Care Facility" Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

"Communicable Disease" ~~means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment means "Contagious Disease".~~

"Contact" A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

"Contagious Disease" An infectious disease that can be transmitted from person to person, or animal to person.

"Designee" The person named by the Director of the Division of Public Health to assume a specific responsibility.

"Division" The Division of Public Health.

"Division Director" The Director of the Division of Public Health.

"Directly Observed Therapy (DOT)" an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

"Epidemic" or "Outbreak" The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy. ~~but not upon declaration of a state of emergency due to such illness of similar nature.~~

"Health care provider" Any person or entity who provides health care services, including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

"HIV Infection" repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example p24 antigen); or a positive result on any other highly specific licensed test for HIV.

"Infectious disease" A disease caused by a living organism or other pathogen, including a fungus, bacillus,

parasite, protozoan or virus. An infectious disease may or may not be transmissible from person to person or animal to person.

"Isolation" The physical separation and confinement of an individual or group of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals to prevent or limit the transmission of the disease to non-isolated individuals.

"Medical Examiner" A physician appointed pursuant to 29 Del.C. §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

"Nosocomial Disease" A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission. **[Also known as Healthcare Associated Infection.]**

"Notifiable Disease" An infectious communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

"Notification" A written[, **electronic,**] or verbal report as required by any section of these Rules.

"Outbreak" Refer to definition of "Epidemic".

"Post-Secondary Institution" Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

["Public Health Emergency" is an occurrence or imminent threat of an illness or health condition that is believed to be caused by any of the following:

- 1. Bioterrorism;**
 - 2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or**
 - 3. A chemical attack or accidental release;**
- and, Poses a high probability of any of the following harms:**

- 1. A large number of deaths in the affected populations;**
- 2. A large number of serious or long-term disabilities in the affected population; or**
- 3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.]**

"Quarantine" ~~An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. The Division Director or designee shall determine which persons or animals are subject to quarantine and shall issue appropriate instructions~~ The physical separation and confinement of an individual or group of individuals who are

or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of contagious disease from non-quarantined individuals to prevent or limit the transmission of the [to] disease to non-quarantined individuals.

"Resistant Organism" Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective. **[Also known as Multi-Drug Resistant Organism.]**

"Sensitive Situation" A setting, as judged by the Director of the Division of Public Health or designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard, but not a public health emergency as defined in Title 20 3132(11) of the **Delaware Code**. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

"Source of Infection" The person, animal, object or substance from which an infectious agent passes directly to the host.

"Suspect" A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a[n **communicable infectious**] disease condition.

"Syndromic Surveillance" Surveillance using signs and symptoms that precede diagnosis and may signal a sufficient probability of a case or an outbreak to warrant further public health response.

2.0 Notifiable Diseases or Conditions to be Reported **Conditions to be Reported, Timeliness and Manner of Reporting**

2.1 Notifiable Diseases Reporting

The notifiable diseases specified in the Appendices to these regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those identified after death, shall be reported as defined in Section 3 to the Division of Public Health. Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N). The Division of Public Health may list additional

diseases and conditions on its reporting forms for which reporting is encouraged but not required.

2.2 Timeliness and Content of Notifiable Disease Reports

2.2.1 Reports pursuant to this subsection shall be made electronically, telephonically, [by] facsimile, or in writing within 48 hours of recognition to the Division Director or designee, except as otherwise noted in these regulations or specified in the Appendices to these regulations.

2.2.2 Except as otherwise provided by these regulations, reports of notifiable or other diseases or conditions required to be reported by these regulations shall contain sufficient information to contact person reporting. When available, the following information shall be reported: the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected, the date of onset of illness; the name, address, and telephone number of the person's health care provider; and any pertinent laboratory information.

2.3 Ordinary Skill

Any person who is required to report a disease or other condition under this Section shall use ordinary skill in determining the presence of the reportable disease or condition. If the determination of the disease or condition is disputable and the disease or condition may have potential public health concern or may potentially be an indicator of a public health emergency, the Division Director or designee may request tests through the Division's laboratory or another certified laboratory to help resolve uncertainty.

2.4 Privacy Protection

The Division of Public Health is the state's recognized public health authority as defined in HIPAA (45 CFR § 164.501) pursuant to 45 CFR § 164.512 (b). Covered entities may disclose without individual authorization, protected health information to public health authorities. As the recognized public health authority for the State of Delaware, the Division of Public Health is authorized by law to collect or receive protected health information for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. The information required to be reported represents the minimum necessary to carry out our public health mandates pursuant to 45 CFR § 164.514(d) of the HIPAA Privacy Rule.

2.5 Electronic Reporting Systems

The Division may establish a system for electronic reporting to improve the accuracy and timeliness of reporting notifiable diseases. The system shall be

technologically designed to ensure data security and compatibility with other state and federal public health reporting systems to the extent feasible. Those authorized to participate in electronic reporting systems must meet minimum standards for compliance and training as determined by the Division.

2.6 Syndromic Surveillance Reporting

The Division may establish a state-wide syndromic surveillance system. The system shall be technologically designed to ensure data security and compatibility with other state and federal public health reporting systems to the extent feasible. Those authorized to participate in syndromic surveillance must meet minimum standards for compliance and training as determined by the Division. The Director will establish what syndromes will be reported. The Director may change and/or add reportable syndromes to assure the monitoring of health events of public health importance.

3.0 Report of Outbreaks and Potential Causes of a Public Health Emergency

3.1 Outbreaks

~~[A health care provider or any other person identified in Section 4~~ **Any health care provider,** having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the Division Director or designee.

3.2 Public Health Emergencies

3.2.1 A health care provider or any other person having knowledge of a public health emergency shall immediately report all cases of persons who harbor any illness or health condition, or symptoms of said illness or health condition, that may be potential causes of a public health emergency. The Division Director or designee may declare certain illnesses or health conditions as public health emergencies which shall be reported.

3.2.2 A pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to:

3.2.2.1 An unusual increase in the number of prescriptions to treat fever, respiratory or gastrointestinal complaints;

3.2.2.2 An unusual increase in the number of prescriptions for antibiotics or other pharmaceuticals or sales of over-the-counter pharmaceuticals; and

3.2.2.3 Any prescription that treats a disease that is relatively uncommon or may be associated with terrorism.

4.0 Reporting of Notifiable Diseases Persons and Institutions Required to Report

4.1 Attending Practitioners

~~Reports required by Sections 1 and 2 shall be made to the Division Director or designee by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.~~

4.1 Health Care Providers

Reports required by Sections 2 and 3 shall be made to the Division Director or designee by any health care provider who diagnoses or suspects the existence of any disease required to be reported or by the medical examiner in [such] cases of [unattended deaths that he or she examines].

4.2 Hospitals

4.2.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

~~3.3.2 Such case reports shall be made to the Division Director or designee within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.~~

4.2.2 Reporting of a case or suspect case of a notifiable disease by a hospital fulfills the requirements of the [attending practitioner health care provider] to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 4.1.

4.2.3 The hospital reporting officer shall also report to the Division Director or designee communicable diseases not specified in Section 2, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health. Such reports shall be made within 24 hours of the recognition of such a situation.

4.2.4 Hospitals [authorized shall make a good effort to meet the technologic standards provided by the Division] to report notifiable diseases electronically per Section 2.5 and syndromic surveillance data per Section 2.6. [Hospitals meeting said standards] shall use this method of reporting.

4.3 Laboratories

4.3.1 Any person in charge of a clinical or hospital laboratory, or other facilities in which a laboratory examination of any specimen derived from a human body and submitted for ~~microbiologic~~ examination shall share with the Division of Public Health Laboratory specimens or culture results for agents causing certain diseases listed in the Appendices of these regulations. In addition, such laboratories shall report to the Division of Public Health results of laboratory examinations of specimens indicating or suggesting the existence of;

4.3.1.1 ~~A notifiable disease to the Division of Public Health within 48 hours of when the results were obtained or as soon as possible, except as otherwise provided in these regulations.~~

4.3.1.2 A suspected agent of bioterrorism immediately upon when results were obtained

4.3.1.3 Any other potential agent or specimen that may be the cause of an outbreak or public health emergency immediately upon when results were obtained.

4.3.2 The Director or designee may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of a communicable disease.

~~3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.~~

4.3.3 Reporting of antibiotic resistant organisms. Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism identified in Appendix ~~H I~~ by (A), will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/Zone diameter to the Division of Public Health. **[Upon request, the Division may waive the requirement for the reporting of said demographic information until such time that electronic reporting facilitates its reporting.]** In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

4.3.4 Laboratories authorized to report notifiable diseases electronically per Section 2.5, shall use this method of reporting.

4.4 Others

In addition to those who are required to report notifiable diseases, the following are requested and authorized to notify the Division Director or designee of the

name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no health care provider, as in Section 4.1 above, has been consulted: every parent, guardian, householder; ~~every nurse, [every dentist]~~, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, ~~[jail prison]~~, or juvenile detention center.

~~3.5 Confidentiality~~

~~Information identifying persons or institutions submitted in reports required in Sections 3.1 – 3.4 shall be held confidential to the extent permitted by law.~~

~~3.6 Information in Reports~~

~~Information included in reports required in Sections 3.1-3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected, the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.~~

5.0 Investigation of Case

5.1 Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the Director of the Division or designee may take action as permitted in these Rules, and additionally as deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, the Director of the Division or designee may make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious, and obligatory medical treatment in order to prevent the spread of disease in the community.

5.2 Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized

warrant or court order shall be presented to show just cause in instances where the suspect refuses such examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the Division Director or designee.

5.3 Sensitive Situations

5.3.1 No person known to be infected with a ~~communicable~~ contagious disease or suspected of being infected with a ~~communicable~~ contagious disease shall engage in sensitive situations as defined in ~~[Part II Section 1.0]~~ of these regulations until judged by the Division Director or designee to be either free of such disease or no longer a threat to public health. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

5.3.2 When, pursuant to Section 5.3.1, it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a ~~communicable~~ contagious disease, the Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a ~~communicable~~ contagious disease and to that person's employer or other such individual responsible for the sensitive situation.

5.3.3 The Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a ~~communicable~~ contagious disease that, in the opinion of the Division Director or designee, significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

5.3.3.1 ~~unusual~~ diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;

5.3.3.2 fever (100 F by oral thermometer or 101 F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.

5.3.3.3 any other symptoms which, in the opinion of the Division Director or designee suggest the presence of a ~~[communicable contagious]~~ disease that significantly threatens the public health. Exclusion from a childcare facility in this case shall be effective upon written notification pursuant to Section 5.3.2.

~~5.0~~ Quarantine

~~5.1~~ Establishment

~~When quarantine of humans is required for the control of any notifiable disease or other disease or condition, the Division Director or designee shall have the authority to initiate procedures to establish a quarantine.~~

~~5.2~~ Requirements

~~5.2.1 The Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.~~

~~5.2.2 Quarantine orders shall be in effect for a time period in accord with accepted public health practice.~~

~~5.3~~ Transportation

~~5.3.1 Transportation or removal of quarantined persons may be made only with prior approval of the Division Director or designee.~~

~~5.3.2 Transportation or removal of quarantined persons shall be made in accordance with orders issued by the Division Director or designee.~~

~~5.3.3 Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.~~

~~5.4~~ Disinfection

~~5.4.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.~~

~~5.4.2 Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee.~~

~~6.0~~ Quarantine and Isolation

~~6.1 The Division's authority may exercise the following over persons:~~

~~6.1.1 To establish and maintain places of isolation and quarantine;~~

~~6.1.2 To isolate and quarantine individuals subject to the procedures enumerated in this section; and~~

~~6.1.3 To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.~~

~~6.2 Standard for quarantine or isolation.~~

6.2.1 Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease to others with serious consequences. A person's refusal to accept medical examination, vaccination or treatment shall constitute prima facie evidence that said person should be quarantined or isolated.

6.2.2 Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.

6.3 Character of isolation and quarantine area

6.3.1 To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication and other necessities and competent medical care shall be provided.

6.3.2 Isolated individuals must be confined separately from quarantined individuals.

6.3.3 The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the individual must promptly be moved to isolation.

6.4 Transportation

6.4.1 Transportation or removal of quarantined or isolated persons may be made only with prior approval of the Division Director or designee.

6.4.2 Transportation or removal of quarantined or isolated persons shall be made in accordance with orders issued by the Division Director or designee. Quarantine or isolation shall be resumed immediately upon arrival of quarantined or isolated person at point of destination for the period of time in accord with accepted public health practices.

6.5 Disinfection

6.5.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined or isolated person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.

6.5.2 Disinfection shall also be carried out at the termination of the period of quarantine or isolation and shall be applied to the quarter vacated. The disinfection

procedures shall be as approved by the Division Director or designee.

6.6 Control of quarantine and isolation area.

6.6.1 A person subject to isolation or quarantine shall obey the Division's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter isolation or quarantine premises by the Division's authority. Any person entering isolation or quarantine premises may be isolated or quarantined.

6.6.2 No person, other than a person authorized by the Division, shall enter isolation or quarantine premises. If by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, that person may be subject to isolation or quarantine pursuant to the provisions of this section.

6.7 Procedures for isolation and quarantine. The following procedures shall protect the due process rights of individuals:

6.7.1 The Division shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals. Said petition shall specify the following:

6.7.1.1 The identity of the individual or group of individuals subject to isolation or quarantine;

6.7.1.2 The premises subject to isolation or quarantine;

6.7.1.3 The date and time at which the Division request isolation or quarantine to commence;

6.7.1.4 The suspected contagious disease, if known;

6.7.1.5 A statement of compliance with the conditions and principles for isolation and quarantine;

6.7.1.6 A statement of the basis upon which isolation or quarantine is justified.

6.7.1.7 A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

6.7.2 Ex parte orders. Before isolating or quarantining a person, the Division shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. An order, which may be an ex parte order, shall be requested as part of a petition filed in compliance with 6.1 through 6.2. The Court shall grant an order, which may be an ex parte order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this Section. A copy

of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under subsection (6.7).

6.7.3 Temporary quarantine or isolation pending filing of a petition. Notwithstanding the preceding subsections, the Division may isolate or quarantine a person without first obtaining a written order, which may be an ex parte order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger to the public health. Following such isolation or quarantine, the Division shall file a petition within 24 hours. In addition, if the Division exercises its powers, it must provide a written directive to the individuals or groups under temporary quarantine or isolation indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known).

6.7.4 Speedy hearing. The Court shall grant a hearing within 72 hours of the filing of a petition when an individual has been isolated or quarantined.

6.7.5 Consolidation of claims. The Court may order consolidation of individual claims into a group of claims where:

6.7.5.1 The number of individuals involved or to be affected is so large as to render individual participation impractical;

6.7.5.2 There are questions of law or fact common to the individual claims or rights to be determined;

6.7.5.3 The group claims or rights to be determined are typical of the affected individuals' claims or rights; and

6.7.5.4 The entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

6.8 Relief for isolated and quarantined persons.

6.8.1 On or after 10 days following a hearing, a person isolated or quarantined pursuant to the provisions of this section may request in writing a Court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within 72 hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the Division must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

6.8.2 A person isolated or quarantined pursuant to the provisions of this section may request a hearing in the Superior Court for remedies regarding his or her treatment

and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing, the Court shall fix a date for a hearing. The hearing shall take place within 10 days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.

6.8.3 If upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of this section, the Court may then fashion remedies appropriate to the circumstances of the necessity for the isolation or quarantine and in keeping with the provisions of this section.

6.8.4 No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment or vaccination program, nor shall it apply to a person whose conduct caused the necessity for the isolation or quarantine.

6.9 Additional due process protections.

6.9.1 A record of proceedings before the Court shall be made and retained for at least 3 years.

6.9.2 The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this section.

6.9.3 The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the Court, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

[6.10 The provisions of this section are subject to the provisions of Title 16, Sections 520-532 of the Delaware Code. Provisions of 16 Delaware Code, Sections 520-532 that conflict with provisions of this section take precedence over this section.]

7.0 Control of Specific [Communicable Contagious] Diseases

7.1 Vaccine Preventable Diseases

7.1.1 All preschool children who are enrolled in a child care facility must be age-appropriately vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control

and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation.

7.1.2 Any child entering private school must be age-appropriately vaccinated against diseases prescribed by the Division Director, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. This provision pertains to all children between the ages of 2 months and 21 years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools.

7.1.3 Acceptable documentation of the receipt of immunization as required by Sections 7.1.1 - 7.1.2 shall include either a medical record signed by a physician, or a valid immunization record issued by the State of Delaware or another State, which specifies the vaccine given and the date of administration.

7.1.4 Immunization requirements pursuant to sections 7.1.1 - 7.1.2 shall be waived for:

7.1.4.1 children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental to that child; and,

7.1.4.2 children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

7.1.5 Child care facilities and private schools (grades K-12) shall maintain on file an immunization record for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

7.1.6 Parents whose children present immunization records which show that immunizations are lacking will be allowed 14 days (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. In instances where more than 14 days will be necessary to complete the age-appropriate immunization schedule, an extension may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

7.1.7 When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or

continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule.

7.1.8 It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to document required immunizations pursuant to this section.

7.1.9 Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in pursuant to sections 7.1.1 and 7.1.2, any child not immunized against that disease shall be excluded from the premises, until the Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

7.1.10 All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment by the following criteria:

7.1.10.1 Measles immunity:

7.1.10.1.1 persons born before January 1, 1957; or

7.1.10.1.2 physician documented history of measles disease; or

7.1.10.1.3 serological confirmation of measles immunity; or

7.1.10.1.4 a documented receipt from a physician or health facility that two doses of measles vaccine were administered after 12 months of age.

7.1.10.2 Rubella immunity:

7.1.10.2.1 persons born before January 1, 1957; except women who could become pregnant; or

7.1.10.2.2 laboratory evidence of antibodies to rubella virus; or

7.1.10.2.3 a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.

7.1.10.3 Mumps immunity:

1, 1957; or
of mumps disease; or
immunity; or
physician or health facility that mumps vaccine was administered on or after 12 months of age.

7.1.10.3.1 persons born before January

7.1.10.3.2 physician diagnosed history

7.1.10.3.3 laboratory evidence of

7.1.10.3.4 a documented receipt from a

7.1.11 Immunization requirements pursuant to section 6.1.10 shall be waived for:

7.1.11.1 A student whose licensed physician certifies that such immunization may be detrimental to the student's health;

7.1.11.2 A student who presents a notarized document that immunization is against their religious beliefs.

7.1.12 The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section 7.1.10 through notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

7.1.13 Students who can not show evidence of immunity to measles pursuant to 6.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication. However, in implementing these requirements, doses of a measles containing vaccine shall not be given closer than 28 days apart.

7.1.14 The Division Director may maintain a registry of the immunization status of persons vaccinated against any vaccine preventable diseases (hereafter called an "immunization registry").

7.1.14.1 Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

7.1.14.2 The Division Director or designee may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

7.1.14.2.1 The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

7.1.14.2.2 Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

7.1.14.2.3 Health records staff of school districts and child care facilities.

7.1.14.2.4 Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

7.1.14.2.5 Health insurers, however only when the person immunized is a client of the health insurer.

7.1.14.2.6 Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

7.1.14.3 If any person authorized in subsection 7.1.14.2 discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

7.2 Ophthalmia Neonatorum

Any physician, nurse, midwife, or other health care provider so permitted to under the law, who attends the birth of an infant in Delaware, shall provide or cause to be provided prophylactic treatment against inflammation of the eyes of the newborn. Said prophylactic treatment shall be provided within 1 hour of birth and consist of (1) 1% silver nitrate in single-dose containers, or (2) a 1-2 centimeter ribbon of sterile ophthalmic ointment containing tetracycline (1%) or erythromycin (0.5%) in single-use tubes, or (3) other treatment recommended for this purpose as published in the most recent edition of the U.S. Preventive Services Task Force, Guide to Clinical Preventive Services.

7.3 Sexually Transmitted Diseases (STDs)

7.3.1 Appendix I list[s] STDs regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concerns such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to 16 Del.C. Ch. 7. For the purposes of this section, a suspect is any person[+] having positive or clinical findings of a STD; or in whom epidemiologic evidence indicates a STD may exist; or is identified as a sexual contact of a STD case, and is provided treatment for the STD on that basis.

7.3.2 Reporting STDs

7.3.2.1 A ~~physician or any other licensed health care provider professional~~ who diagnoses, suspects or treats a reportable STD and every administrator of a health facility or prison in which there is a case of a reportable STD shall report such case to the Division of Public Health. ~~Unless reportable in number only as specified in Appendix I,~~ Reports provided under this rule shall specify the infected person's name, address, date of birth, gender and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting licensed health care professional.

7.3.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a reportable STD shall notify the Division of Public Health. ~~Unless reportable in number only as specified in Appendix I,~~ Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person[s] from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory. **[Identifying and demographic information shall be required only if made known to the reporting laboratory or hospital in which the laboratory is part.]**

7.3.2.3 The manner and timing of reports required by this Section 7.3 shall be made in accordance with Section 2 of these regulations unless otherwise specified by these regulations. ~~for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means within 1 working day. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.~~

7.3.2.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del.C. §710, and §711. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance

the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

7.3.2.5 Any person or facility required to report a STD under this Section shall permit the Division of Public Health to examine records in order to evaluate compliance with this section.

7.4 Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS)

7.4.1 ~~HIV/AIDS infection~~ is regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, and is of major public health concern, such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as notifiable and reportable pursuant to 16 Del.C. Ch. 5. Under this provision the following shall be reported:

7.4.1.1 A diagnosis of HIV, according to the Centers for Disease Control and Prevention case definition of HIV

7.4.1.2 A diagnosis of AIDS, according the Centers for Disease

~~Control and Prevention case definition of AIDS~~

7.4.1.~~43~~ A positive confirmed result of any test approved and indicative of the presence of HIV.

7.4.1.~~54~~ All CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable)

7.4.1.~~65~~ A perinatal exposure of a newborn to HIV.

6.4.1 Reporting HIV Infection

7.4.2 Reporting of HIV/AIDS and perinatal exposure of newborns to HIV.

7.4.2.1 A ~~physician or any other licensed health care professional~~ health care provider who diagnoses or treats HIV/AIDS and every administrator of a health care facility or prison in which there is an HIV/AIDS infected person or perinatal exposure to HIV shall report such information to the Division of Public Health. Reports provided under this rule shall specify the infected person's name, address, date of birth, gender, mode of transmission and race as well as the date of HIV positive laboratory result, date of perinatal exposure, date of AIDS diagnosis and stage of disease, type and amount of treatment given and the name and address of the submitting ~~licensed health care professional~~ health care provider.

7.4.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological or

other evidence of HIV/AIDS, including perinatal exposure to HIV, shall notify the Division of Public Health. Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person from whom the specimen was obtained, laboratory findings, including all CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable), and the name and address of the ~~physician~~ health care provider and that of the processing clinical laboratory.

7.4.2.2.1 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.

7.4.2.2.2 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV/AIDS consistent with 7.4.2.2.

7.4.2.2.3 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.

~~6.4.2.3 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.~~

~~6.4.2.4 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV consistent with 6.4.2.2.~~

~~6.4.2.5 Reports of HIV infection required by Section 6.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.~~

~~6.4.2.6 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.~~

7.4.2.3 Reports made on the basis of perinatal HIV exposure shall be made regardless of confirmatory testing.

7.4.2.4 Reports of HIV/AIDS, required by Section 7.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis [positive test,] or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.

~~6.4.2.7 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV~~

~~counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.~~

7.4.2.5 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.

6.4.3 Confidentiality of HIV Reports

7.4.3 Confidentiality of HIV/AIDS Reports

~~7.4.3.1 The Division of Public Health will evaluate reports of HIV/AIDS for completeness and potential referrals for service. All case reports will be kept in a confidential and in a secure setting. Once this function is completed, the patient's name will be converted to a code and then destroyed. From that time forward, the code will be used in lieu of the name to determine if the patient has been previously reported. In carrying out this function, the Division shall destroy the name as expeditiously as possible, but not later than 90 days from receipt of the report.~~

7.4.3.2 The Division of Public Health will evaluate its procedures for HIV/AIDS named-based reporting on a continuous basis [after implementation] for timeliness, completeness of reporting, and security of confidential information.

7.4.3.3 The Division of Public Health will follow the December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports, "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome" document as it pertains to patient records and confidentiality, or any subsequent revisions of said document.

7.4.3.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of 16 Del.C. §710, §711 and §1201-4, §1201A-4A. Any person aggrieved by a violation of this Section shall have a right of action in the Superior Court and may recover for each violation:

7.4.3.4.1 Against any person who negligently violates a provision of this regulation, damages of \$1,000 or actual damages, whichever is greater.

7.4.3.4.2 Against any person who intentionally or recklessly violates a provision of this subchapter, damages of \$5,000 or actual damages, whichever is greater.

7.4.3.4.3 Reasonable attorneys' fees.

7.4.3.4.4 Such other relief, including an injunction, as the court may deem appropriate.

7.4.3.4.5 Any action under this regulation is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure.

7.4.3.5 From information received from reports of HIV infection, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person on whom the report is made. However, if delays resulting from informing the physician may enhance the spread of HIV, or otherwise endanger the health of any individuals, the Division of Public Health may contact the person without first informing the attending physician.

~~6.4.4 Duty to Disclose the Identity of Sexual or Needle-sharing Partners of HIV Infected Patients~~

7.4.4 Duty to Disclose the Identity of Sexual or Needle sharing Partners of HIV Infected Patients

7.4.4.1 Any physician, or any other licensed health care professional acting on the orders of a physician, (hereafter referred to as provider), health care provider diagnosing or caring for an HIV infected patient shall disclose the identity of the patient's sexual or needle-sharing partner(s) (if known), including spouses to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

~~a. The patient's condition satisfies the Centers for Disease Control and Prevention definition of AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;~~

7.4.4.1.1 The provider knows of an identifiable partner at risk of infection who may not have been informed of their potential risk; and

7.4.4.1.2 The provider believes there is a significant risk of harm to the partner; and

7.4.4.1.3 Reasonable efforts have been made to counsel the patient pursuant to 16 Del.C. §1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner.

~~e. The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a preference as to whether the partner be notified by the provider, the patient, or the Division.~~

7.4.4.2 Any health care provider diagnosing or caring for an HIV infected patient shall also report to the Division of Public Health relevant facts about a patient that does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may threaten further spread of HIV to the general population. In this instance the conditions specified in Section 7.4.4.1.3, ~~6.4.4.1 (d) and 6.4.4.1 (e)~~ shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.

7.4.4.3 Procedures for disclosing information pursuant to this section shall be specified by the Division. ~~Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.~~

~~6.4.4.4 The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.~~

7.4.4.4 Division shall have the authority to re-ascertain names for previously reported HIV cases and report them as deemed necessary.

7.5 Tuberculosis

7.5.1 Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

7.5.2 Reporting Tuberculosis

7.5.2.1 Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and other health care providers who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

7.5.2.2 Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from human body yields microscopic, cultural, serological or other evidence

suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

7.5.2.3 Any health care provider, who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

7.5.2.4 Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

7.5.3 Diagnostic Examinations

7.5.3.1 Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

7.5.3.2 The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause them to be examined for the presence of tuberculosis disease.

7.5.4 Clinical Management

7.5.4.1 In addition to fulfilling the reporting requirements of 7.5.2, health care providers shall manage persons with active TB disease by following one of three courses of action:

7.5.4.1.1 they shall immediately refer the client to the Division of Public Health for comprehensive medical and case management services; or

7.5.4.1.2 they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

7.5.4.1.3 they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses 7.5.4.1.2 or 7.5.4.1.3 above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health

care provider shall assure that the requested information is communicated.

7.5.4.2 Patients with infectious tuberculosis who are dangerous to public health may be required by the Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the Division Director or designee as to whether these or other facilities shall be used.

8.0 Preparation for Burial.

See 16 Del.C. Ch. 31 and Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

9.0 Disposal of Infectious Articles, Remains.

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section 10 ("Disposition of Amputated Parts of Human Bodies").

10.0 Diseased Animals.

10.1 Importation and Sale

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected with a disease communicable from animals to man.

10.2 Notification

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee of the infection.

11.0 Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.

11.1 Definitions

For the purposes of this section, the following definitions shall apply.

"Emergency medical care provider" fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

"Receiving medical facility" hospital or similar facility that receives a patient attended by an emergency

medical care provider for the purposes of continued medical care.

"~~[Universal Standard]~~ precautions" those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. ~~[Universal Standard]~~ precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

11.2 ~~[Universal Standard]~~ Precautions

11.2.1 Didactic Instruction

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

11.2.1.1 Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

11.2.1.2 Proper techniques of hand washing, including the theory supporting the effectiveness of hand washing, and guidelines for waterless hand cleansing in the field.

11.2.1.3 Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

11.2.1.4 The proper techniques of disinfection and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

11.2.1.5 Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

11.2.1.6 The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers[, and safety sharps].

11.2.1.7 First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

11.2.2 Practical or Laboratory Instruction

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

1~~2~~1.2.3 Approval of Curricula

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not regarded by the Division of Public Health to be in substantial compliance with 10.2.1 and 10.2.2.

11.3 Communicable Diseases

11.3.1 Communicable Disease Defined

For the purposes of Section 11 only, exposure to patients infected with the following communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

Human Immunodeficiency Virus (HIV)

Hepatitis B Virus

Hepatitis C Virus

Meningococcal disease

Haemophilus influenzae

Measles

Tuberculosis

Uncommon or rare pathogens

11.3.2 Infection Defined

For the purposes of Section 11 only, a patient shall be considered infected with a communicable disease when the following conditions are satisfied:

11.3.2.1 Blood-borne pathogens

11.3.2.1.1 HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

11.3.2.1.2 Hepatitis B - positive for hepatitis B surface antigen.

11.3.2.1.3 Hepatitis C - ~~(1) IgM anti-HAV negative, and (2) IgM anti-Hbc negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal, or anti-HeB positive.~~ Hepatitis C antibody screening test and more specific supplemental test positive.

11.3.2.2 Air-borne [**and droplet spread**] pathogens

11.3.2.2.1 Meningococcal disease - compatible clinical findings and laboratory confirmation through isolation of Neisseria meningitides from a normally sterile site.

11.3.2.2.2 Haemophilus influenzae - compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of Haemophilus influenzae from a normally sterile site or from the epiglottis.

11.3.2.2.3 Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

11.3.2.2.4 Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

11.3.2.3 Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

11.3.3 Exposure Defined

11.3.3.1 Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in 11.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, **[tissue, cerebrospinal fluid, synovial fluid, peritoneal fluid, pericardial fluid, amniotic fluid,]** or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

11.3.3.2 Air-borne **[and droplet spread]** pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne **[or droplet spread]** pathogen as defined in 11.3.2.2 shall be as follows:

11.3.3.2.1 Meningococcal disease and Haemophilus influenzae - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

11.3.3.2.2 Measles - Sharing confined air space with an infected patient, regardless of contact time.

11.3.3.2.3 Tuberculosis - Sharing confined air space with an infected patient, regardless of contact time.

11.3.3.3 Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

11.3.3.4 Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in 11.3.

11.4 Request for Notification

11.4.1 Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

11.4.1.1 receive requests for notification from emergency medical care providers;

11.4.1.2 collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

11.4.1.3 forward requests for notification to receiving medical facilities;

11.4.1.4 report to the emergency medical care provider findings provided by the receiving medical facility; and

11.4.1.5 assist the emergency medical care provider to take medically appropriate action if necessary.

11.4.2 Receiving medical facilities must register with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

11.4.3 If an emergency medical care provider desires to be notified under this regulation, the officer designated pursuant to 11.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

11.5 Notification of Exposure to Air-borne **[and droplet spread]** Pathogens

11.5.1 Notwithstanding any requirement of 11.4.3, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne **[or droplet spread]** communicable disease pursuant to 11.3.2.2 and 11.3.3.2. Such notification shall occur as soon as possible but not more than 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

11.5.2 To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-

borne [or droplet spread] communicable disease to determine if care was provided by an emergency medical care provider. If medical records do not so indicate, the receiving medical facility shall assume that no notification is required.

11.6 Notification of Exposure when Requested

11.6.1 When a request for notification has been made pursuant to 10.4.3, the receiving medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to 10.4.1 as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

11.6.1.1 The date that the patient was attended by the emergency medical care provider;

11.6.1.2 Whether or not the emergency medical care provider was exposed;

11.6.1.3 If the emergency medical care provider was exposed, the communicable disease involved.

11.6.2 If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section 11.4.1 as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

11.6.2.1 The date that the patient was attended by the emergency medical care provider;

11.6.2.2 That there is insufficient information to determine if an exposure has occurred;

11.6.3 The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 11.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

11.7 Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to

11.4.1. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

11.8 Transfer of Patients

If, within the 30-day limitation defined in 11.5.1 and 11.6.1 a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to 11.4.1 if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

11.9 Death of Patient

If, within the 30-day limitation defined in 11.5.1 and 11.6.1, a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical facility must provide the medical examiner with all requests for notification made by emergency medical care providers for that patient. The medical examiner must make notification to the designated officer if the medical examiner determines that the patient is infected with a communicable disease, and shall otherwise comply with these regulations.

11.10 Testing of Patients for Infection

Nothing in this regulation shall be construed to authorize or require a medical test of an emergency medical care provider or patient for any infectious disease.

11.11 Confidentiality

All requests and notifications made pursuant to these regulations shall be used solely for the purposes of complying with these regulations and are otherwise confidential.

~~11.0 Enforcement~~

~~11.1 Authorization~~

~~The Department of Health and Social Services or the Director of the Division of Public Health or their designated representatives are authorized to enforce these regulations to accomplish the following:~~

~~11.1.1 To insure compliance of persons who refuse to submit themselves or others for whom they are responsible, including their animals, to necessary inspection, examination, treatment, sacrifice of the animal, or quarantine.~~

~~11.1.2 To insure coordination of actions of individuals, local authorities, or state authorities in the control of communicable disease.~~

11.1.3 To insure the reporting of notifiable diseases or other disease conditions as required in these Rules.

11.2 Penalties

Except as otherwise provided by the ~~Delaware Code~~ or this regulation, failure to comply with the requirements of this regulation will be subject to prosecution pursuant to 16 ~~Del.C.~~, §107. The Department of Health and Social Services may seek to enjoin violations of this regulation.

**APPENDIX I
NOTIFIABLE DISEASES**

~~Acquired Immune Deficiency Syndrome (AIDS) (S)
Lymphogranuloma Venereum (S)
Anthrax (T) Malaria
Botulism (T) Measles (T)
Brucellosis Meningitis (all types other than meningococcal)
Campylobacteriosis Meningococcal Infections (all types) (T)
Chancroid (S) Mumps (T)
Chlamydia trachomatis infection (S) Nosocomial Disease Outbreak (T)
Cholera (T)
Cryptosporidiosis Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)
Cyclosporidiosis Pertussis (T)
Diphtheria (T) Plague (T)
E. Coli 0157:H7 infection (T) Poliomyelitis (T)
Encephalitis Psittacosis
Ehrlichiosis Rabies (man, animal) (T)
Foodborne Disease Outbreaks (T) Reye Syndrome
Giardiasis Rocky Mountain Spotted Fever
Gonococcal Infections (S) Rubella (T)
Granuloma Inguinale (S) Rubella (congenital) (T)
Hansen's Disease (Leprosy) Salmonellosis
Hantavirus infection (T) Shigellosis
Hemolytic uremic syndrome (HUS) Streptococcal disease (invasive group A)
Hepatitis A (T)
Hepatitis B (S) Streptococcal toxic shock syndrome (STSS)
Syphilis (S)
Hepatitis C & unspecified Syphilis (congenital) (T) (S)
Herpes (congenital) (S) Tetanus
Herpes (genital) (N) Toxic Shock Syndrome
Histoplasmosis Trichinosis
Human Immunodeficiency Virus (HIV) Tuberculosis
Human papillomavirus (genital warts) (N) Tularemia~~

~~Influenza (N) Typhoid Fever (T)
Lead Poisoning Vaccine Adverse Reactions
Legionnaires Disease Varicella (N)
Leptospirosis Waterborne Disease Outbreaks (T)
Lyme Disease Yellow Fever (T)~~

(T) report by rapid means.
(N) report in number only when so requested
For all diseases not marked by (T) or (N):
(S) sexually transmitted disease, report required in 1 day
Others report required in 2 days

APPENDIX I

State of Delaware - List of Notifiable Diseases/Conditions

AIDS (S)
Amoebiasis
Anthrax (T)
Arboviruses (all human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.))
Babesiosis
Botulism (T)
Brucellosis (T)
Campylobacteriosis
Chancroid (S)
Chickenpox (Varicella)
Chlamydia (S)
Cholera (toxigenic Vibrio cholerae 01 or 0139) (T)
Coccidioidomycosis
Creutzfeldt-Jakob Disease (T)
Cryptosporidiosis
Cyclosporiasis
Cytomegalovirus [(neonatal only)]
Dengue Fever (T)
Diphtheria (T)
Enterohemorrhagic E.coli including but not limited to E.coli 0157:H7 (T)
Ehrlichiosis
Encephalitis
Enterococcus species, Vancomycin resistant (A)
ESBL resistance (Extended-Spectrum B-lactamases) (A)
Foodborne Disease Outbreak (T)
Giardiasis
Glanders (T)
Gonorrhea (S)
Granuloma inguinale (S)
Guillain-Barre
Hansen's Disease (Leprosy)
Hantavirus (T)
Haemophilus influenzae, invasive
Hemolytic Uremic Syndrome (T)

<u>Hepatitis A (T)</u>	<u>Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T) (A)</u>
<u>Hepatitis B</u>	<u>Streptococcal Disease, invasive group A or B (T)</u>
<u>Hepatitis C</u>	<u>Streptococcus pneumoniae, invasive (sensitive and resistant) (A)</u>
<u>Hepatitis Other</u>	<u>Syphilis (S)</u>
<u>Herpes, congenital (S)</u>	<u>Tetanus (T)</u>
<u>Herpes, genital (S)</u>	<u>Toxic Shock Syndrome (Streptococcal or Staphylococcal)</u>
<u>Histoplasmosis</u>	<u>Toxoplasmosis</u>
<u>HIV (S)</u>	<u>Trichinellosis</u>
<u>Human Papillomavirus (S)</u>	<u>Tuberculosis (T)</u>
<u>Influenza</u>	<u>Tularemia (T)</u>
<u>Influenza Associated Infant Mortality (T)</u>	<u>Typhoid Fever (T)</u>
<u>Kawasaki Syndrome</u>	<u>Typhus Fever (endemic flea borne, louse borne, tick borne)</u>
<u>Lead Poisoning</u>	<u>Vaccine Adverse Reaction</u>
<u>Legionellosis</u>	<u>Vibrio, non-cholera</u>
<u>Leptospirosis</u>	<u>Viral Hemorrhagic Fevers (T)</u>
<u>Listeriosis</u>	<u>Waterborne Disease Outbreaks (T)</u>
<u>Lyme Disease</u>	<u>Yellow Fever (T)</u>
<u>Lymphogranuloma venereum (S)</u>	<u>Yersiniosis</u>
<u>Malaria</u>	
<u>Measles (T)</u>	<u>(T) - report by rapid means (telephone, fax or other electronic means)</u>
<u>Melioidosis</u>	<u>(S) - sexually transmitted disease, report required within 24 hours</u>
<u>Meningitis</u>	<u>(A) - Drug Resistant Organisms required to be reported within 48 hours</u>
<u>Meningococcal Infections, all types (T)</u>	<u>Others - report required within 48 hours</u>
<u>Monkey Pox (T)</u>	
<u>Mumps (T)</u>	
<u>Norovirus</u>	
<u>Nosocomial [(Healthcare Associated)] Disease Outbreak (T)</u>	
<u>Pelvic Inflammatory Disease (N. gonorrhoea, C. trachomatis, or unspecified) (S)</u>	
<u>Pertussis (T)</u>	
<u>Plague (T)</u>	
<u>Poliomyelitis (T)</u>	
<u>Psittacosis</u>	
<u>Q Fever</u>	
<u>Rabies (man and animal) (T)</u>	
<u>Reye Syndrome</u>	
<u>Rheumatic Fever</u>	
<u>Ricin Toxin (T)</u>	
<u>Rickettsial Disease</u>	
<u>Rocky Mountain Spotted Fever</u>	
<u>Rubella (including congenital which is rapidly reportable)</u>	
<u>Salmonellosis</u>	
<u>Severe Acute Respiratory Syndrome (SARS) (T)</u>	
<u>Shigatoxin Production</u>	
<u>Shigellosis</u>	
<u>Silicosis</u>	
<u>Smallpox (T)</u>	
<u>Staphylococcal Enterotoxin (T)</u>	
<u>Staphylococcal aureus, Methicillin Resistant (MRSA) (A)</u>	

APPENDIX II**DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED**

~~Staphylococcus aureus intermediate or resistance to Vancomycin (MIC > 8ug/ml)~~

~~Streptococcus pneumoniae drug resistant, invasive disease~~

APPENDIX II**Organisms and Samples to be sent to the Division of Public Health Laboratory**

1. Clinical or hospital laboratories, or other facilities, that presumptively identify or are unable to rule out the following organisms shall send an isolate or specimen to the Delaware Public Health Laboratory for testing immediately:

- Brucella species
- Burkholderia mallei
- Burkholderia pseudomallei
- Clostridium botulinum

Franciscella tularensis

Yersinia pestis

Bacillus anthracis

2. Any environmental sample deemed as credible threats for harboring a toxin or a biological agent of terrorism shall be sent to the Delaware Public Health Laboratory for testing immediately upon identification:

3. Clinical specimens from patients potentially exposed to a chemical agent of terrorism shall be sent to the Public Health Laboratory for testing immediately upon identification.

4. Clinical specimens from suspect human cases of the following infections shall be sent to the Delaware Public Health Laboratory for testing immediately upon identification

Monkeypox

Variola (Smallpox)

Vaccinia

SARS

5. The following isolates from humans shall be sent to the Delaware Public Health Laboratory for testing within 24 hours of identification:

Enterohemorrhagic E. coli, including 0157

Haemophilus influenzae, sterile sites

Mycobacterium tuberculosis

Listeria monocytogenes

Neisseria meningitidis, sterile sites

Salmonella species

Shigella species

Streptococcus pneumoniae, sterile sites, Penicillin

resistant

Staphylococcus aureus, sterile sites, Methicillin

resistant

Staphylococcus aureus, Vancomycin intermediate

or resistant (VISA, VRSA)

Vancomycin resistant Enterococci, (VRE) sterile

series

Vibrio cholerae and Non-cholerae

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,

Section 7406 (16 Del.C. §7406)

16 DE Admin. Code 4466

ORDER**4466 Radiation Technologists/Technicians (Certification)****Nature of the Proceedings**

The Delaware Authority on Radiation Protection (The Authority) initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Regulations Governing Certification of Radiation Technologists/Technicians. The Authority's proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 74.

On December 1, 2005, The Authority published in the *Delaware Register of Regulations* (Vol. 9, Issue 6) 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 The Authority by January 6, 2006, or be presented at a public hearing on January 4, 2006, after which time The Authority would review information, factual evidence and public comment to the said proposed regulations.

Findings of Fact

No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from December 1, 2005 through January 6, 2006. Verifying documents are attached to the Hearing Officer's record. The regulation has been reviewed and approved by the Delaware Attorney General's office.

The Authority 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 State of Delaware Regulations Governing Certification of Radiation Technologists/Technicians are adopted and shall become effective February 10, 2006, after publication of the final regulation in the *Delaware Register of Regulations*.

William L. Holden, III, Chair, January 13, 2006

* Please note that no changes were made to the regulation as originally proposed and published in the December 2005 issue of the Register at page 902 (9 DE Reg. 902). Therefore, the final regulation is not being republished. Please refer to the December 2005 issue of the Register or contact the Division of Public Health.

A complete set of the rules and regulations for the Division of Public Health is available at:

<http://www.dhss.delaware.gov/dhss/dph/index.html>

DIVISION OF SOCIAL SERVICES

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

ORDER

Delaware Temporary Assistance for Needy Families (TANF) State Plan Renewal

Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193). 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 2005 *Delaware Register of Regulations* requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations. Additionally, Delaware's TANF State Plan can be viewed on the Department's website at:

<http://www.dhss.delaware.gov/dhss/index.html>.

Summary of Proposed Changes

Title of Notice

Delaware TANF State Plan for Federal Fiscal Years 2006 – 2008

Background

The State Plan outlines the provisions under which the State will administer the TANF program for Federal Fiscal Years 2006-2008. Under Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), the State is required to submit the TANF State Plan to the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) biennially in order to receive certification to be eligible for continued Federal TANF funding. In order to continue to receive TANF funding, Delaware must file for renewal with the DHHS by December 31, 2005.

One of the requirements of the grant application is that the public submit comment on the plan and its design of services. All comments received during the comment period will receive consideration for the development of the TANF State Plan.

Summary of Proposed Changes

- Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996.
- DSS is not making any program “changes” but added information about the new E&T system and made minor updates to the language on pages 3, 4, 6, 7, 24, and 32.
- Please note that DSS has updated Exhibit 1 on page 9 and Exhibit 2 on page 10 to reflect the implementation of the self-employment standard deduction. **[Bracketed Bold type]** indicates the text added at the time the final order is issued.

Summary of Comments Received with Agency Response

No public comments were received.

Findings of Fact

The Department finds that the proposed changes as set forth in the December 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program is adopted and shall be final effective February 10, 2006.

Vincent P. Meconi, Secretary, DHSS, January 13, 2006

DSS FINAL ORDER REGULATION #06-03**RENEWAL:****DELAWARE STATE PLAN FOR TANF**

This new State Plan is submitted to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996. The waiver expired on September 30, 2002.

The current short-term reauthorization of TANF leaves much unknown about the future of the program, and Delaware is unwilling to make major changes to our TANF program without full knowledge of new federal requirements. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes into this Plan without knowing which of the many conflicting provisions will prevail.

Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.

Since Delaware is unable at this time to plan what alternative provisions might be required by enactment of long-term reauthorization legislation, we have opted to continue operating Delaware's TANF program as it is currently designed with minor changes to be in compliance with certain TANF requirements.

Delaware is closely watching the progress of federal TANF reauthorization and will submit any needed Amendments to this State Plan as quickly as possible after new legislative requirements become known.

GOALS, RESULTS AND PUBLIC INVOLVEMENT**Goals**

The goal of Delaware's TANF Program is to provide a welfare system based on a philosophy of mutual responsibility. In working toward that goal, the State will strive to place individuals in private or public sector unsubsidized employment that enables them to enter and maintain meaningful jobs and interrupts the intergenerational welfare dependency cycle. To that end, TANF creates positive incentives for families to become

employed, and expects families to accept responsibility to become self-supporting.

Five key principles form the foundation of TANF:

1. Work should pay more than welfare.
2. Welfare recipients must exercise personal responsibility in exchange for benefits.
3. Welfare should be transitional, not a way of life.
4. Both parents are responsible for supporting their children; and
5. The formation and maintenance of two-parent families should be encouraged, and teenage pregnancy and unwed motherhood should be discouraged.

Involvement of Local Governments, the Public, and Private Sector Organizations

Welfare Reform in Delaware has a long history of active involvement and partnership between and among state and local governments and the private sector. Over a multi-year period, Delaware has engaged government, the public and the private sector in dialog about the welfare system and ways to change it.

Since its introduction in January of 1995, in the form of a waiver request, all sectors have had the opportunity to influence Delaware's welfare reform program in a series of public meetings and forums.

A collaborative partnership among the Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO) worked to develop Delaware's original TANF program; and the Delaware Transit Corporation (DTC) has joined these components in planning any changes required.

From 1995 to the present, the TANF collaborative team has involved other stakeholders in a number of ways. Community partner involvement runs the gambit from support letters for TANF-related grants, to participating in the resultant project planning and implementation, to membership on an initiative's advisory/oversight council. Partnerships include the City of Wilmington's HOPE VI subsidized housing project; the Delaware Ecumenical Council on Children and Families' rural outreach project; the Division of Vocational Rehabilitation's employment efforts with people with disabilities; the National Corps/VISTA welfare-to-work mentoring program; and the Division of Substance Abuse and Mental Health's Youth Offender Re-entry initiative. Presentations on TANF are ongoing by request to the various Section 8 and Public Housing entities; to non-profits such as the First State Community Action Agency and the Latin American Community Center; and to

local churches, healthcare centers, childcare providers, schools and youth centers (e.g., Boys & Girls Club).

The Social Services Advisory Council, consisting of educators, health professionals, religious leaders, representatives of community-based organizations, advocates, and government leaders, all appointed by the Governor, continues to provide advice on improving the delivery of Delaware's social programs. In addition, the Division of Social Services has regularly conducted focus groups with clients in all counties of the States, most recently in 2000 and 2001.

The requirement for a 45 day public comment period was accomplished by making the plan available for public review and comment through the following means:

- The original State Plan was published in the Delaware Register on October 1, 2002;
- The State Plan was published on the Delaware web site at <http://www.state.de.us/dhss/dhss.htm> on September 15, 2002; and
- Stakeholder groups as represented by the Social Services Advisory Council, the TANF Employer Committee, and TANF program contractors were provided with individual copies of the Plan.
- This State Plan is being published in the Delaware Register and on the Delaware web site.

Delaware is proud to say that the administration addressed and continues to build on the themes the public identified not only in TANF but in many other areas of public policy that support low income families, including the Administration's economic development, education, and family policies. A brief summary of where public policies intersect with welfare system change include:

- easing transition from welfare to work by:
 - passing through to TANF recipients a portion of the child support collected
 - enhancing child support collection strategies and achieving record child support collections
 - changing the way the welfare system budgets income so that families go off assistance only after achieving income at 75 percent of the federal poverty level
 - increasing Delaware's investment in child care so that there is no subsidized child care waiting list for eligible working families with income up to 200% of the federal poverty level
 - increasing the income threshold below which individuals are not required to file personal income tax returns to \$15,449 for married

couples and \$9,399 for single individuals; increasing the personal credit from \$100 to \$110; and reducing the tax rate for all individuals, other than the top tax bracket, by .4 percentage points

- increasing the State minimum wage to \$6.15 an hour as of September, 2000.
- increasing the earnings potential of TANF individuals through a State Earned Income Tax Credit for 2006.
- ensuring access to health care for Delaware families through:
 - providing Medicaid coverage to uninsured adults as well as all children in families with income at or below 100 percent of the federal poverty level
 - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children Program (DHCP)
 - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- improving education for children by:
 - expanding access to the Early Childhood Education Program (ECAP)
 - providing extra instructional time for low-achieving students
 - operating the Parents as Teachers program statewide
 - operating the Mentoring for Students program for students who need an adult role model
 - implementing a comprehensive program to ensure safe, disciplined schools
 - raising academic standards and graduation requirements and pushing for school choice and charter schools
- recruiting, through the Delaware Economic Development Office (DEDO), new companies and maintaining existing employers with good jobs that provide career opportunities
 - strengthening Delaware's families by:
 - helping many thousands of welfare recipients go to work, and providing continuing supports to working families
 - initiating voluntary paternity establishment
 - providing transportation support for job seekers and new workers
 - establishing more effective welfare to work programs with a work first approach to employment and training services, while

- providing opportunities for educational advancement
- enabling families with both parents to receive benefits and services
- participating with community-based organizations and the faith community to support targeted, fragile populations
- discouraging teen pregnancy through the Alliance on Adolescent Pregnancy Prevention
- extending home visits to all first time parents following a child's birth
- cracking down on domestic violence to protect vulnerable women and children
- enforcing the Sexual Predator Act to protect vulnerable youth and prevent teen pregnancy.

Results to be Measured and Methods for Measuring Progress

Delaware has committed to evaluate its welfare system. The State had a multi-year contract with Abt Associates to evaluate TANF. We measured:

- the number of individuals working;
- the number of individuals sanctioned;
- the caseload size; and
- the number of months of receipt of TANF.

Recent reports by the evaluator include:

- The ABC Evaluation - A Better Chance for Welfare Recipients? What the Public Thinks*, March, 1999;
- The ABC Evaluation - Enrollment of Families in Delaware's A Better Chance Program: A Report on the First Three Years*, March, 1999
- The ABC Evaluation - Carrying and Using the Stick: Financial Sanctions in Delaware's A Better Chance Program*, May, 1999.
- Will Welfare Reform Influence Marriage and Fertility? Early Evidence from the ABC Demonstration*, June, 1999.
- The ABC Evaluation - Verifying School Attendance of Welfare Recipients' Children*, June 2000
- The ABC Evaluation - Impacts of Welfare Reform on Child Maltreatment*, August 2000
- A report, *Turning the Corner -- ABC at 4 Years*, November 2000
- The DABC Evaluation How Have They Fared? Outcomes After Four Years for the Earliest*

DABC Clients, August 2001

- The *DABC Evaluation Institutional Aspects of Welfare Reform in Delaware*, August 2001

These reports can be located at <http://www.abtassoc.com/reports/welfare-download.html>.

Note that at one time, Delaware's TANF program was known as A Better Chance or ABC.

Delaware ~~is~~ was also one of four states participating in a Welfare Reform and Family Formation research project designed to provide an increased understanding of how changes in welfare policies have affected childbearing, marriage, and other family structure factors. Abt Associates ~~is teaming~~ teamed with a University of California research team in analyzing random assignment data collected in Delaware.

Ensuring Accountability

TANF is administered by the Division of Social Services (DSS), State of Delaware Department of Health and Social Services. While DHSS is the lead agency, program administration is accomplished through a partnership of DSS, Department of Labor (DOL), Delaware Economic Development Office (DEDO), and the Delaware Transit Corp (DTC).

Delaware completed a massive automation enhancement effort, to incorporate new technology in a complete redesign of DCIS. DCIS II is a large-scale, client/server, interactive eligibility determination and benefit issuance system. DCIS II automates: client registration, application entry, eligibility determination, benefit calculation, benefit issuance and work programs for more than 100 variations of cash, Medicaid, child care and food stamp programs, administered by the Delaware Division of Social Services. DCIS II provides automated program support and supports the information needs at the state and local office level. DCIS II also incorporates program changes required by P.L. 104-193.

The most recent enhancements to DCIS II provide for on-line real-time communications between DSS workers and Employment Connection contractors. DSS now provides automated referral of non-exempted individuals to contractors, contractor staff are now able to send automated alerts to DSS workers, and contractors and DSS workers are able to share case notes about participants. In addition, contractors now directly enter hours of work participation into the system, facilitating the computation of grants for Work for Your Welfare participants.

Delaware is participating in the income and eligibility verification system (IEVS) required by section 1137 of the Social Security Act.

In addition, the State operates a fraud control program and will disqualify individuals found to have committed an intentional program violation based on findings of administrative disqualification hearings and findings of prosecution or court actions. Delaware has adopted the penalties for intentional program violations used by the Food Stamp Program; 12 months for the first offense and 24 months for a second instance. An individual committing a third offense is permanently disqualified.

NEEDY FAMILIES

Definition of Needy Families

For program purposes, needy families are a child and or child(ren) and caretaker relatives whose combined income and financial resources are not equal to or higher than the standards established by the State. The following sections describe these standards and how they are applied to applicants and recipients.

Income and Resource Rules for Determining Need

For purposes of determining need Delaware will continue to utilize the already established income and resource rules of the TANF program. The following specific features of Delaware's TANF program shall continue to apply:

- The equity value of a primary automobile up to \$4,650 is excluded in determining the household resources.
- The cash value of a life insurance policy will be excluded.
- In addition to the current resource limit, families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5,000.00, including interest.
 - Families will contribute directly to their EBIA's.
 - Funds in such accounts will not be considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to: dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.

- Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, JTPA payments, educational loans, and other loans that are expected to be repaid will not be counted as income for TANF program purposes. Also, other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses will be excluded.
- Earnings of dependent children, regardless of student status, will be disregarded in determining the family's eligibility and the amount of TANF benefits.
- A one-time bonus payment of \$50.00 will be paid from TANF funds to eligible teens who graduate from high school by age 19. This bonus, which will be paid directly to the high school graduate, will be disregarded as income.

Income Tests to Determine Eligibility

There are two income tests to determine financial eligibility. The first test is a gross income test, and the second is a net income test.

- Comparing the family's income to 185% of the applicable standard of need is the gross income test. Both applicants and recipients must pass this income test.
- The other income test compares a family's income, after applying certain disregards, to the applicable standard. This is a net income test.
 - For applicants, defined as families who have not received assistance in at least one of the four months immediately preceding the application, the net income is compared to the payment standard.
 - For recipients, defined as families who have received assistance in at least one of the four months preceding the application or are current recipients, the net income is compared to the standard of need.
 - A family's income must be less than the gross and net income limits to be financially eligible for TANF. Once eligibility is established, the grant amount is determined.
 - Gross income is the total of the earned and unearned income.
 - Wages and self-employment income are examples of earned income.
 - Social Security benefits, child

support, and stepparent income are examples of unearned income. Stepparent income will be included if the child's natural parent lives in the home.

Exhibit 1 contains the calculation steps for TANF applicants.

Exhibit 1: Determining Applicant Eligibility for TANF Benefits

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. **[If the case has self-employment income subtract the self-employment standard deduction, if applicable, from the gross self-employment income. Add to that any other earned income.]** Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need.

Step 2) The standard work deduction (\$90.00) and child care expenses will be subtracted from each wage earner's earnings. The applicant's net earned income will be added to unearned income to determine the net family income. The net income will be compared to the payment standard. Assistance will be denied if the income exceeds the payment standard.

If the income is less than the payment standard,

Step 3) The standard work deduction (\$90.00), child care, and the \$30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. This net earned income will be added to the unearned income to calculate the family's net income. The net income will be subtracted from the applicable standard of need to obtain the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

Exhibit 2 provides the calculations for TANF recipients.

Exhibit 2: Determining Recipient Eligibility for TANF Benefits

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. **[If the case has self-employment income subtract the self-employment standard deduction, if applicable, from the gross self-employment income. Add to that any other earned income.]** Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need.

Step 2) The standard work deduction (\$90.00), child care, and the \$30 plus 1/3 disregard (if applicable) will be

subtracted from each earner's earned income. The net earned income will be added to unearned income to calculate the family's net income. Assistance will be denied if the income exceeds the standard of need.

If the income is less than the standard of need,

Step 3) The net income will be subtracted from the applicable standard of need; the number calculated is the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

The TANF standards apply to all benefits and services provided to needy families except for Emergency Assistance, discussed on page twelve (12) and **Attachment A**; and child care, described on pages three (3), twelve (12), and twenty-four (24). Delaware has established separate need standards for these programs.

Fill-the-Gap Budgeting

Fill the Gap budgeting will be used for recipient families to determine continued eligibility and the amount of TANF benefits, so that families can retain more of their income. By having a standard of need which is greater than the payment standard a "gap" is created. The difference between the family's income and the need standard is called the deficit. The state pays a percentage of the deficit up to a maximum benefit level or payment standard.

- Three standards will be used in financial eligibility calculations: 185% of the standard of need, the need standard and the payment standard. 185% of the standard of need will be used in the gross income test.
- The standard of need used is 75% of the Federal Poverty level. This includes allowances for food, clothes, utilities, personal items, and household supplies.

Diversion Assistance Program

Delaware operates a Diversion Assistance program intended to help a family through a financial problem which jeopardizes employment and which, if not solved, could result in the family needing regular ongoing assistance. The Diversion Assistance payment will not exceed \$1,500 or the financial need resulting from the crisis, whichever is less. Diversion Assistance, which is available to both applicant and recipient families, is not a supplement to regular assistance but is in place of it.

Eligibility requirements for Diversion Assistance are as follows:

- the parent must be living with his/her natural or adopted children;
- the family has not received a Diversion Assistance payment in the past 12 months;
- the Diversion Assistance amount will alleviate the crisis;
 - the parent is currently employed but having a problem which jeopardizes the employment or has been promised a job but needs help in order to accept the job;
 - the family's income would qualify the family for TANF as a recipient household. (When calculating eligibility for Diversion Assistance the family is given the \$30 plus 1/3 disregard, if applicable, and the family's net income is compared to the Standard of Need.);
 - the family's resources would qualify for TANF.

The Diversion Assistance payment may be used for items and/or services such as but not limited to:

- transportation (such as vehicle repairs, tires, insurance, driver's license fee, gas);
- clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel;
- tools and equipment;
- medical expenses not covered by Medicaid (e.g., eye glasses);
- union dues, special fees, licenses or certificates;
- up-front costs of employment such as agency fees and testing fees;
- unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care;
- relocation expenses for verified employment in another county or state. These expenses may include moving equipment rental, gas, and lodging for the days of the move and the first month's rent, rental and utility deposit.

Diversion Assistance payments will be made to a third party vendor, not the parent. When the parent receives Diversion assistance (s)he agrees to forego TANF cash assistance as follows:

- \$0 through \$500.99 for 1 month;
- \$501 through \$1,000.99 for 2 months;
- \$1,001 through \$1,500 for 3 months.

The once a year limitation on Diversion Assistance and the period of ineligibility can be eliminated when good cause exists. Good cause exists when circumstances beyond the client's control make re-application for Diversion Assistance for TANF necessary. Examples of good cause are the employer lays off the parent or a serious illness forces the parent to stop working.

The family is eligible for TANF related Medicaid in the month in which the diversion Assistance payment is made. The family would remain eligible for Section 1931 Medicaid (TANF related Medicaid) until the family's income exceeds the Standard of Need. If the family's income exceeds the standard of need because of increased earnings or loss of the \$30 plus 1/3 disregard and the parent is working, the family may be eligible for Transitional Medicaid.

Diversion Assistance does not count as income in the child care programs, and families receiving Diversion Assistance may also be eligible to receive child care under Delaware's working poor child care program if their income does not exceed 200 percent of the federal poverty level. Receipt of Diversion Assistance would not bar receipt of Food Stamp benefits, and Food Stamp applications will be actively solicited from individuals requesting diversion assistance.

Diversion Assistance does not count against the time limit on receipt of assistance.

The family will not have to assign child support to the state. Child support received by the parent or the Division of Child Support Enforcement (DCSE) will belong to the family. DCSE will not use child support to offset or reimburse the Diversion Assistance.

Diversion Assistance is not intended to replace TANF's Emergency Assistance Program or Supportive Services payments, which will continue. The TANF Emergency Assistance Program provides identical benefits that were provided under Delaware's State Plan in effect on August 21, 1996. (See Attachment A) Rather, Diversion Assistance expands the opportunities to access as well as the value of services to support employment.

ELIGIBILITY FOR ASSISTANCE UNDER THE TANF PROGRAM

Conditions of Eligibility

If the income tests described above are met, a family will be eligible to receive TANF assistance subject to the following conditions.

Relationship/Living Arrangements

A child must be living in the home of any relative by blood, marriage, or adoption who is within the fifth degree of

kinship to the dependent child or of the spouse of any person named in the above group even though the marriage is terminated by death or divorce.

The caretaker of a teen parent who is not a parent must demonstrate valid circumstances why the teen is not living with a parent and must agree to be a party to the Contract of Mutual Responsibility and fulfill the same responsibilities thereunder as a parent.

Fugitive Felons; Individuals Convicted of Drug Related Felonies

Fugitive felons and parole violators are ineligible for TANF assistance. In addition, as of August 22, 1996, individuals convicted of drug related felonies are permanently barred from the date of conviction.

Family Cap Provision

No additional cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after the date of application for benefits under TANF.

The family cap will not apply:

- when the additional child was conceived as a result of incest or sexual assault,
- to children who do not reside with their parents
- to children born prior to the period identified above who return or enter the household
- to a child that was conceived in a month the assistance unit (i.e., the entire family) was not receiving TANF, but this does not apply in cases that close due to being sanctioned.

The family cap will apply to children who are the firstborn of minors included in a TANF grant, except that the family cap does not apply to firstborn children of minors where the child was born prior to March 1997, the date that Delaware began its TANF program.

The additional child(ren) is included in the standard of need for purposes of determining eligibility; and the income and resources of the child, including child support, is included in determining the family's income and resources. However, the child(ren) is not included in determining the payment standard for the family.

- The additional child(ren) is considered a recipient for all other purposes, including categorical Medicaid coverage, TANF child care, and Food Stamp benefits.
- Child support received for capped children is passed directly through to the family.

Denial of Benefits to Babies Born and Residing with Unmarried Teen Parents.

Cash assistance is not provided to babies born on and after January 1, 1999 to unmarried minor teen parents. This applies to both applicants and recipients. For all other purposes, these babies will be considered TANF recipients. They may also be eligible to receive Food Stamps, Medicaid and child care as well as vouchers for the baby's needs. This provision applies as long as the teen parent resides in the home with the baby, is unmarried or less than eighteen (18) years of age.

Denial of Benefits for Fraudulent Misrepresentation to Obtain Assistance in Two States

Any individual who misrepresents residence to receive TANF, Medicaid, or Food Stamp benefits in two states shall be subject to a ten-year bar if convicted in a state or federal court.

Treatment of Eligible Non-Citizens

Qualified non-citizens who enter the United States before August 22, 1996 shall be eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified aliens entering the United States on or after August 22, 1996, who are exempt from benefit restrictions as specified in Federal law, are eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified non-citizens who enter the United States on or after August 22, 1996 are, after five years, eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Program Type

Depending on circumstances, families are placed in either the Time-Limited TANF program or the Non Time-limited TANF program.

Delaware's Time-Limited TANF Program has a work first approach. Participants are expected to meet immediate work requirements in order to receive benefits.

Effective October 1, 1998, Delaware began funding its two parent program with state only funds. The eligibility requirements, services and benefits for this state funded two-parent program are the same as the single parent Time-Limited program

Time-limits for Delaware's Time-Limited TANF Program and the interactions between time-limits and work

requirements are described in the sections entitled, Work: Time Limits and Work, and TANF Benefits to Needy Families: Time Limits.

Families with the following status will receive benefits in the Non Time-limited program:

- Families that the agency has determined are unemployable, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent;
- Families headed by a non-needy, non-parent caretaker;
- Families headed by a non-eligible non-citizen parent who is not eligible to receive TANF benefits;
- Families where the agency has determined that the adult caretaker is temporarily unemployable; and
- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. In this case, the family must sign an agreement to repay cash benefits received under the Non Time-limited TANF program from the proceeds of the first SSI/DI check received. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.

Contract of Mutual Responsibility requirements and sanctions for noncompliance apply to families in the Non Time-limited TANF program. Recognizing that Delaware's exemptions from time-limits are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to remain within TANF's time limit requirements.

Contract of Mutual Responsibility

The caretaker of children in the TANF program enters into a Contract of Mutual Responsibility with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and recipients have a face-to-face interview. During this interview, the DSS worker explains to the recipient the Contract of Mutual Responsibility (CMR) and those elements specific to the client.

The Contract lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-

related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements. The State provides supports to families including but not limited to: employment-related activities, training activities, child care, Medicaid, and other services identified during the development of the Contract of Mutual Responsibility.

The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document can be revised as the needs and the situation of the family evolve.

Services related to these CMR requirements will be available to the participant. If the services specified in the CMR are not reasonably available to the individual, the participant will not be sanctioned for failure to comply and the Contract will be modified to reflect that the service is currently unavailable.

It is mandatory that all caretakers enter into a Contract of Mutual Responsibility. Contracts are completed for families in the Time Limited TANF Program and the Non Time-limited TANF program as well as for teen parents. Both caretakers in an assistance unit and non-needy caretaker payees are required to develop and comply with CMRs. Other family members within the assistance unit may be required to comply with provisions of the Contract, and are subject to sanction for non-compliance.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities but will be required to participate in other Contract activities.

If a caretaker objects to certain aspects of the Contract, the caretaker needs to present these objections up front, at the time of the initial Contract. If good cause can be demonstrated, the Contract can be amended to rectify the objections.

When staff has reason to believe that the family needs other services to become employed or to increase work hours and wages, these services will be identified and specified in the Contract of Mutual responsibility.

The fiscal sanction for not cooperating, without good cause, in development of the Contract will be an initial \$50.00 reduction in benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end with demonstrated compliance.

Individuals from Another State

All families meeting the status eligibility requirements set forth above shall be eligible for TANF benefits using

Delaware rules, regardless of how long they have been residents of the State.

Statewideness

All definitions and determinations of need shall be applied on a statewide basis.

Protection of Privacy of Assisted Families

31 **Delaware Code**, Chapter 11, Section 1101 provides that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS. By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

General information regarding expenditures, numbers of clients served, and other statistical information is a matter of public record and may be made available to any interested party. Other than the exceptions noted below, DSS will not release any information regarding a particular individual without the individual's written consent.

- DSS Regional Operations Managers have the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:
 - is fleeing to avoid prosecution; or
 - is a fleeing felon (or in the case of New Jersey is fleeing from conviction of a high misdemeanor); or
 - is violating a condition of probation or parole; or
 - has information that is necessary for the officer to conduct his or her official duties; and
 - the location or apprehension of the recipient is within such official duties.
- If a law enforcement officer requests information that does not meet the guidelines indicated above, a subpoena from a court of law is required before the information can be released.
- DSS is required to report to the Division of Family Services in situations where it believes a home is unsuitable because of neglect, abuse or exploitation of a child.

- A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her family guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that (s)he may participate and represent the child.
 - If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.
- DSS has the authority to disclose information concerning applicants and recipients provided it pertains to:
 - 1) an investigation, prosecution, or criminal or civil proceeding conducted in connection with public assistance programs.
 - 2) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. The agency must assure DSS that such information will remain confidential and will be used only to pursue services for the individual. Other means tested programs include the Supplemental Security Income Program, School Lunch and Breakfast Program, the Energy Assistance Program, and the Low Income Housing Program.
- Other agencies (such as Family and Children Services of Delaware, Inc., Catholic Social Services, Legal Aid, etc.) must provide written permission from the recipient before public assistance information may be released.
- Other governmental agencies may obtain lists of recipients from DSS if the information will be used to perform services for DSS, and the agency can assure DSS that the lists will remain confidential.

APPEALS PROCESS

DSS will provide timely and adequate notice for actions taken which affect eligibility or benefit level. Adequate notice means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

Timely notice means a notice which is mailed no later than 10 days before the date of action (i.e., 10 days before the intended change would be effective). When DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five days before the action would become effective.

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for assistance is denied or is not acted upon with reasonable promptness and to any applicant or recipient who is aggrieved by any Agency action.

To be considered by the Agency, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority. The freedom to make such a request will not be limited or interfered with in any way and the Division will assist the appellant in submitting and processing his/her request. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

WORK

Goals for Work

Delaware's TANF program is based on the belief that assistance provided is transitional and should not become a way of life. The State maintains that the way for persons to avoid dependency on welfare is for them to find and maintain employment. Thus the primary goal of TANF is to help recipients find private sector work and to help them keep such work by providing them with necessary supports.

To assist families in obtaining and maintaining employment, the State will engage the efforts of the Departments of Health and Social Services, Labor and Economic Development and Delaware's private sector to provide job readiness and placement opportunities, health

and child care, the EITC, and family services. In turn, TANF recipients who have the capacity to work will be required to accept work, to keep their children in school, to cooperate with child support, to bear the costs of additional children they conceive while on welfare, and to leave the welfare rolls after a defined time period.

State Agencies Involved

Delaware Health and Social Services, Labor, and Economic Development have a unique partnership. All three agencies are responsible for moving welfare clients to work. These three agencies have collaborated in developing Delaware's TANF program, in public information, in implementation, and continue to collaborate in managing the initiative.

The Delaware Transit Corporation (DTC) in the Department of Transportation has joined the TANF collaborative team, and has assisted to develop a statewide transportation system plan for TANF, using vans and other vehicle sources.

Minutes for the TANF collaboration team for the previous six months are included as **Attachment B**.

In May 2001, the Business Planning Committee, a subcommittee of the TANF collaborative team that deals with transportation initiatives, sponsored a transportation forum in each of the three counties. The purpose of the forums was to bring together businessmen, community leaders and other stake holders to develop and advance innovative, non-traditional solutions to varying transportation problems faced by each county.

Transportation forum highlights were a panel discussion by the lead agencies that shared some "points of pride" in the program and gaps and needs in transportation, Best Practices Ideas and Transportation Information, Employer Recognition of Innovative Success Solutions and brainstorming sessions to identify transportation issues and to gather ideas for further development. Each forum was designed to highlight transportation problems that were county specific. Sussex County Government, represented by the Sussex County Administrator, was particularly effective in explaining the population growth, the economic growth and the problems created by their largely rural area.

As a result of the forums, the Business Planning Committee has been able to identify some cross-cutting themes statewide as well as county specific. They have also been able to identify ideas that need further development and which will be used as the Committee continues to find innovative solutions to transportation problems. One overriding theme from the forums was the lack of knowledge of the current transportation options available. This has led to the production of a transportation video which highlights all

the options available to assist individuals as they move from dependency to self-sufficiency.

Another special partnership is that between the Division of Social Services and the Division of Child Support Enforcement. Both agencies are part of Delaware Health and Social Services. This close linkage has enabled them to partner throughout TANF development and implementation.

Involvement of Community, Education, Business, Religious, Local Government and Non-Profit Organizations to Provide Work

As noted in the discussion on page 2, every sector has been actively involved in the development of Delaware's TANF program and continues to be involved.

A TANF Employer Committee, consisting of representatives of both the public and private sector, assists in placing welfare recipients in unsubsidized jobs and provides advice on direction, policy, and implementation of welfare-to-work efforts. This committee was established through HB 251. A major accomplishment of the Employer Committee in conjunction with DEDO and the Department of Education was the development of a program, Career Soft Skills Essentials for employers, which is now posted on the internet at www.delawareworkforce.com. The committee regularly advises the collaborative team about TANF employment issues. Minutes of committee meetings for the prior year are included as **Attachment C**.

To further promote employer interest in hiring TANF recipients, the Departments of Labor and Economic Development meet with members of the business community at regularly scheduled events like monthly Chamber of Commerce meetings as well as at special events. For example, to roll out Career Soft Skills Essentials, DEDO hosted two conferences to link employers with trainers.

The Social Services Advisory Council is established by executive order. The Governor appoints council members to advise the directors of both the Division of Social Services and the Division of Child Support Enforcement on matters related to public assistance and child support services. Council members represent the community, advocates, non-profit providers, educators, and interested citizens.

DSS and DCSE management regularly meet with the Social Services Advisory Council to discuss TANF and other Social Services and Child Support programs. Minutes of Social Services Advisory Council meetings in 2005, along with information on current Council members, are attached. (**Attachment D**)

Client specific focus groups were also conducted by the Director of DSS in 2000 and 2001. The 2000 focus groups, held in different locations throughout the state from May

through November, asked recipients a series of questions about the TANF program, to ascertain their knowledge of various program requirements, and their experiences obtaining assistance from DSS workers and contractors. The 2001 client focus groups were held from June through October. They asked a series of questions about client work and sanction experiences, and ascertained information about specific services that had been of assistance and obstacles that clients had to overcome to obtain and retain employment. (**Attachment E**)

Based on these focus groups, there seemed to be a solid majority opinion that people understood the rules, that sanctions are appropriate, and that some people do need a push to get motivated to get back into the job market. However, clients did wish for more flexibility for individual circumstances, and requested more assistance with transportation and in juggling schedules so that program requirements could be met.

Special interest groups such as One Church, One Family and New Pathways have chosen to focus their resources on welfare families and provided mentoring support to welfare families.

Role of Public and Private Contractors in Delivery of Services

Delaware has contracted with private for-profit and non-profit providers and the local community college network to provide job readiness, job placement and retention services to welfare clients since 1986. These contractual arrangements continue under TANF. Contractors include community and faith-based social services agencies and organizations offering specialized services.

A number of community providers across the state provide academic remediation to TANF recipients.

Who Must Participate

All adult caretakers and other adults in the time-limited assistance unit who are not exempt must participate in TANF employment and training related activities. The two exemptions are: 1) a parent caring for a child under 13 weeks of age; and 2) an individual determined unemployable by a health care professional.

Teen parents are required to attend elementary, secondary, post-secondary, vocational, or training school, participate in a GED program or work. Delaware will use state MOE funds for benefits we provide to unmarried non-graduate teen parents who are working, rather than in an educational or training activity.

Services to Move Families to Work

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills
- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as described in SB 101, effective July 2, 1999
- Provide financial management training.
- Work-related activities that assist in obtaining or maintaining employment or improve work performance.

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

The State implemented a new Employment and Training Management Information System (ETMIS) July 2005 that was incorporated into the existing Delaware Client Information System (DCIS). This new ETMIS can track referrals, hours of participation, and sanctions. The ETMIS provides greater accountability and tracking of participants to ensure the highest possible work participation rates. While an excellent management evaluation tool, it will also provide Delaware with the ability to determine where changes need to be made to ensure the success of the individuals in meeting program goals.

Work

Until January 1, 2000, one-parent families in the Time-Limited Temporary Program were required to immediately engage in meaningful job search and comply with conditions set forth in their Contract of Mutual Responsibility including work, education, and training activities. Failure to comply with the work requirements resulted in the imposition of an

employment and training sanction. Recipients who were unable to locate private sector jobs despite good faith efforts to do so, were eligible to receive Work For Your Welfare payments, for participating in a workfare job, for a maximum of two more years.

Effective January 1, 2000, families initially applying for or reapplying for benefits can only receive benefits if they are employed or immediately participate in a Work For Your Welfare position. Failure to comply with the work requirements contained in their Contract of Mutual Responsibility results in the imposition of an employment and training sanction.

Single parent households are required to participate in Work for Your Welfare up to 30 hours per week, determined by dividing TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceed 30 hours per week, participants are to complete no more than 30 hours maximum participation hours. In addition to participating in Work For Your Welfare, individuals must participate in 10 hours of job search, education or a vocational activity per week.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage. Participants who fail to complete the 10 hours of job search, education or a vocational activity per week are subject to employment and training sanctions.

In two parent households, one parent must participate in Work For Your Welfare and the second parent must participate in a work-related activity, including child care. The requirements for parents in two-parent households are unchanged.

The January 1, 2000 change in the work requirements for one-parent families means that, to receive Time-Limited TANF benefits in Delaware, both one-parent and two-parent families must either be employed or participate in a Work For Your Welfare position with supplementary activities as required. Delaware's requirement for immediate work activities exceeds the federal TANF mandate.

An individual enrolled in the TANF Time-Limited Program who, in accordance with the requirements in their Contract of Mutual Responsibility, participates in unsubsidized employment of at least twenty-five hours per week is not required to participate in Work for Your Welfare. Individuals participating in a combination of such employment and education of at least twenty (20) hours per week are also not required to participate in Work For Your Welfare. TANF Contracts of Mutual Responsibility are designed to fit individual circumstances. It is possible for an individual enrolled in the TANF Time-Limited Program who

is engaged in at least twenty (20) hours of combined work and allowable education activities to meet work requirements, if their Contract of Mutual Responsibility contains such an activity agreement.

Recognizing that Delaware's hourly requirements for participation in work and work-related activities are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to continue to meet TANF work participation requirements.

Time limits for Delaware's Time-Limited TANF Program are described in the section entitled, TANF Benefits to Needy Families: Time Limits.

Protecting Current Workers from Displacement

Regarding the Work for Your Welfare program, DSS conforms to Section (a)(5) of the Federal Unemployment Tax Act which requires that a job offered cannot be available as a result of a strike or labor dispute, that the job cannot require the employee to join or prohibit the employee from joining a labor organization, and that program participants are not used to displace regular workers.

In addition DSS ensures that no participants, including but not limited to those placed in either a Work For Your Welfare placement or a community work experience program, displace regular paid employees of any of the organizations providing either the placement or the community work experience. Such assurance complies with State law contained in 31 **Delaware Code**, Chapter 9, Section 905(b). This assurance also complies with Section 407(f) of TANF, which requires that DSS will not use federal funds under TANF to place individuals in a work activity when:

- any individual is on a layoff from the same or a substantially equivalent job;
- the employer has terminated any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy created with an adult receiving TANF benefits.

In addition, DSS has established a grievance procedure, in conformance with Section 407(f)(3) of TANF, for resolving complaints for any alleged violation of nondisplacement requirements. Employees or their representatives who believe that their jobs are being displaced or infringed upon shall present their complaint to the employment contractor with authority over the placement. If the contractor is unable to resolve the problem within 15 days, the employee or representative may file a

formal grievance in writing to the DSS Director's Office, who will hear a formal grievance. The employee will have an opportunity to: present his/her grievance on the record; present evidence; bring witnesses and cross examine witnesses; be represented by counsel; and receive a written decision.

Grievance hearings will be scheduled within 30 calendar days of receipt of the formal grievance, and a written decision will be issued within 30 days of the hearing. If either party is dissatisfied with the State's written decision, they may appeal the decision to the U.S. Department of Labor within 20 days of receipt of the written decision. The procedures for appeal, which must be sent to the Office of Administrative Law Judges, in the U.S. Department of Labor, will be provided in writing with the decision.

Supportive Services

Delaware recognizes the importance of available child care in helping recipients participate in work-related activities, and securing and retaining unsubsidized employment. To that end, the financial resources provided for child care have been significantly increased from the FY95 child care funding level to the current request for funding.

Supportive Services, such as child care, and TANF provided assistance with other work-related expenses, such as eye examinations and corrective lenses, dental, and physicals not covered by Medicaid, transportation, fees, training, and work-related equipment, uniforms, shoes, and supplies will be available where possible. Services are provided by voucher or directly. In addition, TANF will, on a case by case basis, pay fees to purchase certificates, licenses, or testing needed to obtain employment. Medical services are not part of these supportive services. DSS will determine when such services are necessary for a TANF recipient to participate. The services shall include:

- Support provided by contractors to retain employment for one (1) year
- Health care for Delaware citizens through:
 - providing Medicaid coverage to uninsured adults with income at or below 100 percent of the federal poverty level
 - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children program
 - providing transitional Medicaid via 1931d program effective October 1, 2002, for two years for families with children who exit

welfare, at incomes up to 185% of poverty.

Subsidized child care for families who leave TANF to go to work for a period of two years, as long as family income remains below 200 percent of the federal poverty level. In addition, to help individuals retain unsubsidized employment beyond two (2) years, Delaware also provides subsidized child-care to other low income working families until the family's income exceeds 200 percent of the federal poverty level.

- Job search programs and other assistance from the Department of Labor to find a job; and
- ongoing job retention assistance.

Additional Targeted Support

Family Development Profile

The Family Development Profile is used by Delaware to identify possible social, familial, and emotional barriers to self-sufficiency, insofar as they impact an individual's ability to obtain and retain employment. Participants who complete the Profile answer questions about their self-esteem and health, and relationships with family members and other individuals. The Profile includes the capacity to identify mental health problems.

DSS workers report that the Profile frequently surfaces major domestic issues which participants need to resolve. By utilizing the Profile, workers are able to refer participants for assistance in resolving domestic violence and other abuse situations. Further efforts to assist individuals to resolve domestic violence and other abuse situations are described in a later section: Parental Responsibility: Addressing Problems of Statutory Rape and Domestic Violence.

Substance Abuse

As part of the application and redetermination processes, workers ask clients a series of questions, called the CAGE questions, to identify substance abusers for referral to appropriate services. Through the Bridge Program and referrals to the Division of Substance Abuse and Mental Health (DSAMH), Delaware's TANF program offers assessment and non-medical treatment services for all substance abusers identified through this and other methods. DSAMH and the Division of Medicaid and Medical Assistance (DMMA) will ensure that if medical treatment services are needed they are paid from other than TANF funds.

Supporting Teens

Delaware is targeting youth by providing special services. Through the Department of Education, Delaware provides a family literacy program which includes parenting skills training and other services to teen parents and their children to prevent repeat pregnancies.

Beginning with FY 1999 funds were allocated for Delaware's Teen Pregnancy Prevention Initiative, Teen Hope, to support activities for at-risk teens in six School Based Health Centers (SBHCs) and one community site. The program, utilizing the Transtheoretical Behavior Change Model, helps youth develop skills to make better sexual and health related decisions. Initial programs have been very successful. In addition, wellness centers located in 27 high schools provide medical, health and counseling services to high school students.

Several other initiatives are being operated. The AmeriCorp Grant partnership grant with DHSS as lead was awarded in 1999. Under this grant, Planned Parenthood is managing an effort to have AmeriCorp members provide a responsible adult presence and a structured environment for youth to learn, as a strategy to prevent teen pregnancy, in the lives of at-risk teens in selected target areas. The Abstinence Education Grant currently provides mini-grants to agencies providing skills building community programs for teens.

Delaware has undertaken, through an Alliance on Adolescent Pregnancy Prevention (AAPP), a grassroots community and media outreach campaign to convince teenagers to postpone sexual activity and to avoid becoming or making someone else pregnant. AAPP works directly with parents in this initiative to improve communication between parents and children around sexuality and pregnancy prevention. In addition, AAPP provides preventive education and distributes information on preventing teen pregnancy, utilizing a number of kinds of interventions. For example, two full-time community educators visit schools, community centers, churches, and camps; and provide workshops/training to parents and children around sexuality and teen pregnancy prevention. AAPP also maintains a resource center for the community and lends or gives away brochures, videos, curriculum, posters, books, and other communications about teen pregnancy prevention and sexuality.

The Wise Guys initiative is an adolescent male responsibility program that uses an established Wise Guys curriculum over a ten-week period. The program, operating in six high school based health centers, promotes character development and prevention of adolescent pregnancy by teaching young males self-responsibility in several areas.

Delaware's teen pregnancy prevention campaign also uses billboards to convey the message, and statewide

conferences to provide assistance implementing prevention activities.

Delaware's TANF program provides a positive incentive to teenagers to graduate high school by age 19 by awarding a one-time \$50 bonus. Additionally, TANF requires teenage mothers currently on welfare to live with their parent(s) or a responsible adult, stay in school, immunize their children and participate in parenting education.

Services to teens are also discussed in the Section entitled Parental Responsibility: Efforts to Reduce Out-Of-Wedlock Births.

Delivery of Services Across State

Delivery of services will be consistent across the State

TANF BENEFITS TO NEEDY FAMILIES

Computing the Benefit

Eligibility will be determined prospectively. After establishing eligibility, benefits will be computed prospectively. Income per time period will be converted to a monthly income figure by utilizing the following conversion factors:

Weekly	4.33
Bi-weekly	2.16
Semi-monthly	2.00

EXAMPLE: Given a weekly income of \$85, multiply by 4.33 to arrive at a monthly income of \$368.05.

The benefit amount will be determined by using prospective budgeting and the best estimate of earned and unearned income for the assistance unit. The payment will not be changed until the next eligibility determination, unless the recipient reports a change that would result in an increase in the benefit or there is a significant change in circumstances as defined below.

- A significant change is defined as any of the following:
- change in household size;
- new source of employment;
- loss of unsubsidized employment or a change in employment status from full time to part time which was beyond the recipient's control;
- an increase of forty (40) hours or more in unsubsidized employment per month;
- receipt of a new source of unearned income; or
- increases or decreases in existing sources of unearned income totaling \$50.00 or more per

month.

The recipient needs to verify all changes in circumstances.

EXAMPLE: An applicant applies in May. The applicant is employed. The applicant is working 20 hours per week and earns \$5.65 per hour. The best estimate of wages is calculated by multiplying 20 hours times \$5.65 (\$113.00 per week), then multiplying the weekly figure by 4.33 to determine the monthly income of \$485.90.

Redeterminations

At least one redetermination is required every six (6) months. TANF emphasizes work and work related activity. Mandating face-to-face redeterminations might undermine that goal. Therefore, mail-in redeterminations, with a telephone interview are used as an option to encourage recipients to continue participating in employment and training activities or to keep working.

When a redetermination is due, the recipient must complete a new DSS application form or a DSS renewal form. The redetermination could be completing a paper form or participating in an automated interactive interview. A redetermination is complete when all eligibility factors are examined and a decision regarding continuing eligibility is reached.

The assistance case will be closed if a recipient fails, without good cause, to complete the redetermination review. Likewise, the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility will be closed.

As part of the verification process for continuing eligibility, the person will provide verification that (s)he has carried out the elements of the individual Contract of Mutual Responsibility.

Time Limits

Under TANF, cash benefits are time-limited for households headed by employable adults age 18 or older who are included in the grant. Prior to January 1, 2000, Delaware limited receipt of TANF, for families in the Time-Limited Program, to twenty-four (24) cumulative months. During the time-limited period, employable adults received full benefits if they met the requirements of their Contract of Mutual Responsibility, including employment-related activities.

After the first 24 month cumulative period ended, families headed by employable adults could continue to receive cash benefits for an additional 24 cumulative months only as long as the adults participated in a Work For Your

Welfare work experience program or they were working and family income was below the need standard of 75 percent of the Federal Poverty Level.

Effective January 1, 2000 the time limit for receipt of TANF cash benefits is thirty-six (36) cumulative months.

During the time-limited period, employable adult recipients receive full cash benefits only as long as they meet the requirements of their Contract of Mutual Responsibility, including participation in employment-related activities. The ultimate goal of this time-limited period is to support the employable adult's search for, and placement in, an unsubsidized job. Time limits will not apply when Delaware's unemployment rate substantially exceeds the national average or is greater than 7.5 percent.

Individuals found eligible for TANF prior to January 1, 2000 will still have a forty-eight (48) month time limit even if they reapply for benefits on or after January 1, 2000.

DSS will track the time remaining before a family's time limits expire and notify families on a quarterly basis of the time they have remaining before the time limits expire. At least two (2) months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, DSS will remind the family that assistance will end and notify the family of the right to apply for an extension.

Extensions will be provided only to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility; the related extension will correspond to the time period for which services were not provided; or
- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be 12 months.

Extensions may also be granted where other unique circumstances exist. Extensions will not be granted if the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause or if the adult caretaker did not make a good faith effort to comply with the terms of the Contract of Mutual Responsibility.

Retroactively, starting October 1, 1995, Delaware exempted months in which a person worked twenty hours or more per week from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. Beginning in May 2005, Delaware

exempts months in which a person works twenty-five hours or more from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. So that families who have not reached the State's 36/48 month time limit won't reach the Federal 60 month time limit, benefits for these families are provided under a segregated program using State MOE funding, beginning October 1, 1999. However, both the federal and Delaware time clocks continue to run for individuals who meet their work participation requirements by participating in a combination of employment and education for at least twenty (20) hours a week; and for individuals who meet their work participation requirements by participating in education for at least twenty (20) hours a week.

After the time limit has been reached, benefits will be provided to families that have been granted an extension only for a maximum period of 12 months and only in the Work For Your Welfare component. Thus, for Time-Limited families, unless the caretaker is employed at least twenty-five (25) hours per week, the maximum period for receipt of benefits to families enrolled in the Time-Limited TANF Program will be sixty (60) cumulative months for families with a forty-eight (48) cumulative time limit and forty-eight (48) months for families with a thirty-six (36) month time limit. Delaware will comply with federal requirements so that no family receives more than sixty (60) months of TANF paid through federal TANF block grant.

Sanctions: Failure to Comply with the Contract and the Imposition of Sanctions

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning; 2) self-sufficiency; and 3) teen responsibility requirements.

- 1) Enhanced family functioning requirements of the Contract include, but are not limited to, acquiring family planning information and attending parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanction for non-compliance with these requirements is an initial \$50 which will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one requirement. Clients will have to comply with all requirements before the sanction can end.
- 2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training, work-related activities, and ensuring

school attendance requirements for dependent children under age 16.

- The sanction for non-compliance with these requirements is a 1/3 reduction of the benefit for the first occurrence, 2/3 reduction for the second occurrence and a total and permanent loss of the benefit for the third occurrence for work related activities. A third occurrence of the penalty for a child under 16 not attending school is loss of all cash benefits but is curable when the parent demonstrates compliance. The duration of the first and second sanctions will each be two months or until the person complies. If, at the end of the two month period, there is no demonstrated compliance, the sanction will increase to the next level.
- Clients will have to demonstrate compliance with all self-sufficiency requirements before all benefits are restored.
- For the purpose of determining that the individual's failure to comply has ended, the individual must participate in the activity to which (s)he was previously assigned, or an activity designed by the Employment and Training provider to lead to full participation, for a period of two weeks before ending the sanction.
- The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits. The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:
 - for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months;
 - for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months;
 - for a third offense, a permanent loss of all cash benefits.
- For dependent children under age 16, including teen parents, the sanction will not be imposed if the parent of the teen is working with school officials or other agencies to remediate the

situation.

- 3) Teen responsibility requirements include maintaining satisfactory school attendance, or participation in alternative activities such as training or employment, for dependent children 16 years of age and older. The sanction for non-compliance with these requirements is to remove the needs of the teen from the TANF benefit and to remove the needs of the caretaker if the caretaker does not work to remedy the situation. Complying with the requirements ends the sanction.

Failing to comply with both the enhanced family functioning and self-sufficiency requirements will result in combined penalties. For example, both a \$50 reduction and a 1/3 reduction to the benefit could be assessed for first failures to comply in two areas. Demonstrated compliance will not excuse penalties for the period of noncompliance. Sanctions will be imposed for the full period of noncompliance.

Benefit Delivery: Direct Payments and Vouchers

Currently, Delaware uses check issuance as the payment method for TANF.

Delaware directly pays for center-based child care authorized for TANF participants, where the center agrees to accept the Delaware child care reimbursement rate. Some caretakers, however, receive vouchers to self-arrange and pay for their child care. Delaware will reimburse these caretakers, up to the rates published in the Child Care and Development Fund (CCDF) plan, for the cost of child care provided by licensed and license-exempt child care providers.

STAFF TRAINING

TANF training has been incorporated into the Cash Grant training which is required for all new financial services staff. APHSA training has now been incorporated into Interviewing and Coaching training which is required for all new staff.

PARENTAL RESPONSIBILITY

Adults and minor parent(s) are required to comply with parenting expectations outlined in the Contract of Mutual Responsibility.

Cooperation with Child Support Enforcement

Participants in TANF must cooperate with the Division of Child Support Enforcement as a condition of eligibility.

In addition, all families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify such a good cause claim.

Failure of a caretaker, without good cause, to cooperate with and provide information to the DCSE to permit the State to pursue the collection of child support on behalf of dependent children will result in a full family sanction, until compliance. Applicants who fail to provide information so that Delaware may pursue child support collections will be denied. To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of the needy children in the family.

When a child lives with both the natural father and the mother but paternity has not been legally established, the parents will be referred to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgment of paternity.

When a child lives with the natural father but paternity has not been legally established, the father will complete a declaration of natural relationship document and will provide acceptable verification of relationship.

When a child lives with a relative of the natural father but paternity has not been legally established, the relative must complete a declaration of natural relationship document and provide acceptable verification of relationship.

In Delaware, DCSE determines non-cooperation with child support requirements. In addition, effective January 1, 1999 DCSE began making the determination of good cause.

Distribution of Child Support Collections to TANF Recipients

Delaware, a fill-the-gap state in 1975, uses fill-the-gap to make sure that families do not experience a net loss of income due to the State retaining Child Support paid by absent parents. A portion of Child Support payments is not counted in calculating the grant.

Efforts to Reduce Out-of-Wedlock Births

Delaware believes that the number of out-of-wedlock births to teens must be reduced significantly to eliminate poverty and dependency. A study by Doble Research Associates commissioned by the Governor's Family Council, in June, 1998, concluded that Delaware's efforts to reduce teen pregnancy, including establishing more after-school programs, strongly enforcing child-support

enforcement and the Sexual Predator Act, and making teen mothers ineligible for cash assistance, are solidly supported by public opinion. We are undertaking a number of statewide initiatives to reduce adolescent pregnancy. Many of these initiatives are being coordinated through the activities of the Alliance for Adolescent Pregnancy Prevention (AAPP). Ventures include the provision of adolescent health services through school-based health centers and improving teen utilization of our family planning centers.

The AAPP is a statewide public and private partnership charged with the development and implementation of a comprehensive plan to prevent adolescent pregnancy in Delaware. The organizational structure of the Alliance includes a 12 member advisory board appointed by the Governor and a statewide membership of over 200 schools, agencies, organizations, churches, and individuals concerned with teen pregnancy. Staff and program support for the Alliance is provided through a contract from the Division of Public Health (DPH) to the Medical Center of Delaware.

Since its inception, the AAPP has awarded mini-grants to non-profit youth organizations to provide community based teen pregnancy programs; implemented a statewide media campaign to increase community awareness; and worked with existing coalitions to establish teen pregnancy prevention programs. AAAP plans and activities include:

- statewide leadership to develop a visible, viable structure for mobilizing resources needed to impact the problem;
- data development to develop a methodology to monitor rates in real time;
- public relations efforts to increase community awareness and involvement; and
- identifying barriers to teen utilization of family planning services and developing solutions

The Division of Public Health has the lead responsibility in Delaware to implement initiatives to reduce teen pregnancy. Using the strategies and recommendations presented by AAPP, DPH activities include school based health centers, family planning clinics, parenting education, and the peer leadership program. The "teen friendly" services provided at Department of Public Health Units located at State Service Centers have resulted in a significant increase in use. In addition, all clients seen in Sexually Transmitted Disease Clinic sites receive counseling on family planning, as well as pregnancy prevention supplies.

Based on a report by Adolescent Health Survey Research (AHSR), which used a survey and focus groups with youth and their parents conducted early in 1999 to

identify top strategies in pregnancy prevention, Delaware implemented a number of initiatives to prevent subsequent births, including:

- Smart Start, an enhanced prenatal program that attempts to decrease low birth weight babies, infant mortality, and maternal mortality, through social service, nutritional, and nursing support to at-risk pregnant women;
- Placing information on our combined Food Stamp/cash assistance/MA applications for the following telephone numbers: Planned Parenthood, AAPP and Delaware Helpline, to obtain information on pregnancy prevention/family planning.

In addition, family planning and reproductive health services are provided to adults in eight public health locations in Delaware; and similar services are provided to adults by Planned Parenthood of Delaware in five locations in the state. Minority populations are targeted through family planning and reproductive health services available at three Federally Qualified Health Centers in Delaware; and family planning and reproductive health services are available to Delaware State University students through the DSU health center.

These Delaware initiatives to reduce out-of-wedlock births are complemented and strengthened by the policies of TANF which:

- Require adults and minor parent(s) to obtain family planning information from the provider of their choice;
- Provide for a fiscal sanction of an initial \$50 reduction in benefits for failure, without good cause, to obtain family planning information. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end when the adult and/or minor parent(s) obtains the family planning information at the provider of their choice;
- Eliminate benefit increases for children conceived while a caretaker is receiving TANF, and apply this family cap to children who are the firstborn of minors included in a TANF grant where the children are born after March 1, 1997; and
- Treat two parent families the same as single parent families.

The goals for the Division of Public Health teen pregnancy prevention are mirrored in the 'Responsible

Sexual Behavior' section of the Healthy Delaware 2010 guidebook. They include:

- a. By 2010, increase the proportion of teens who abstain from sexual intercourse or use condoms if currently sexually active from 79% to 85%.
- b. By 2004, implement an evidence-based media campaign to promote responsible sexual behavior
- c. By 2010, maintain the proportion of youth that report remaining abstinent before age 13 at 90%
- d. By 2005, reduce the birth rate for teenagers aged 15 through 17 from 39.2 to 33.3 per 1,000.

Goals a. and c. are measured through the Youth Risk Behavior Survey administered every two years by the Department of Education. Goal b. has been satisfied by the implementation of an ongoing teen pregnancy prevention media campaign managed by the Alliance for Adolescent Pregnancy Prevention through Christiana Health Care under contract by DPH. Goal d. is measured by the Delaware Health Statistics Center.

DSS will see that TANF families receive education about the benefits of marriage and planning to have children when they can be best supported by both parents within the financial management component of their training. Our goal is to reduce the out of wedlock birth rate by 1% each year beginning with FFY 2004.

Initiatives to Promote Two-Parent Families

To provide broad-based support for working families, Delaware was one of the first States to recognize that the special eligibility requirements that applied to two-parent families contributed both to the non-formation and the break up of two-parent households. The six-quarter work history requirement was particularly responsible for non-marriage of teen parents, who had not yet worked enough to meet this qualification. The denial of benefits to two-parent families if one of the parents was working at least 100 hours a month also contributed to the low work rate of two-parent families which were receiving AFDC.

When Delaware eliminated these special deprivation requirements as part of our welfare reform waiver, the numbers of two-parent families receiving TANF soared, and we believe that, without the TANF change, many of these households would have applied for and been found eligible for benefits as single mother families. These never formed two-parent households would have had profound effects on the ability of the family to exit welfare and on the future success of the children. We have found that the average length of stay on TANF is much lower for two-parent families, reflecting the greater incidence of retained employment when two adults are able to engage in work and share child care duties.

Delaware has always allowed taxpayers to file separately and applied the progressive rate structure to each spouse's income separately, which avoided most tax increases resulting from marriage. However, a marriage penalty could still result from uneven standard deduction amounts. By increasing the standard deduction amount for married taxpayers to exactly twice the single standard deduction beginning January 1, 2000, enactment of HB 411 has effectively eliminated the income tax "marriage penalty" in the State of Delaware

Addressing Problems of Statutory Rape and Domestic Violence

Statutory Rape

The Sexual Predator Act of 1996 imposes more severe criminal sanctions on adult males who are significantly older than their victims and holds them financially accountable when children are born as a result of violations of this law.

The legislation requires a cooperative agreement as part of a multi-faceted effort to combat teenage pregnancy and reform welfare. Specifically, the law requires the Attorney General's Office, the Department of Health and Social Services, the Department of Services to Children Youth and Their Families, the Department of Public Instruction and law enforcement agencies statewide to establish a cooperative agreement specifying the various roles of the agencies involved. The Memorandum of Understanding establishing the cooperative agreement, executed on December 10, 1996, and SB 346 are provided as **Attachment F**.

Victims of Domestic Violence

As required under the optional Certification of Standards and Procedures to Ensure that a State Will Screen for and Identify Domestic Violence, DSS will refer identified victims of domestic violence to appropriate services such as shelters and counseling and to Family Court. Under the Protection from Abuse Act (PFA), 10 **Delaware Code**, Chapter 9, Sections 1041-1048 (**Attachment G**), Family Court has the power and authority to expeditiously adjudicate all matters related to domestic violence including court ordered restraints, custody, property and financial resources.

Through this strong domestic violence Law, Delaware is clearly committed to assisting victims of domestic violence to overcome circumstances which put them in physical, emotional and/or financial jeopardy; and to assist them in seeking redress and a safe environment for themselves and their families. The Law is a strong deterrent to domestic violence, according to a study by the National Center for

State Courts, released on December 2, 1996. The study reported that 86 percent of those who sought protection under the Law, which permits individuals in danger of serious physical abuse to obtain a protection order, were no longer being physically abused.

In addition, using our Family Development Profile, caseworkers ask a series of screening questions designed to identify victims of domestic violence. (**See Attachment H**) So that we are certain that workers can use this tool to effectively identify domestic violence issues, beginning 1998 all staff members at each of Delaware's 17 field sites receive a full day of Domestic Violence Training, focused on the impact of domestic violence on clients and their ability to abide by the conditions of the Contract of Mutual Responsibility. As part of this training, staff learn how to recognize and assist women who are victims of domestic violence. DSS has continued this training on an ongoing basis and now provides the training not only to field staff but to all staff.

We believe that our methodology of resolving domestic violence situations as quickly as possible, as provided for under a strong statute, is the most appropriate and best course of action to assist current victims and to prevent future violence where possible.

Delaware certifies that the Family Development Profile establishes a procedure that screens for domestic violence and that, pursuant to a determination of good cause, program requirements may be waived if it is determined that compliance would make it more difficult for individuals to escape violence. However, decisions to waive compliance with TANF requirements will be made on an individual, case by case basis, and will not endorse an individual's failure to behave proactively to ameliorate destructive domestic violence situations. For our program to work, domestic violence victims must take actions to recover their lives, using the relief provided by the domestic violence statute and the other resources Delaware makes available.

TRIBES

Delaware has no federally recognized tribes.

ADMINISTRATION

Structure of Agency

The Department of Health and Social Services is the cabinet level agency designated by the State as responsible for Delaware's public assistance programs as allowed under Title IV-A of the Social Security Act. Within the Department, the Division of Social Services administers

these programs. (Organizational chart included as Attachment I to State Plan.)

Administrative Spending

Delaware will comply with federal requirements.

Compliance With Participation Rates

Delaware intends to meet the participation rate requirements set forth in the TANF legislation. Recognizing that Delaware's hourly requirements for participation in work and work-related activities are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to continue to meet TANF work participation requirements. Delaware will comply with federal requirements.

Maintenance of Effort

Delaware is aware of and intends to fully comply with the requirements of the law (P.L. 104-193) to maintain a prescribed level of historic state expenditures. Delaware will ensure that expenditures of state funds for benefits and services ("Qualified State Expenditures" as defined in the law) for TANF participants (either in the Part A federally funded program or non-Part A state funded program) who are TANF eligibles will equal or exceed the required annual spending level.

As a 1975 fill-the-gap state, Delaware has opted to continue to use fill-the-gap for the issuance of child support disregard and child support supplemental payments to TANF clients. Delaware considers these payments to be "cash assistance" to eligible families and therefore to be within the definition of "Qualified State Expenditures".

Financial eligibility criteria for MOE-funded assistance or services are the same as for other TANF assistance or services, except that MOE claimed for child care under the provisions of section 263.3 will follow the financial eligibility criteria established in the CCDF State Plan and associated State regulations.

Implementation Date and Plan Submittal Date

The plan is submitted for certification of completeness on December, 2005. The implementation date for the provisions of this plan is October 1, 2005. Any subsequent amendments to this Plan will be indicated by amending the page of the Plan that describes the program or function being changed.

DIVISION OF SOCIAL SERVICES

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

ORDER**Temporary Assistance for Needy Families (TANF) –
Joint Custody****Nature of the Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings the Division of Social Services Manual (DSSM) as it relates to Joint Custody and TANF. 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 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Regulation**Citation**

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

Background

There are often situations when two parties want to receive TANF benefits for the same child at the same time. In most circumstances, the party that has physical custody and cares for the child most of the time will be able to receive the TANF benefits. When the parties have joint custody or shared custody, determining which party can receive those benefits is more difficult.

Summary of Proposal

DSSM 3004.1.1, *Joint Custody*: Adds specific language to describe the criteria and procedures for determining which party receives TANF when two parties have joint custody or shared custody.

Summary of Comments Received with Agency Response with Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS considered each comment and responds as follows:

First, in recent years the Family Court has issued "shared custody" as well as "joint custody" orders. The Division may wish to clarify in its definition of "joint custody" that is intended to also cover "shared custody" situations.

Second, the regulation offers conflicting or ambiguous guidance on the authorized applicant for TANF in joint custody context. On the one hand, the fourth full paragraph establishes a "first to file" approach irrespective of primary residence. On the other hand, the sixth paragraph establishes a primary residence standard and only applies a "first to file" approach if residency is equally split.

This apparent conflict should be resolved. SCPD recommends that DSS consider the attached analogous Maryland regulation for its Temporary Cash Assistance (TCA) Program. It is clear and concise:

Joint Custody

A. Allow a child to receive assistance in only one TCA household

B. With joint custody, apply the following rules:

1. When the child spends the majority of the time with one parent, that parent may receive TCA if otherwise eligible.

2. When the child spends equal time with both parents:

- The parents decide who applies for TCA, or if they cannot agree
- The parent who applies first claims the child.

Agency Response: First, the agency recognizes and points out that our similar terms may have different definitions than the courts. Second, DSS sees no conflict in the guidance on the authorized applicant for TANF in the joint custody context. The overall premise is that when there is joint custody, the first party to apply and be determined eligible will receive TANF for the child. This will always be the case **except** when both parents wish to apply *at the same time*. In these cases, the agency leans in favor of the parent who maintains the primary residence of the child. To clarify the agency's intent, the sentence **[This also covers shared custody situations.]** and the phrase **[at the same time]** in bracketed bold type has been added to DSSM 3004.1.1.

Findings of Fact

The Department finds that the proposed changes as set forth in the December 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to Joint Custody and TANF is adopted and shall be final effective February 10, 2006.

Vincent P. Meconi, Secretary, DHSS, January 13, 2006

DSS FINAL ORDER REGULATION #06-04

NEW:

DSSM 3004.1.1 Joint Custody

The home exists even if the responsible caretaker relative or child is temporarily absent per DSSM 3023.4, 3023.5, and 3023.6 for TANF purposes. Joint custody cases can complicate deciding if a child is eligible for TANF and with which specified relative.

The Division of Social Services uses the following terms and definitions. (Note: The court system may use similar terms having different definitions.)

Joint Custody-Two parties are given the control to make major life decisions for a child. Joint custody exists when two parties are given, by court decree, the responsibility for making the major decisions in a child's life. [This also covers shared custody situations.] (This is not meant to be an exhaustive list but a guide. There may be other decisions that fall into this category.) Major life decisions revolve around:

- Religious upbringing;
- Medical treatment options; and
- Education.
- Primary Residence - The physical home/location of the child the majority of the time. The court may indicate which party should maintain a primary residence for the child. This decision is often with one party but can sometimes be an equal split between the adults seeking custody. A court decree indicating that one party has the primary residence does not automatically mean only that party is permitted to apply for and receive TANF for that child.
- Day-to-Day Care and Control- The person(s) who

provide the care for the child the majority of the time. These care decisions do not necessarily rise to the level of major life decisions but they are the ones that the responsible adult makes on a daily basis.

The Division of Social Services provides that in joint custody situations, the first party to apply for and have eligibility determined for TANF can receive it for that child. This is permitted, whether or not the party in the joint custody case has the primary residence of the child. We allow this situation because the child will have just one parent providing the day-to-day care or no parent providing the day-to-day care at any given time. This only applies in joint custody cases.

When both parties in the joint custody arrangement wish to receive TANFB [at the same time];

- Determine with whom the child resides most of the time; and
- Determine who maintains the day-to-day care and control of the child.

The party with whom the child resides most of the time and the party who maintains the daily care and control of the child will be able to receive TANF for that child. If both parties have equal time and decision making for the child each month, then the party that applies first will be able to receive the TANF benefits.

DIVISION OF SOCIAL SERVICES

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

ORDER

Refugee Cash Assistance Self-Employment Income Standard Deduction

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 implementing a simplified way to calculate self-employment income for Refugee Cash Assistance. 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 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2005 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

Background

Determining self-employment income is complicated and error prone. Current food stamp rules do not allow certain business costs that the Internal Revenue Service (IRS) allows for tax purposes. Gathering the correct information from tax records can be cumbersome for staff. Verification of gross proceeds is fairly easy to obtain but verifying the costs of doing business is not.

Summary of Proposed Change

DSSM 8028.1, Sources of Income: The previous regulation that was adopted to implement the self-employment standard deduction (October 2005 issue of the *Delaware Register*) did not include Refugee Cash Assistance (RCA). This notice corrects the omission.

Summary of Comments Received with Agency Response

DSS has considered the one comment received and responds as follows:

As the spouse of a self-employed person, I think this proposal has not come soon enough. We have been kicked out of every assistance program that we've applied to because the gross check appears to workers as over the limit. The fact is providing proof of all business expenses is cumbersome and timely and frankly, workers either are not knowledgeable or patient enough to work through the maze of expenses. Please go forward with this regulation quickly, it's the hard working people who are trying to get ahead that are getting left behind!

Agency Response: DSS appreciates your comment. The agency’s intent is to simplify the process for our self-employed customers and to make it easier for staff to accurately calculate the deductions.

Findings of Fact

The Department finds that the proposed changes as set

forth in the December 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to implementing a simplified way to calculate self-employment income for Refugee Cash Assistance is adopted and shall be final effective February 10, 2006.

Vincent P. Meconi, Secretary, DHSS, January 13, 2006

DSS FINAL ORDER REGULATION #05-70

REVISIONS:

8028.1 Sources of Earned Income

1. Wages - Gross earnings paid to the employee before deductions for taxes, FICA, insurance, etc. are counted. Sick pay or vacation pay is considered as a wage as long as it is paid as a wage. If sick pay is paid through an insurance company as disability pay, it is considered unearned income.

NOTE: Earnings paid to employees under contract are averaged over the number of months covered by the contract.

EXAMPLE: A teacher is under contract for a full calendar year, but may choose to collect his pay during the school year. His wages for public assistance purposes are budgeted over the full year.

2. Self employment - Gross earned income from self employment is determined by subtracting business expenses (supplies, equipment, etc.) from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the standard allowance for work connected expenses (See DSSM 8028.2 and DSSM 8028.3).

~~Self-employed persons must submit evidence of gross proceeds and business expenses or income tax statements to verify earnings.~~

3. Farming — Farming is defined as raising crops, livestock, or poultry for profit. Gross earned income from farming is determined by subtracting the farmer's operating expenses from sales. Produce grown for home consumption is not considered income.

4. Room and Board Income — [See DSSM 8030 for treatment of cash payments for shared living expenses.] Income from the operation of a rooming and/or boarding home is considered earned income. The following disregards are deducted from gross proceeds as operating expenses. These expenses are deducted before any earned income disregards are subtracted from income.

Roomers only — subtract \$10.00 per month per person. (A roomer is a person who rents living space in the home.)

Boarders only — subtract \$30.00 per month per person. (A boarder is a person who purchases meals provided in the home, but does not live there.)

Roomers and Boarders — subtract \$46.00 per month per person. (A roomer and boarder does both.)

EXAMPLE: An individual operates a rooming and boarding home. She has three (3) roomers who each pay \$60.00 per month and two (2) roomers and boarders who each pay \$100.00 per month.

~~\$180.00 — Payment from roomers \$60 x 3~~

~~30.00 — Disregards for roomers \$10 x 3~~

~~\$150.00-~~

~~\$200.00 — Payment from roomers and boarders (\$100 x 2)~~

~~92.00~~

~~\$108.00 — Disregard for roomers and boarders (\$46 x 2)~~

~~\$150.00~~

~~+108.00~~

~~\$258.00 — Total gross income from roomers and boarders (Earned income disregards appropriate to the category of assistance are subtracted in the budgeting process. See DSSM 8028.2).~~

Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to,

tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all their business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311 & 1718 (18 Del.C. §§ 311, 1718)
18 DE Admin. Code 504

ORDER

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

Proposed changes to Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants were published in the *Delaware Register of Regulations* on December 1, 2005. The comment period remained open until January 3, 2006. There was no public hearing on the proposed changes to Regulation 504. Public notice of the proposed changes to Regulation 504 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed changes for comment. With the experience of the Atlantic and Gulf Coast states in 2005 generally and Delaware's experience with the Glenville flood in 2003 and Hurricane Jeanne in 2004 specifically, it is important that Delaware licensed property and casualty producers who sell homeowners and personal lines coverages be familiar with flood insurance programs and how to offer the best possible flood protection to Delaware consumers. Consumers will be better informed about the insurance products and coverage on flood policies by requiring producers who sell flood insurance to include a two hour course of instruction in flood insurance as part of their biennial continuing education requirement.

The adjustment to the required ethics hours from four to

three allows Delaware to conform to the same requirement as other states as part of the uniformity agreement within the National Association of Insurance Commissioners that resulted from the passage of the Gramm Leach Bliley Act.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. Any producer who sells homeowners and/or personal lines coverage should be required to attend a minimum of two hours of continuing education in flood insurance as part of that producer's mandatory continuing education requirement under 18 Del.C. Ch. 17 and Regulation 504.

2. In order to be consistent with other states in the National Association of Insurance Commissioners as part of the uniformity agreement, it is appropriate to reduce the mandatory number of course hours of continuing education in ethics from four to three.

3. Paragraph 12 relating to the effective date is confusing as written and applies to prior amendments to the Regulation. Paragraph 12 can be removed without affecting the substance of the regulation and its removal does not require publication and comment since it is technical in nature and is permitted by 29 Del.C. §10113(b).

Decision and Effective Date

Based on the provisions of 18 Del.C. §§311(a) and 1718 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt Regulation 504 as amended and as may more fully and at large appear in the version attached hereto to be effective on March 1, 2006.

Text and Citation

The text of the proposed amendments to Regulation 504 last appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 939-944.

IT IS SO ORDERED this 13th day of January 2006.

Matthew Denn, Insurance Commissioner

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

1.0 Statutory Authority and Purpose

This Regulation is established and promulgated pursuant to 18 Del.C. §§314, 1718 and 29 Del.C. Ch.101.

The purpose of this Regulation is to establish requirements for insurance education and ethics for resident insurance adjusters, public adjusters, producers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

8 DE Reg. 703 (11/1/04)

2.0 Definitions

"Administrative record" means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

"Audit" means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines, self-study programs and distance learning programs based on current guidelines.

"Authorized representative" or "provider representative" means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records. Where this regulation provides for an act by an entity sponsor or provider, such act shall be performed by an authorized representative.

"Commissioner" means the Insurance Commissioner of the State of Delaware and/or such designee appointed by the Commissioner.

"Completion" when used in the context of:

Self-Study, means a passing grade of 70% or better on the examination.

Class, means attendance for the full amount of time approved for each course.

Seminar means attendance for the full amount of time assigned for each workshop or break-out session selected.

"Compliance date" means the last day of February of even numbered years. Each biennial license shall commence on March 1st and end on the last day of February of even numbered years.

"Contact person" means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or

corporate officer, and who designates the school official to represent the entity.

"Continuously licensed" means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

"Course" means any class, self-study, seminar or distance learning course for insurance producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that has been approved by the Department for the purpose of complying with continuing education requirements.

"Credit hour (CEUs)" means one (1) unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

"Department" means the Delaware Department of Insurance.

"Disciplinary action" means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer or a licensee.

"Distance learning" or "Distance education" means instructional delivery that does not constrain the student to be physically present in the same location as the instructor. Distance education includes but is not limited to: audio, instructional television, videotape, teleconferencing, audio/video conferencing, and computer conferencing, web based instruction, traditional self-study course(s) including CDs and DVDs as supplied materials and any other planned learning that normally occurs in a different place from teaching and as a result requires special techniques of course design, special instructional techniques, special methods of communication by electronic and other technology, as well as special organizational and administrative arrangements approved by the Department.

"Entity sponsor" or "sponsor" means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

"Ethics credits" means the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another, conflicts of interest and matters that deal with individual character and

personal characteristics such as honesty, integrity and professionalism in the insurance industry.

"Hour" means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

"Initially Licensed" means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

"Recognized association" means an insurance industry association established for at least 5 years.

"School official" means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

"Syllabus" means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

2 DE Reg. 122 (7/1/98)

8 DE Reg. 703 (11/1/04)

3.0 Course Providers

3.1 A provider who sponsors a continuing education course must be approved by the Department and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, national provider, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on written forms or in an electronic format approved by the Department. The Department may approve or participate in reciprocal agreements relating to continuing education with the NAIC and/or its members. In assessing a provider's application for approval, the Department may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

3.2 General Requirements and Responsibilities.

3.2.1 Providers shall maintain the records of each individual completing a course for three (3) years from the date of completion and shall send the Department a roster of those in attendance within thirty (30) days of the course completion date on forms or in electronic format prescribed by the Department.

3.2.2 Providers shall notify the Producer Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

3.2.3 Course providers will provide each licensee successfully completing their program a Certificate of Completion for attendees' records only after successful completion of the entire approved education course/activity. Entity Sponsors are required to distribute a Certificate of Completion to each licensee successfully completing the educational activity within thirty (30) calendar days.

3.2.4 Course providers shall obtain the Department's approval for each course offered. No prior approval shall be required for any course offered through any NAIC sponsored reciprocal agreement but course credit under this regulation shall only be allowed for those subjects eligible for course credit in Delaware.

3.2.5 No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Department upon request.

3.2.6 Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

3.2.7 One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

3.2.8 Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

3.2.9 Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

3.2.10 Course approvals, once granted by the Department, shall remain valid until modified or terminated by the entity sponsor or Department. Any changes or modifications to one or more courses by an entity sponsor shall not be valid until submitted to and approved by the Department in writing. All courses approved for credit as of November 1, 2004 shall not be subject to re-approval under the provisions of this section.

3.2.11 No activity may be advertised as having been approved until the sponsor receives written notification from the Department.

8 DE Reg. 703 (11/1/04)**4.0 Instructors**

4.1 An entity sponsor shall certify to the Department that the instructor shall possess one or more of the following qualifications:

4.1.1 A minimum of 3 years working experience in the subject matter being taught.

4.1.2 An approved professional designation in accordance with Section 9.3 from a recognized association.

4.1.3 A degree from an accredited school in the subject matter being taught.

4.1.4 Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

4.1.5 An instructor who is a licensee shall receive the same number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

4.1.6 Instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course provider's policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors.

8 DE Reg. 703 (11/1/04)**5.0 Department's Action upon Violation or Non-conformity by Course Provider or Instructor**

If the Department determines that a course provider or instructor has violated any provisions of this regulation, the Department may withdraw approval of the entity sponsor or instructor or may order a refund of course fees to licensees who attended the course, or both. The Department may also refuse to approve courses conducted by specific sponsors or instructors if the Department determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Department or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

8 DE Reg. 703 (11/1/04)**6.0 Appeals**

6.1 Appeals shall be conducted in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch.101 and 18 **Del.C.** §§323-28.

6.2 Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

6.2.1 A synopsis of the issue,

6.2.2 The basis for the appeal,

6.2.3 The name, address, and telephone number of a contact person,

6.2.4 A copy of the original course submission and supporting documents, and

6.2.5 A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

8 DE Reg. 703 (11/1/04)**7.0 Required Forms**

7.1 Requests for entity sponsor approval shall be made to the Department on such forms as shall be authorized by the Department.

7.2 Requests for entity sponsor course approval shall be made to the Department on such forms as shall be authorized by the Department.

8 DE Reg. 703 (11/1/04)**8.0 Licensee's Responsibility**

8.1 Each licensee shall retain each original course completion certificate for a period of 3 years. The course completion certificate may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department.

8.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum, the number of education credits described below.

8.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, ~~four~~ three (43) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations. Any resident

licensee who is authorized to write homeowners or personal lines coverage shall be required to complete a two (2) hour continuing education course related to flood insurance and the National Flood Insurance Program as part of the twenty-one (21) general credit hours necessary to maintain a Delaware resident license. [The flood education requirement shall become effective for reporting periods on or after March 1, 2006.]

8.2.2 Resident adjusters, public adjusters and Fraternal Agents shall be required to fulfill twelve (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

8.2.3 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline and include a copy of the providers course completion certificate.

8.2.4 The maximum number of carryover credits shall not exceed five (5) credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements.

8.2.5 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed.

8.3 Automatic credit. An individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of twelve (12) credits in each biennium. The Department shall maintain a list of approved professional designations. Automatic credits may not be applied to satisfy the mandatory continuing education courses set forth in section 8.2.1.

8.4 License reinstatement after suspension, revocation or cancellation. All resident licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del.C. §1706 including the retaking of exams for all lines of authority under which the individual proposes to transact insurance. Any licensee who is reinstated under the provisions of this subsection shall not be entitled to the waiver provided for in section 8.2.5.

8.5 Extension of time. For good cause shown, the Department may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the

succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Department no less than thirty (30) days before the expiration of the biennium period.

8.6 Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Department for good cause shown. "Good cause" includes long-term illness or incapacity and any other emergency situations deemed appropriate by the Department. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Department no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Those individuals serving full time in the armed forces of the United States of America on active duty outside of the State of Delaware shall notify the Department upon their return by supplying a copy of their activation orders as part of their application for a waiver. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

8.7 Sixty (60) days prior to the start of each biennium, the Department shall prepare and publish a list of those lines of insurance for which the producers are exempt from the requirements of section 8.

8.8 Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 8.2.2 of this regulation. Nonresident adjusters and public adjusters must meet the license requirements of their home state.

8 DE Reg. 703 (11/1/04)

9.0 Penalty for Noncompliance

9.1 Pursuant to 18 Del.C. §§334, 1712, and 1718, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under section 8.5 of this regulation shall be subject to an administrative penalty up to and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

9.2 Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments shall be reinstated unless or until the insurer notifies the Department and licensee in writing of the insurer's intent to

terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subject to compliance with 18 Del.C. §1706 including the retaking of examinations for all line(s) of authority for which the individual licensee seeks a license.

9.3 The Commissioner may, by Order based upon a reasonable belief that a violation of Title 18 occurred, require any individual licensed under 18 Del.C. Ch. 17 to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

8 DE Reg. 703 (11/1/04)

10.0 Continuing Education Advisory Council

10.1 The Council shall consist of fourteen (14) licensees drawn from the professional organizations and the insurance industry in the State, 5 from the life and health field, 5 from the property and casualty field and four (4) from the claims settlement field.

10.2 One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Department – regarding acceptance/rejection and the number of CEUs to be granted if accepted.

10.3 The Council shall also advise the Department on matters of concern as they arise and be the liaison between the Department and the professional organizations.

10.4 Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

10.5 The Department's decision with respect to any Entity Sponsor submission shall be final.

8 DE Reg. 703 (11/1/04)

11.0 Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

8 DE Reg. 703 (11/1/04)

~~12.0 Effective Date~~

~~This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 504 (Formerly Regulation 47) as last amended in 1987 shall remain in effect. The amendments to this Regulation shall become effective November 15, 2004. Any matters~~

~~that are not merely procedural in nature arising prior to November 15, 2004 shall be governed by the provisions of the prior version of this regulation in effect at the time the matter arose.]~~

8 DE Reg. 703 (11/1/04)

DEPARTMENT OF INSURANCE

18 Delaware Code, Sections 311 and 2503

(18 Del.C. §§311 and 2503)

18 DE Admin. Code 607

ORDER

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

Public hearings were held on November 1, 2005 and January 5, 2006 to receive comments on proposed Regulation 607 relating to the Defensive Driving Course Discount for Automobiles and Motorcycles. Public notice of the two hearings and publication of the proposed Regulation 607 and subsequent amendments to the original proposal in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Twenty-four persons attended the November 1st public hearing and nine persons attended the January 5th public hearing. There were thirty-four written comments received by the Department.

Summary of the Evidence and Information Submitted

The main objectives of the proposed amendments to Regulation 607 are to update and streamline the course approval process and to clarify the complaint, hearing and adjudication process for alleged violations of the regulation. Additionally, with the improvements in technology, the proposed amendments are designed to accommodate the consumers' desires for an alternative to live classroom presentations, namely course availability on the internet.

The initial form of the proposed amendments was published on October 1, 2005 in the *Delaware Register of Regulations*. The initial proposal contained a requirement that drivers taking a course be required to pass an exam approved by the Department of Insurance ("the Department") with a score of at least 75%. The Department received seventeen written comments opposed to the testing requirement and a number of persons spoke against the proposed test requirement at the public hearing held on

November 1, 2005.

A second major change proposed in the regulation was transferring responsibilities currently being administered by the Defensive Driving Credentials Committee to a more traditional administrative review process. The concerns raised by the public comment to this part of the proposed changes were less substantive and more oriented to a concern about whether there would be a reduction in public access under the Freedom of Information Act to the deliberative process of course approval or the complaint process. I have determined that the benefit to consumers of a faster, more efficient review process, combined with the availability under the Freedom of Information Act of most documents involved in an administrative review process, will allow the Department to provide consumers more affordable choices while still allowing for appropriate public review of the process.

At the conclusion of the first public hearing on November 1st, I informed the public that the proposed changes to the regulation would be revised based on the public comment received as of November 1st. The most significant change was to eliminate the proposed testing requirement. The other changes prompted by the public comment were (1) to revise the language of the proposed changes to clarify the requirement that online or CD-ROM courses be set up so that a student taking such a course would be required to commit the same time, five hours of instructional time, to complete an online course as would be required for a live classroom course; (2) clarify the requirements for live assistance for online course takers; and (3) clarification of the procedures governing the identification of students taking the online course and receiving a course completion certificate from the online provider.

The revisions to the proposed regulation were published in the *Delaware Register of Regulations* on December 1, 2005. A public hearing on the revisions was conducted on January 5, 2006. Two course providers submitted public comment prior to the public hearing on January 5th. They were concerned about the inconvenience to online students who would be required to appear in person at a particular place to prove their identity in order to obtain a course completion certificate. This requirement would present a hardship to students and members of the military serving outside the State of Delaware and was inconsistent with the option to take the course online as opposed to a scheduled classroom environment.

In both hearings, there were concerns raised about the possibility of persons other than a course registrant taking the course for someone else in order to get them credit under false pretenses. A classroom course provider stated that it

was inconsistent to require classroom students to prove their identity prior to taking the course but not requiring the same for online students. However, since the online course is not the same as a classroom environment, it is not inconsistent to allow for some procedural differences to accommodate the particular needs of each course method. The proposed changes in the regulation allow for the Department to assure that all providers have appropriate security in place as a condition of course approval to eliminate or at least minimize the potential for fraudulent conduct.

One course provider suggested that the letter required in section 6.10 need only be given once, with the registration or with the course completion certificate, but not twice as required by the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §2503(6) and (7) provides that the Commissioner “shall require a reduction in rates for a 3-year period for any person who voluntarily attends and successfully completes” either a motor vehicles or motorcycles accident prevention course “which is approved by the Commissioner.” That statutory provision is silent as to the methods by which such approval is given however, 18 **Del.C.** §311(a) provides that the Commissioner may make reasonable rules and regulations necessary for the administration or effectuation of any provision of Title 18.

2. The continuation of course approval and complaint investigation and adjudication by the Defensive Driving Credentials Committee under current Regulation 607 is cumbersome, inefficient, and time consuming. In a time where technological advances occur at a rapid rate, it is in the public interest that the Department provides for a streamlined, efficient system for the review of applications for course certification as well as for the prompt review of questions or complaints from providers or the public at large.

3. The changes to the complaint filing, investigation and adjudication procedures modernize the regulation and bring it into conformity with the format used by most of the State’s licensing boards. *Compare* 29 **Del.C.** §8735(h).

4. The regulation requires six hours of class time broken into fifty minutes of instruction and ten minutes of break time. An online course that provides five hours of actual instructional time meets the requirements of the regulation.

5. There was general agreement among the comments received that the current system needs improvement and there were no comments suggesting that the proposed regulation extends, modifies or conflicts with any Delaware

law.

6. The suggestion that section 6.10 be amended to require only one delivery of the Department's letter is valid. Amending the last sentence of section 6.10 to read as follows is merely technical and does not require republication as set forth in 29 Del.C. §10113(b): "On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion."

Decision and Effective Date

Based on the provisions of 18 Del.C. §§311 and 2503 and 29 Del.C. §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 607 as may more fully and at large appear in the version attached hereto to be effective on February 11, 2006.

Text and Citation

The text of the proposed amendments to Regulation 607 last appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 944-49.

IT IS SO ORDERED this 5th day of January, 2006.

Matthew Denn, Insurance Commissioner

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

1.0 Purpose and Authority

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Providers and Instructors. This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

2 DE Reg. 989 (12/1/98)

2.0 Definitions

"Classroom courses" for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

~~"Committee" for the purpose of this regulation means the Defensive Driving Credentials Committee.~~

"Department" means the Delaware Insurance Department.

"On-line courses" for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD ~~roms~~ ROMS or similar pre-recorded media or websites.

"Providers" means corporate sponsor for any course as well as the individual who signs the application for the course.

3.0 Minimum Requirements

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the ~~Insurance Commissioner~~ Department.

2 DE Reg. 989 (12/1/98)

4.0 Application

4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above. Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

2 DE Reg. 989 (12/1/98)

5.0 Implementation

5.1 ~~In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motoreycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motoreycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.~~

5.2 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

5.32 All courses certified by this Department as of September 1, 2004 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2005. All courses not certified by this Department prior to September 1, 2004 shall apply for certification under the provisions of section 7 of this regulation.

6.0 Defensive Driving Course Credential Committee

6.1 ~~The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). In appointing Committee members, the Commissioner shall consider the following characteristics:~~

6.1.1 ~~Knowledge of principles of teaching and learning;~~

6.1.2 ~~Knowledge of safe driving principles; and~~

6.1.3 ~~Knowledge of Delaware Motor Vehicle laws.~~

6.2 ~~The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course provider and who meet the standards set forth in sections 10.1.1 through 10.1.4.~~

6.3 ~~Duties. The Committee shall:~~

6.3.1 ~~Elect its Chairperson and shall make recommendations to the Commissioner concerning the duties set forth herein;~~

6.3.2 ~~Review and examine defensive driving course provider, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider or prospective provider and applicants.~~

6.3.3 ~~Review and examine defensive driving courses and shall provide occasional monitoring of courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.~~

6.3.4 ~~Certify approved course providers and individual instructors for a two-year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and~~

6.3.5 ~~Conduct any other such activity reasonably related to the furtherance of its duties.~~

76.0 Certification Criteria for Defensive Driving Programs and Providers

Each course provider shall:

76.1 ~~Submit to the Department~~ for approval written instructor and student materials for any defensive driving course to be offered that ~~minimally includes the elements listed in this section.~~ On-line courses shall provide free site access to ~~the Department~~ ~~a Committee member~~ for purposes of verification of compliance. The course materials for each defensive driving course shall include, at a minimum, the following:

76.1.1 The definition of defensive driving and the collision prevention theory serving as the basis for the course;

76.1.2 A discussion of vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

76.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

76.1.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:

76.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;

76.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;

76.1.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

76.1.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

76.1.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include identifying oneself as an aggressive driver and the appropriate manner to respond.

76.2 Require instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

76.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions at all times during which the course is accessible online. For courses which are accessible offline, the provider must provide toll free telephone access at such times and for such hours as shall be approved by the Department.

76.4 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the refresher advanced (renewal) course. Each classroom hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for the classroom and shall submit to the Department any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section.

76.5 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.

76.6 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.

76.7 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.

76.8 Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course.

76.9 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

6.9.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials.

6.9.2 No online course provider shall issue a certificate of completion online or offline. All such providers shall appoint an agent or agents in Delaware with an address and telephone number easily accessible by all students who shall personally compare the online identification information with the information on the student's Delaware driver's license and/or government-issued photo identification prior to the hand delivery of a certification of completion as described in section 6.9.

76.10 All courses shall provide all students with a copy of a letter provided by the ~~Committee~~ Department informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.

76.11 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

~~8.0 Complaints, De-certification, Suspension and Probationary Status~~

~~8.1 Complaints received by the Department of Insurance against course providers and/or instructors shall be directed to the Chairperson for the Committee. The Chairperson shall forward the complaint, in writing or by electronic mail, to the provider and shall request a response. The provider shall respond in writing or by electronic mail within fifteen working days. At the next meeting, the Committee shall determine whether the complaint is in an area over which it has the authority to take action or to make a recommendation. The results shall be reported to the course provider in writing as soon as reasonably possible.~~

~~8.2 Course providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.~~

~~8.3 Prior to de-certification, placement on probation or suspension of certification, the course provider or instructor or both shall be notified, in writing, by the Committee. The course provider or instructor or both shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.~~

~~8.4 A course provider or instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days~~

~~shall be subject to de-certification at the end of the probationary period.~~

~~8.5 A course provider or instructor or both may be de-certified, suspended or placed on probation for the following:~~

~~8.5.1 Falsification of information on, or accompanying, the Application for Certification/Recertification;~~

~~8.5.2 Falsification of, or failure to keep and provide adequate student records and information as required herein;~~

~~8.5.3 Falsification of, or failure to keep and provide adequate financial records and documents as required; and~~

~~8.5.4 Failure to comply with any section of this Regulation.~~

9.0 Appeal Procedures

~~9.1 Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course provider or instructor or both may file an appeal requesting review of the action taken.~~

~~9.2 The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.~~

~~9.3 The Committee shall conduct all hearings pursuant to 29 Del.C. Ch.101 of the Delaware Code Annotated.~~

7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status

7.1 The following procedure shall be followed for the investigation of complaints against course providers and/or instructors certified under section 6.0 of this Regulation (the term "course provider" as used in section 7.0 of this Regulation shall include individual instructors as may be appropriate in the context of this section):

7.1.1 Any person who desires to file a complaint against any course provider must do so in writing.

7.1.2 The complaint shall state the name of the course provider and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Department may, in its discretion, dismiss the complaint without further notice or a hearing.

7.1.3 The Department, upon determining that the complaint is complete as provided in section 7.1.2 above, shall, within 15 days of the receipt of the complaint, assign a docket number to the complaint and shall transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the course provider named in the complaint at the course provider's address of record in the Department's files. The named course provider may file an answer to the complaint within 20 calendar days with the Department.

7.1.4 The Department shall assign a staff member to investigate the complaint and the course provider's response.

7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Commissioner or his designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.

7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Department. The Department shall provide a written notification of the Department's action and the basic reason(s) therefor to the complainant and to the course provider.

7.2 Upon a recommendation for further action under section 7.1 of this Regulation, the Commissioner shall determine whether the course provider should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.

7.3 Upon making a determination as provided for in section 7.2 of this Regulation, the Department shall provide written notice to the course provider by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:

7.3.1 a summary of the complaint;

7.3.2 a summary of the information obtained in the investigation;

7.3.3 findings of fact and/or law; and

7.3.4 the sanction to be imposed by the Department.

7.4 Upon receipt of the notice provided for in section 7.3 of this Regulation, the course provider shall have the rights to a hearing and appeal as provided for in 18 Del.C. §§323-28.

7.5 Nothing in section 7.0 of this Regulation shall preclude the course provider from entering into a consent agreement with the Department.

7.6 A course provider or instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or

probation within the time set forth in the consent agreement or order may be subject to suspension or decertification.

7.7 In addition to the other provisions of this Regulation, a course provider may be placed on probation, suspended or decertified for any one or more of the following:

7.7.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;

7.7.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or

7.7.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.

108.0 Certification Process for Defensive Driving Instructors

108.1 Basic Requirements. Each instructor shall:

108.1.1 Be at least 18 years of age;

108.1.2 Be a high school graduate or have a G.E.D.;

108.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

108.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The ~~Committee reserves the right to~~Department may require a criminal history background check of all applicants for an instructor's certification.

10.2 The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.

10.38.2 Re-certification. Every two years each instructor shall:

10.38.2.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

10.38.2.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

10.38.2.3 Submit a form as prescribed by the ~~Committee~~Department certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation; and;

10.38.2.4 Submit a certified copy of his or her driving record.

~~10.3.58.3~~ The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The ~~Committee~~ Department shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

8.4 The Department may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Commissioner's website from time to time as may be appropriate.

11.0 Meetings

~~The committee shall set a day and time for quarterly meetings. Other meetings may be set as needed.~~

12 2.0 Effective Date

~~12.1 This regulation shall become effective on September February 11, 2004.~~ The procedural guidelines set forth in this regulation shall govern the disposition of any matter pending before the Defensive Driving Credentials Committee as of the effective date of this regulation.

2 DE Reg. 989 (12/01/98)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No: 2005-W-0052

Regulations Governing Storm Water Discharges Associated with Industrial Activities

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On February 10, 2003, the Department approved this proposed rulemaking proceeding Start Action Notice ("SAN") 2003-03 in order to reissue and amend *Regulations Governing Storm Water Discharges Associated with Industrial Activities* ("Regulations"). The Regulations are based upon a federal program that enables the Department to issue a general permit under certain circumstances. The

Department determined that the regulation of storm water discharges associated with industrial activities was suitable for the general permit program in order to protect the environment and water quality from the harm posed from unregulated storm water discharges.

The Department drafted proposed regulations, held three public workshops in New Castle County, Kent County and Sussex County on July 6, 7, and 14, 2005, published Proposed Regulations in the September 1, 2005 *Delaware Register of Regulations*, and held a public hearing on September 29, 2005. Based on the record of decision, including the public hearing record reviewed in the December 23, 2005 Hearing Officer's Report ("Report") appended hereto, I find and conclude that the recommended regulations should be adopted as final regulations.

The regulations are well-supported and consistent with the law and regulations. They will allow the Department to exercise its authority to protect the environment from the harm posed from unregulated storm water discharges from industrial activities. The regulations will allow the Department to continue the federal program, but they also reflect considerable improvements, as reviewed by the Report. The result is a significant reduction in the number of regulations through the repeal and consolidation of the existing regulations without any loss of regulatory control. In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary, adopts as final regulations the recommended regulations set forth in the Appendix B to the Report;

The issuance of the final regulations will protect and improve the environment from possible harm associated with unregulated release of storm water discharges associated with industrial activities;

The final regulations are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by sound technical analysis in the record;

The Department provided adequate public notice of the proceeding and the public hearing, held a public hearing, and considered all timely and relevant public comments in making its determination;

The Department's proposed regulations, as published in the September 1, 2005, *Delaware Register of Regulations*, and with the minor change set forth in Appendix B to the Report, are well-supported, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that;

The Department shall provide written notice to the

persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of written comments.

John A. Hughes, Secretary

Date of Issuance: January 28, 2005

Effective Date: February 11, 2006

*** Please note: The only change to the proposed regulation was the movong of "\$9.1.01.9 Best Management Practices" from the Appendix to the body of the regulation. Since the balance of the regulation contained no changes from the proposed it is not being republished here.**

An HTML version is available on the monthly register website.

<http://www.state.de.us/research/register/february2006/final/index.shtml>

For an Adobe PDF version click here.

[§9.1.01.9 Best Management Practices

The Department is authorized under the federal regulations (40 CFR 122.44) to impose Best Management Practices (BMPs) to control or abate the discharge of pollutants in lieu of numeric effluent limitations when the Department finds that BMPs are reasonably necessary to achieve effluent limitations and standards, or to carry out the purposes and intent of the State and Federal Acts.

The Department shall maintain a list of Best Management Practices that would eliminate or reduce the contact of industrial materials, areas, and or activities with storm water. These BMPs are a means to meet the requirements for BMPs listed in as applicable and are considered the minimum set of required BMPs for an industrial activity. Equivalent BMPs may be selected which result in equal or better quality of stormwater discharge.]

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**

1400 Board of Electrical Examiners
Statutory Authority: 24 Delaware Code,
Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))
24 **DE Admin. Code** 1400

ORDER

A public hearing was held to receive comments on January 4, 2006, at the regularly scheduled meeting of the Board of Electrical Examiners. The Board considered changes to its Rules and Regulations, 7.0 Expiration and Renewal and 8.0 Continuing Education, that were published in the *Register of Regulations*, Vol. 9, Issue 6, December 1, 2005.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact With Respect to the Evidence and Information

The Board finds that the changes clarify the online renewal process as well as the auditing of continuing education for compliance.

Decision and Effective Date

The Board of Electrical Examiners hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

Text and Citation

The text of the Rules and Regulations appears in the *Register of Regulations*, Vol. 9, Issue 6, December 1, 2005 at page 949.

BOARD OF ELECTRICAL EXAMINERS

Jacob Good, President	C. Leroy James
Andy Strouse, Vice President	Steven Dignan
Shirley Good	Donald King
Donald Collins	James Anderson

Date: January 4, 2006

7.0 Expiration and Renewal.

7.1 The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov.

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

4 DE Reg. 1788 (5/1/01)

9 DE Reg. 260 (8/1/05)

8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board completed by April June 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is

~~due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.~~

8.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.

8.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.

8.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.

8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at www.dpr.delaware.gov. Licensees may also contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and ~~name~~ the curriculum vitae or resume of the instructor.

8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.42.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

~~8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained~~

~~during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.~~

8.5.1 The Board will notify licensees within sixty (60) days after June 30 that they have been selected for audit.

8.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

4 DE Reg. 1788 (5/1/01)

***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 Electrical Examiners is available at:**

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

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code,

Section 2509 (24 Del.C. §2509)

24 DE Admin. Code 2500

ORDER

A hearing was held to receive comments on January 13, 2006 at a regularly scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations 3.0, 5.0 and 13.0 as published in the *Register of Regulations* at 9 DE Reg 951 12-01-05.

Summary of the Evidence and Information Submitted

1. The Board received a letter dated January 4, 2006 supporting the proposed changes from the National Association of Chain Drug Stores.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board finds that the changes to Regulation 3.0 protect the public with specific requirements for a pharmacy while providing flexibility for the various practice settings.

Regulation 5.0 is updated to eliminate "reconstitution" in the definition of compounding. In addition, selling compounded products on the order of a practitioner for his or her office use with individual patients is permitted.

Centralized prescription processing is governed by new

Regulation 5.12 as a means to make dispensing based on a central database efficient and safe.

Regulation 13.0 applicable to Nuclear Pharmacies was simplified and updated to provide for some consistency with other jurisdictions.

Decision and Effective Date

The Board hereby adopts the changes to Regulations 3.0, 5.0 and 13.0 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 at 9 DE Reg 951 12-01-05.

SO ORDERED this 13th day of January, 2006.

STATE BOARD OF PHARMACY

John E. Murphy, R.Ph., President

Don Holst, R.Ph., Vice President

Daniel Hauser, Pharm. D.

Karen J. Dey, R.Ph.

Angelo Chiari, R.Ph.

3.0 Pharmacy Requirements

3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and

delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials. ~~Each pharmacy shall have the following equipment and maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:~~

3.3.1 References:

~~3.3.1.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.~~

~~3.3.1.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.~~

~~3.3.1.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.~~

~~3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.~~

~~3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.~~

~~3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.~~

3.3.2 Equipment

3.3.2.1 Prescription Scale, Class A

Set of Metric Weights if balance is used

3.3.2.2 Graduates, (must be glass) Metric

One of Each:

— 30 ml

— 60 ml

125 ml

500 ml

(or Set with both metric and Apothecary

Graduations may be used)

- ~~3.3.2.3 Mortars and Pestles~~
 - ~~One 8 ounce glass~~
 - ~~One 8 ounce wedgewood~~
- ~~3.3.2.4 Filter Paper~~
- ~~3.3.2.5 Prescription/physician Order Files~~
- ~~3.3.2.6 Two Spatulas~~
- ~~3.3.2.7 One Glass Funnel~~
- ~~3.3.2.8 One Glass Stirring Rod~~
- ~~3.3.2.9 Ointment Slab or Papers~~
- ~~3.3.2.10 Distilled Water~~

~~Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.~~

~~All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.~~

3.3.1 Equipment: Each pharmacy shall have all equipment appropriate to the individual pharmacy practice and to the care of the patients served.

3.3.1.1 All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.3.1.2 Equipment may include such things as prescription scale, metric graduates, mortars and pestles, filter paper, spatulas, funnel, stirring rod, ointment slab or papers, distilled water, and prescription/physician order files.

3.3.2 References: Each pharmacy shall maintain a library of the latest edition and supplements of current reference sources, either hard copy or electronically accessible, appropriate to the individual pharmacy practice and to the care of the patients served. References must:

3.3.2.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed.

3.3.2.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.

3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.

3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.

3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:

Refrigerator - 36 degrees to 46 degrees Fahrenheit

Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:

3.5.1 The requirements listed in §2534(f)(1) through (4).

3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.

3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 Del.C. §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

2 DE Reg. 683 (10/1/98)

6 DE Reg. 488 (10/1/02)

7 DE Reg. 309 (9/1/03)

7 DE Reg. 1666 (6/1/04)

9 DE Reg. 85 (7/1/05)

(Break in Continuity of Sections)

5.0 Dispensing

5.1 Definitions

"Agent" An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

"Automated Data Processing System (ADP)" A system utilizing computer software and hardware for the purposes of recordkeeping.

"Cell" Any container which holds the medication for automatic dispensing.

"Central Prescription Processing" The processing by a Pharmacy of a request from another Pharmacy to fill or refill a prescription drug order or to

perform processing functions such as dispensing, DUR, claims adjudication, refill authorizations and therapeutic interventions.

"Common Data Base" A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

"Compounding" The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including ~~the reconstitution of powders for administration~~ and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCa Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

"Computer" Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

"Controlled Substance" Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

"CRT" Cathode Ray Tube used to impose visual information on a screen.

"Delivery" The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

"Dispensing" To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

"Downtime" That period of time when a computer is not operable.

"Facsimile (FAX) Prescription" A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

"Final Container" is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

"New Medication" A medication not previously dispensed by the pharmacy for the ultimate user.

"Patient Counseling" The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in

such instances, it would be permissible for the offer to counsel to be made through alternative means.

“Pertinent Patient Medication Information”

Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

“Prescriber” A practitioner authorized to prescribe and acting within the scope of this authorization.

“Prescription” An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.) A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

“Printout” A hard copy produced by computer that is readable without the aid of any special device.

“Reduced to Writing”

For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.

“Regulatory Agency” Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

“Stop Date” A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

“Supportive personnel” A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

5.2 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only

by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

5.2.1 Receive oral prescriptions and reduce them immediately to writing.

5.2.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

5.2.3 The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the individual verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the individual.

5.3 Patient Counseling

5.3.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

5.3.2 A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

5.3.2.1 the name and description of the prescribed drug;

5.3.2.2 the dosage and the dosage form;

5.3.2.3 the method and route of administration;

5.3.2.4 the duration of the prescribed drug therapy;

5.3.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

5.3.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

5.3.2.7 patient techniques for self-monitoring of the drug therapy;

5.3.2.8 proper storage;

5.3.2.9 prescription refill information;

5.3.2.10 the action to be taken in the event of a missed dose; and

5.3.2.11 current over-the-counter medication use.

5.3.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.3.4 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling.

5.3.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

5.4 Supportive personnel

5.4.1 Qualifications and training

5.4.1.1 The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

5.4.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

5.4.1.2.1 general drug and dosage form knowledge

5.4.1.2.2 medical terminology

5.4.1.2.3 pharmaceutical calculations

5.4.1.2.4 prescription labeling requirements

5.4.1.2.5 general filling/dispensing responsibilities

5.4.1.2.6 patient profile record system requirements

5.4.1.2.7 requirements for patient counseling

5.4.1.2.8 confidentiality

5.4.1.2.9 safety practices

5.4.1.2.10 inventory functions

5.4.1.2.11 knowledge of applicable State and Federal Statutes and Regulations

5.4.1.2.12 other site-specific parameters

5.4.1.3 The general content of the training program must be maintained in the policy and procedure manual.

5.4.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

5.4.2 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

5.4.3 Activities allowed

5.4.3.1 Supportive personnel will be allowed to perform only those duties permitted by this regulation.

5.4.3.2 Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

5.4.3.2.1 Obtaining the medication from stock.

5.4.3.2.2 Typing the label after the pharmacist has interpreted the directions.

5.4.3.2.3 Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

5.4.3.3 Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDC Section 503A and any regulations

promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

5.4.3.3.1 The formulation is developed by the pharmacist before proceeding with the compounding.

5.4.3.3.2 The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

5.4.3.3.3 Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

5.4.3.3.4 The finished product is checked by the pharmacist before dispensing.

5.4.3.3.5 A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

5.4.3.4 Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

5.5 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

5.6 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

5.7 Mandatory Patient Profile Record System

5.7.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

5.7.2 The following information shall be recorded by a pharmacist or designee:

5.7.2.1 The family name and first name of the person for whom the medication is intended (the patient);

5.7.2.2 The address of the patient and phone number;

5.7.2.3 The patient's age, or date of birth, and gender;

5.7.2.4 The original date the medication is dispensed pursuant to the receipt of a prescriber's prescription;

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

5.7.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;

5.7.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.7.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.7.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.7.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.7.4 Upon receipt of a new prescription, a pharmacist, pharmacy intern, or student participating in a College of Pharmacy practical experience program under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem with shall, if necessary, include consultation with the prescriber.

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

5.7.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;

5.7.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.7.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.7.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.7.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.7.4 Upon receipt of a new prescription, a pharmacist pharmacy intern or student participating in a College of Pharmacy practical experience program under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the prescriber.

5.7.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

5.8.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

5.8.1.1 The request comes from a registered pharmacist.

5.8.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.8.1.3 The prescription used for refills must be clearly identified as a copy.

5.8.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

5.8.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document

used must be the same one used for the recording of refills per the pharmacy's policy.

5.8.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

5.8.3 Written copies of prescriptions are for information only and are not valid for refilling.

5.9 Automated Data Processing Systems

5.9.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.

5.9.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

5.9.2.1 Original dispensing date

5.9.2.2 Name and address of patient (patient location if in an institution)

5.9.2.3 Name of prescriber

5.9.2.4 DEA number of prescriber in the case of a controlled substance

5.9.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

5.9.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

5.9.3.1 Quantity dispensed

5.9.3.2 Date of dispensing

5.9.3.3 Serial Number (or equivalent if an institution)

5.9.3.4 The identification of the pharmacist responsible for dispensing

5.9.3.5 Record of renewals to date

5.9.3.6 Name and strength of medicine

5.9.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

5.9.4.1 Serial number of prescription (equivalent if an institution)

5.9.4.2 Date of processing

5.9.4.3 Quantity dispensed

5.9.4.4 The identification of the pharmacist responsible for dispensing

5.9.4.5 Medication dispensed

5.9.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

5.9.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

5.9.7 Transfer of Prescriptions via ADP. A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

5.9.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

5.9.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

5.9.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

5.9.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

5.9.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription.

5.9.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

5.9.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

5.10 Electronic Transmission Of Prescriptions

5.10.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:

5.10.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

5.10.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.10.1.3 be transmitted by an authorized Practitioner or his designated agent; and

5.10.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.10.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.10.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.10.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.10.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

5.10.6 Controlled substance prescriptions may only be electronically transmitted via a facsimile.

5.10.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.10.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.10.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.10.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.10.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.10.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

5.11 Return of Medications and Supply

5.11.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

5.11.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

5.12 Centralized Prescription Processing

5.12.1 A Pharmacy may perform or outsource centralized prescription processing, services provided the parties:

5.12.1.1 have the same owner; or

5.12.1.2 have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

5.12.1.3 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

5.12.2 The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the Board for review upon request and that includes, but is not limited to, the following:

5.12.2.1 A description of how the parties will comply with federal and state laws and regulations;

5.12.2.2 The maintenance of appropriate records to identify the responsible pharmacist(s) in the dispensing and counseling processes;

5.12.2.3 The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;

5.12.2.4 The maintenance of a mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug, order;

5.12.2.5 The provision of adequate security to protect the confidentiality and integrity of patient information;

5.12.2.6 The maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

5.12.3 In addition to the requirements of 24 Del.C. §2536, all drugs dispensed to a patient that have been filled via a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities.

5.13 Compounded medications for office use

5.13.1 On the order of a practitioner, compounded products may be sold to the practitioner for use in his or her office to administer to individual patients, but not for resale.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section 5.4 revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

1 DE Reg. 1965 (6/1/98)

3 DE Reg. 431 (9/1/99)

4 DE Reg. 163 (7/1/00)

4 DE Reg. 682 (10/1/00)

9 DE Reg. 85 (7/1/05)

(Break in Continuity of Sections)

13.0 Nuclear Pharmacy Regulations

13.1 Purpose and Scope

13.1.1 The purpose of this regulation is to recognize the practice of nuclear pharmacy as a specialty of pharmacy practice to be regulated by the Delaware State Board of Pharmacy. As such, the following rules are included to address those areas specific to this specialty practice.

13.1.2 Nuclear Pharmacy practice refers to a patient oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

13.2 Definitions

“Authentication of Product History” includes, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

“Authorized Personnel” means any individual trained through management to be permitted to perform assigned duties in a safe and effective manner.

“Authorized User” means any individual or institution named on a radioactive materials license.

“Nuclear Pharmacy” is a pharmacy which provides radiopharmaceutical services.

“Qualified Nuclear Pharmacist” is a currently licensed pharmacist in the State of Delaware who meets either of the following criteria:

Must be currently certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties.

Must have successfully completed a minimum of 700 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a nationally accredited college of pharmacy or from an American Council on Pharmaceutical Education (ACPE) approved training program. The training qualifications are described in 13.6.

“Radiopharmaceutical Quality Assurance” means, but is not limited to, the performance of tests on radiopharmaceuticals to ascertain the radionuclidic, radiochemical, chemical, physical, and microbiological purity and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

“Radiopharmaceutical Services” means, but shall not be limited to, the procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record keeping, and disposal of radiopharmaceuticals and other drugs.

“Radiopharmaceuticals” are radioactive drugs as defined by the FDA to include any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or nuclide generator which is

intended to be used in the preparation of any such substance. This definition does not include drugs such as carbon containing compounds or potassium containing salts which contain trace quantities of naturally occurring radionuclides. The term radiopharmaceutical also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

“Restricted Area” means any area the access to which is controlled by the license for purpose of protection of individuals from exposure to radiation and radioactive materials.

“Unrestricted Area” means any area the access to which is not controlled by the licensee for purpose of protection of individuals from exposure to radiation and radioactive materials.

13.3 Nuclear Pharmacy general Requirements. The process employed by any permit holder in this state concerning the handling of radioactive materials must involve procedures for the purchase receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials. In order to insure the public health and safety in this respect, a nuclear pharmacy in this state shall meet the following general requirements:

13.3.1 A nuclear pharmacy may be managed only by a qualified pharmacist acting in the capacity of a pharmacist in charge who shall be responsible for the compliance with all laws and regulations, both state and federal pertaining to radiopharmaceuticals and radiopharmaceutical services. An actively licensed qualified nuclear pharmacist must personally supervise the operation of only one nuclear pharmacy when radiopharmaceutical services are being performed.

13.3.2 The nuclear pharmacy area shall be secured from access by unauthorized personnel.

13.3.3 Each nuclear pharmacist shall maintain accurate records of the acquisition, inventory, distribution, and disposal of all radiopharmaceuticals.

13.3.4 All nuclear pharmacies shall provide adequate space for radioactive storage and a product decay area.

13.3.5 Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies for the procurement, secure storage, inventory, preparation, distribution and disposal of radiopharmaceuticals and other drugs.

13.3.6 Radiopharmaceuticals are to be distributed only upon a prescription order from an authorized licensed medical practitioner or through the practitioner's agent.

13.3.7 A nuclear pharmacist shall transfer radioactive materials in accordance with all applicable laws and regulations.

13.3.8 A nuclear pharmacy upon receiving an oral prescription order for a radiopharmaceutical shall

immediately have the prescription order reduced to writing or recorded in a data processing system which shall contain at least the following:

13.3.8.1 the name of the authorized user or his agent;

13.3.8.2 the date of distribution and the time of administration of the radiopharmaceutical;

13.3.8.3 the name of procedure;

13.3.8.4 the name of the radiopharmaceutical;

13.3.8.5 the prescription number assigned to the order for the radiopharmaceutical;

13.3.8.6 any specific instructions; and

13.3.8.7 the initials of the person who received the order.

13.3.8.8 When the order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.

13.3.8.9 If the product is for a therapeutic radiopharmaceutical the patient's name must be obtained and recorded (i.e. verified) by a pharmacist when the pharmacy receives an oral prescription.

13.3.9 In addition to other labeling requirements of the Board of Pharmacy for non-radioactive pharmaceuticals, the immediate outer container shield of a radiopharmaceutical to be dispensed shall be labeled with:

13.3.9.1 the name and address of the pharmacy;

13.3.9.2 the name of the prescriber;

13.3.9.3 the name of the procedure;

13.3.9.4 the standard radiation symbol;

13.3.9.5 the words "caution Radioactive material";

13.3.9.6 the prescription number of the radiopharmaceutical;

13.3.9.7 the radionuclide and chemical form;

13.3.9.8 the amount of radioactive material contained in millicuries (mCi), or microcuries (uCi) and the corresponding time that applies to this activity, if different from 13.3.9.9 of this paragraph;

13.3.9.9 the calibration date and time;

13.3.9.10 the expiration date and time;

13.3.9.11 if a liquid, the volume;

13.3.9.12 if a solid, the number of items or weight;

13.3.9.13 if a gas, the number of ampules or vials;

13.3.9.14 molybdenum-99 content to USP limits; and

13.3.9.15 the name of the patient or the words "Physicians Use Only" in the absence of a patient name. If the order is for a therapeutic or blood-product

radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing. The requirements of this subsection shall be met when the name of the patient is readily retrievable from the physician upon demand.

13.3.10 The immediate inner container label of a radiopharmaceutical to be distributed shall also be labeled with:

13.3.10.1 the standard radiation symbol

13.3.10.2 the words "Caution Radioactive Material"

13.3.10.3 the radionuclide;

13.3.10.4 the amount of radioactivity in mCi or uCi;

13.3.10.5 the calibration date and time

13.3.10.6 the prescription number of the radiopharmaceutical; and

13.3.10.7 the pharmacy name; and

13.3.10.8 the name of the patient or the words "Physicians use only" in the absence of a patient name. If the order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be on the label.

13.4 Nuclear Pharmacy minimum Requirements. All nuclear pharmacies must meet the requirements of the Department of Health and Rehabilitative Services for the control of radiation hazards and applicable requirements of the Federal Food and Drug Administration. In addition, in order to insure compliance with general safety requirements, the following additional minimum requirements must be met by a nuclear pharmacy:

13.4.1 Physical Facilities

13.4.1.1 Each nuclear pharmacy shall have an area for the storage, compounding, distribution and disposal of radiopharmaceuticals which shall be adequate to completely separate such radioactive pharmaceuticals from pharmacy areas which contain non-radioactive medicinal drugs.

13.4.1.2 The nuclear pharmacy facility shall have adequate space commensurate with the scope of services.

13.4.2 Equipment:

13.4.2.1 Vertical laminar air flow unit (hood) used as a shielded radiation containment drawing station;

13.4.2.2 Exhaust/fume unit (hood) with engineering controls to assure airborne concentrations in compliance with federal regulations for storage and handling of all volatile radioactive drugs, if applicable;

13.4.2.3 Vertical laminar flow biological safety cabinet to be used for all compounding of applicable radiopharmaceuticals (i.e. blood products; white blood cells procedures);

13.4.2.4 Dose calibrator;

13.4.2.5 Well scintillation counters;

13.4.2.6 Area rate meters;

~~13.4.2.7 Geiger-Mueller (GM) Survey meters;~~
~~13.4.2.8 Refrigerator;~~
~~13.4.2.9 Microscope;~~
~~13.4.2.10 Hemacytometer~~
~~13.4.2.11 Leaded glass syringe shields;~~
~~13.4.2.12 Personal radiation detection devices~~
~~13.4.3 Supplies:~~
~~13.4.3.1 Syringes and vials required to perform practice;~~
~~13.4.3.2 Disposable gloves and protective lab coats;~~
~~13.4.3.2 Supplies to insure sterile practices for I.V. solutions and preparations;~~
~~13.4.3.3 Supplies to perform thin layer chromatography;~~
~~13.4.3.4 Lead transport shields for syringes and vials;~~
~~13.4.3.5 D.O.T. type 7A approved transport containers and other labels and supplies for shipping radioactive materials.~~
~~13.4.4 Library/Current references: In addition to the reference requirements of Regulation 3.0, a nuclear pharmacy shall maintain a reference library which shall include the following:~~
~~13.4.4.1 NRC Title 10 CFR, Code of Federal Regulations;~~
~~13.4.4.2 NRC Title 21 CFR, Code of Federal Regulations;~~
~~13.4.4.3 NRC Title 49 CFR, Code of Federal Regulations;~~
~~13.4.4.4 NABP Nuclear Pharmacy Practice Guidelines;~~
~~13.4.4.5 A minimum of three current edition texts dealing with nuclear medicine science;~~
~~13.4.4.6 A copy of the procedure manual.~~
~~13.4.4.7 Delaware Radiation Control Regulations~~
~~13.5 Records.~~
~~13.5.1 Policy and procedure manual. All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.~~
~~13.5.2 A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organization, etc. All pharmacy personnel shall be familiar with the contents of the manual.~~
~~13.5.3 The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist in charge with input from other pharmacy staff members.~~
~~13.6 Training Qualifications~~

~~13.6.1 A pharmacist licensed to practice pharmacy in this state who performs a radiopharmaceutical service shall, prior to engaging in such specialized practice, be qualified as a nuclear pharmacist and licensed by the Board of Pharmacy.~~
~~13.6.2 Qualifications for a nuclear pharmacist are as follows:~~
~~13.6.2.1 A pharmacist shall:~~
~~13.6.2.1.1 be a pharmacist licensed by the Board to practice pharmacy in Delaware.~~
~~13.6.2.1.2 submit to the Board either:~~
~~13.6.2.1.2.1 Certification that he or she has successfully completed a minimum of four months on the job training providing radioactive drug services under the supervision of a nuclear pharmacist;~~
~~13.6.2.1.2.2 certification that he or she has successfully completed a nuclear pharmacy training program in an accredited college; or~~
~~13.6.2.1.2.3 an application, in affidavit form, along with such other information the Board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy.~~
~~13.6.2.2 A qualified pharmacist seeking licensure as a nuclear pharmacist in the state shall submit to the Board of Pharmacy a course outline from an accredited college of pharmacy or other program recognized by the Delaware Board of Pharmacy (a program comparable to those offered by accredited colleges of pharmacy for the training of nuclear pharmacists), and a certificate of training which provides a minimum of 200 clock hours of formal didactic training, which includes:~~
~~13.6.2.2.1 Radiation protection (45 hours);~~
~~13.6.2.2.2 Radiation physics and instrumentation (85 hours);~~
~~13.6.2.2.3 Mathematics of radioactivity (20 hours);~~
~~13.6.2.2.4 Radiation biology (20 hours);~~
~~and~~
~~13.6.2.2.5 Radiopharmaceutical chemistry (30 hours).~~
~~13.6.2.3 Proof of attaining a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist. The training and experience shall include, but shall not be limited to the following:~~
~~13.6.2.3.1 Procurement~~
~~13.6.2.3.2 Compounding~~
~~13.6.2.3.3 Quality Assurance~~
~~13.6.2.3.4 Dispensing~~
~~13.6.2.3.5 Distribution~~

- ~~13.6.2.3.6 Health and Safety~~
~~13.6.2.3.7 Provisions of Information and~~

~~Consultation~~

- ~~13.6.2.3.8 Monitoring patient outcome~~
~~13.6.2.3.9 Research and Development~~

~~13.7 Nuclear Pharmacist Continuing Education~~

~~13.7.1 Proof satisfactory that a nuclear pharmacist licensed pursuant to this section, has met the requirements necessary for biennial renewal of this license shall be constituted by the following:~~

~~13.7.1.1 The licensee has completed no less than ten (10) out of the total requirements of 30 hours of coursework each two year period by or through a committee approved provider (e.g. ACPE), instructionally designed to provide in depth treatment of nuclear pharmacy practice.~~

~~13.7.1.2 Content of nuclear pharmacist continuing education program can include, but not be limited to the following:~~

~~13.7.1.2.1 Formulation and quality control issues in nuclear pharmacy~~

~~13.7.1.2.2 Radionuclide therapy in nuclear pharmacy~~

~~13.7.1.2.3 Radiopharmaceutical updates for target organs~~

~~13.7.1.2.4 Current concepts in radiation physics, radiation biology and exposure.~~

~~13.7.1.2.5 Current principles of radiation safety~~

~~13.7.1.2.6 Current principles of nuclear pharmacy management~~

~~13.7.1.2.7 Advances in drug, radiopharmaceutical, or related technology (including but not limited to monoclonal antibodies, peptides, magnetic resonance imaging, positron emission tomography, novel radionuclide therapy and other applicable issues.~~

~~Effective 09/23/95~~

13.1 Purpose and Scope.

The Practice of Nuclear/Radiological Pharmacy is hereby recognized as a specialty of Pharmacy practice, regulated by the Delaware Board of Pharmacy. As such, the following rules are included to address those areas specific or unique to this specialty practice. Nuclear/Radiological Pharmacy Practice refers to patient-oriented and institutional services that embody the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

13.2 Definitions

“**Authentication of Product History**” means, but is not limited to, identifying the purchase sources, and any handling of any Component of a radiopharmaceutical.

“**Internal Test Assessment**” means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the product.

“**Nuclear Pharmacy**” means a Pharmacy providing radiopharmaceutical services or, as provided in Section 3 of these rules, an appropriate area of any Institutional Facility.

“**Qualified Nuclear Pharmacist**” means a currently licensed Pharmacist in the State of Delaware, who is certified as a Nuclear Pharmacist by a certification Board recognized by the Delaware Board of Pharmacy, or who meets the following standards set by the Delaware Board of Pharmacy:

Satisfied the minimum standards of training for “authorized user status” of radioactive material as included in the Nuclear Regulatory Commission (NRC) licensure guide.

Completed a minimum of 200 contact hours of instruction in nuclear Pharmacy and the safe handling and the use of radioactive materials from a program approved by the NRC or the Office of Radiation Control (ORC), with emphasis in the following areas: radiation physics and instrumentation; radiation protection; mathematics of radioactivity; radiation biology; and radiopharmaceutical chemistry.

Attained a minimum of 500 hours of clinical nuclear Pharmacy training under the supervision of a qualified nuclear Pharmacist.

“**Radiopharmaceutical Quality Assurance**” means, but is not limited to, the performance of appropriate chemical, biological, and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

“**Radiopharmaceutical Service**” means, but is not limited to, the procurement, storage, handling preparation, labeling, quality assurance testing, dispensing, delivery, recordkeeping, and disposal of radiopharmaceuticals and other drugs.

“**Radiopharmaceuticals**” are radioactive drugs as defined by the FDA.

13.3 General Requirements for Pharmacies Providing Radiopharmaceutical Services.

13.3.1 Nuclear Pharmacy License. A License to operate a Pharmacy providing radiopharmaceutical services shall only be issued to a Qualified Nuclear Pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of a Qualified Nuclear Pharmacist. A Qualified Nuclear Pharmacist shall be responsible for all operations of

the Pharmacy and shall be in personal attendance at all times that the Pharmacy is open for business.

13.3.2 Nuclear Pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the State or as otherwise defined by the Delaware State Board of Pharmacy.

13.3.3 The Nuclear Pharmacy area shall be secured from unauthorized personnel.

13.3.4 Nuclear Pharmacies shall maintain records of acquisition, inventory, and disposition of all radioactive drugs and other radioactive materials in accordance with NRC statute(s) and regulation(s).

13.3.5 All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area. Detailed floor plans shall be submitted to the State Board of Pharmacy and the State Office of Radiation Control and NRC before approval of the license.

13.3.6 Radiopharmaceuticals are to be dispensed only upon a Prescription Drug Order from a Practitioner authorized to possess, use, and administer radiopharmaceuticals.

13.3.7 The permit to operate a Nuclear Pharmacy is conditioned upon an approved State Office of Radiation Control or NRC license. Copies of the Radiation Control Agency, ORC and NRC inspection reports shall be made available upon request for Board inspection.

***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 Pharmacy is available at:**

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

DIVISION OF PROFESSIONAL REGULATION

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

ORDER

A public hearing was held to receive comments on January 11, 2006, at the regularly scheduled meeting of the Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers. The Board considered changes to

its Rules and Regulations, to wit, 9.3 Standards of Professional Integrity, that were published in the *Register of Regulations*, Vol. 9, Issue 6, December 1, 2005.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact with Respect to the Evidence and Information

The Board finds that the change to Rule 9.3.1.8 protects the public by ensuring that products and services are advertised so that the terms of the transaction are clear and understandable.

Decision and Effective Date

The Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

Text and Citation

The text of the change to the Rules and Regulations appears in the *Register of Regulations*, Vol. 9, Issue 6, December 1, 2005 at page 964.

BOARD OF SPEECH LANGUAGE/PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID DISPENSERS

Gary Marencin, President	George A. Christensen
Michael A. Michelli, Secretary	Cynthia Parker
Illene Courtright	Elizabeth V. Daudt
Carol Guilbert	

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

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

9.2 Standards of Professional Conduct

9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal,

negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).

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

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

9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.

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

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

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

9.3 Standards of Professional Integrity.

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

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

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

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

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

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

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

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

9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public. Any written disclaimer or condition that limits or modifies an offer of services or merchandise must be provided in a clear and conspicuous manner in a type size that is at least one-half the size of the type used in making the offer of services or merchandise

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

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

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

9.4 Miscellaneous Professional Standards

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

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

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

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

8 DE Reg. 1106 (2/1/05)

***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 Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers is available at: <http://dpr.delaware.gov/boards/speechaudio/index.shtml>**

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

Approved: January 3, 2006

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**EXECUTIVE ORDER
NUMBER SEVENTY-SEVEN**

**RE: Regarding State Employee Obligations and
Compensation During Severe Weather
Conditions and Emergencies**

EXHIBIT A

**EMPLOYEE OBLIGATIONS DURING SEVERE
WEATHER CONDITIONS AND EMERGENCIES**

WHEREAS, while State offices strive to remain open and operational with regularly scheduled hours, severe weather conditions and other emergencies may require modification of the operation and staffing of State agencies based on anticipated or actual conditions to ensure the health, safety and welfare of both citizens and employees; and

WHEREAS, it is imperative that within the Executive Branch there be a uniform policy, with appropriate flexibility, consistent with existing State Merit Rules, on State employee obligations and compensation during extreme weather situations and other emergencies; and

WHEREAS, the State's human resource professionals and Labor Management Committee have recommended a policy that clarifies practices for employee obligations and compensation during severe weather and other emergencies,

NOW, THEREFORE, I, Ruth Ann Minner, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The policy entitled "Employee Obligations During Severe Weather Conditions and Emergencies" dated December 19, 2005, and attached hereto as Exhibit A, is adopted as the policy to govern operation of Executive Branch agencies during severe weather conditions and other emergencies that may require changed hours of operation and/or reporting times for affected State employees.

2. The attached policy is applicable to all employees of the Executive Branch of the government of the State of Delaware, except personnel of the Delaware State Police and the Delaware National Guard. The policy is to be followed by all State departments and agencies other than the General Assembly, the judiciary and offices under their respective jurisdictions.

3. Executive Order Number 36, approved by Governor Castle on February 6, 1987 and Executive Order Number 76, approved by Governor Carper on February 4, 2000, are hereby rescinded.

4. The provisions of this policy shall be effective as of December 6, 2005.

1. Definitions: The following definitions will apply throughout this policy.

"Essential Employee": An employee who is indispensable to the emergency service function of his or her employing agency or department and is required to assist the department or agency in meeting its operational needs.

"Non-Essential Employee": An employee who is not necessary to the emergency service function of his or her employing agency or department and is not required to report to work.

"Report When Contacted Employee": An employee who is not required to report to work during severe weather or emergency situations unless there is the approval of the agency and the employee has been specifically contacted by a management representative or management representative's designee (or informed by notification system such as a telephone tree or telephone hotline established by management or informed by HRM website or by official information provided by the designated news media). These employees are not on stand-by status and are not required to remain by the telephone.

"SHOC/DFS Employees": Employees of the State Health Operations Center, and Division of Family Services Investigation, Treatment and After Hours Response Employees. SHOC/DFS Employees may have different requirements to follow than the Report When Contacted Employees and are required to follow the specific instructions of the agency and shall be deemed essential at such time an emergency is declared (depending on the type of emergency).

"HRM": The Human Resources Management unit of the Office of Management and Budget.

2. The Governor, or Governor's designee, has the sole authority to excuse employees of the Executive Branch from reporting to work during extreme weather conditions or other natural or man-made disasters or emergencies. In appropriate circumstances, the Governor shall issue an Order stating that, because of expected or existing conditions, certain employees (as designated in this policy) are excused from reporting to work. Unless such an Order has been

issued, all employees of the Executive Branch shall report to and remain at work for their regularly scheduled hours or shift.

3. The Order may be applicable to all Executive Branch employees in the entire State, or only to those employees in one geographical region of the State, or a combination of the geographical regions. The Order may be limited regarding the purpose for which it is issued, such as permitting the use of Delaware National Guard personnel and equipment, and so may not affect Executive Branch employees in any respect.

4. The Order may require certain employees to work during the emergency. Those required to work during times when the Governor has excused some employees from reporting to work are referred to as "Essential" employees. An Essential employee is defined as one who is indispensable to the emergency service function of the employing agency or department and is required to assist the department or agency in meeting its emergency operational needs, e.g., food, medical, housing maintenance, personal care, hospital care, emergency road service. These examples are not exhaustive. All other employees (other than the SHOC/DFS employees defined earlier) shall be designated as "Report When Contacted" or "Non-Essential" employees. Such Report When Contacted or Non-Essential employees are not required to report to work unless there is the approval of the agency and the employees have been specifically contacted by a management representative or management representative's designee (or informed by a notification system such as a telephone tree or telephone hotline established by management or informed by HRM's website or by official information provided by the designated news media). These employees are not on stand-by status and are not required to remain by the telephone. Such employees shall not be called into work without a compelling and justifiable operational reason. As long as all other applicable laws, rules and regulations are not violated, non-merit agencies may make more restrictive reporting policies in order to meet operational needs, but cannot make less restrictive policies.

5. All State agencies must designate all Essential and SHOC/DFS employees by job classification, budget position number and payroll unit in the PHRST system. Each State agency shall review these classifications annually, at a minimum, and report any revisions to the Director of HRM, and make appropriate changes in PHRST, by October 31st each year.

6. Department and agency heads shall designate employees as Essential or SHOC/DFS employees depending upon their necessity in carrying out the emergency service responsibilities of the department or agency. These employees shall be notified accordingly in writing, and a list of employees and/or classifications designated as Essential

or SHOC/DFS employees shall be posted in a conspicuous location and distributed to the appropriate Exclusive Bargaining Representatives. The status of employees who are designated as Essential or SHOC/DFS employees at the time an emergency is declared, and who report to work during the emergency pursuant to such designation, shall not be changed with respect to that emergency subsequent to their reporting to work without being compensated for their normally assigned hours or shift. Depending on the type of emergency, the Governor's Order may exempt certain group of Essential employees or management may advise such employees.

7. Essential employees who live or work in a region or regions covered by the Governor's Order, and who are required to work, are entitled to compensation at their regular hourly rate plus equal time off for all hours worked during their regularly scheduled work hours or shift. All Essential employees who work additional hours shall be compensated in accordance with existing rules and policies governing overtime payment. Employees covered by the Fair Labor Standards Act (FLSA) are compensated for overtime at time and a half and receive equal time off while employees exempt from the FLSA are compensated at straight time rates and receive equal time off. Exceptions to this may be found in the Budget epilogue or Merit Rules for specific groups of employees.

8. During any specified time periods when Essential employees are required to report to work and other State employees have been given approval by the Governor to not report to work (during normal state business hours of 8 a.m. to 4:30 p.m.), those who work will receive an additional hour of compensation for each hour worked. Agencies have the authority to determine whether the additional compensation will be paid time or compensatory time. Any employee (whether essential or not) who is already on paid leave during such time will not be charged leave for those specific hours.

9. Unless the Governor's Order covers a day which is a statutory holiday of the State, the emergency day shall not be considered a holiday for pay purposes. When employees work at times when it is both a holiday and an emergency, they will receive additional equal time off as compensation for the holiday in addition to equal time off (or pay based on other merit and FLSA rules) for the emergency. Employees in a paid status during the holiday would still receive payment for the holiday in their regular paycheck whether or not they are required to work that day.

10. Upon direction of the Governor (or a designee), if an emergency develops during working hours, department heads and other chief administrative officers within the Executive Branch may allow their Report When Contacted or Non-Essential employees to leave work early. No loss of pay or accumulated time off will occur in the event of early

dismissal for this reason. Under no circumstances, however, will early dismissal operate to excuse an unauthorized absence from work.

11. If a natural or man-made emergency forces any employee to be late for work, the employee shall contact his or her supervisor, inform the supervisor of the impending lateness, and state the expected time of arrival for work. Reasonable delay (not to exceed two hours) in arriving at work due to poor travel conditions will not be a basis for charging annual leave.

12. If Essential employees are required to work but are specifically prevented by the police or other emergency personnel from traveling to their work site due to a natural or man-made emergency, and after notifying such emergency personnel of their Essential status, the employees shall immediately notify their supervisors of the obstruction and shall be excused and not charged for the absence. Employees who are required to work but who do not report to work for any other reason shall immediately notify their supervisors and shall not be paid for the absence. Employees in this category may request approval to use annual leave, accumulated compensatory time, if any, or have their pay docked; however, employees cannot assume that it will be granted and may be subject to disciplinary action if approval is not received for the absence.

13. Before approving pay for after-the-fact sick leave during an emergency, a department or agency head may require either a physician's certificate or a written statement by the employee setting forth the reason for the absence. Essential employees are responsible to report to work and may be subject to disciplinary action if there is a disregard of this policy. All determinations as to whether leave will be approved or whether there will be docking and/or disciplinary action will be made on a case-by-case basis taking into consideration the totality of circumstances preventing the employee from reporting to work.

14. An employee, who already is on authorized paid leave during an emergency, will not be charged leave for the duration of the emergency. Upon the employee's return to work from such leave, the employee's leave records will be credited accordingly.

15. Casual/seasonal employees may be designated as "Essential". Agencies are encouraged to allow casual/seasonal employees designated as Report When Contacted or Non-Essential to flex their schedules to make up work hours lost as casual/seasonal employees are only paid for the actual hours they work. While casual/seasonal employees are paid for the time actually worked, they are not eligible for the equal time off provision.

16. All Report When Contacted or Non-Essential employees on an alternate or compressed schedule shall have their time adjusted in accordance with that schedule and other applicable rules and regulations whenever there is an

emergency Order. Employees not scheduled to work during the emergency will not be impacted unless the emergency day is also a state holiday. If it is a state holiday, employees must still submit leave slips or work additional time to cover the difference between a 7.5 or 8.0 State-paid holiday and their compressed hours or shift.

17. Employees on approved leave without pay will not be impacted by this policy.

18. Rest/sleep time, for all employees regardless of FLSA status, is compensable in accordance with the regulations of the Fair Labor Standards Act.

19. Normally home to work travel is not compensable. However, during an emergency situation, it is possible that an employee must report from home to a location other than the employee's regular reporting location. If the emergency reporting location is further from the employee's home than the employee's regular reporting location, agencies shall compensate such employees for their additional travel time as well as for mileage, if appropriate, minus the normal commute time.

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SEVENTY-EIGHT**

**RE: Regarding Implementation of Financial
Management Measures for the Department of
Transportation and the Transportation Trust
Fund**

WHEREAS, on June 1, 2005, Executive Order No. 69 was adopted, establishing a Transportation Development and Funding Options Committee; and

WHEREAS the Committee recognized that the Delaware Department of Transportation ("DelDOT") is unique among all State agencies in that it must attempt to forecast many uncertain outcomes in order to build a proposed planning, design, and construction/acquisition program; and

WHEREAS, on November 30, 2005, the Transportation Development and Funding and Options Committee delivered a series of recommendations, including recommendations that the State implement certain financial management measures to improve forecasting and reporting of revenues and expenditures for the State's Transportation Trust Fund ("TTF"); and

WHEREAS, certain measures recommended by the Committee, such as capital project spending checkbooks and

partnering in the State's implementation of Enterprise Resource Planning Financial project, have already been initiated by DeIDOT; and

WHEREAS, certain additional measures recommended by the Committee can be implemented administratively, and such measures will ensure better financial management and reporting by DeIDOT and the TTF,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. DeIDOT shall provide a monthly operating expenditure report to the Director of the Office of Management and Budget ("OMB"). Monthly operating expenditure reports shall at a minimum review both expenditures to date as well as forecasted yearly expenditures. These reports shall be presented in a format agreed to by DeIDOT and OMB staff.

2. DeIDOT shall provide a quarterly capital expenditure report to the Director of OMB. Quarterly capital expenditure reports shall list at a minimum both expenditures to date as well as forecasted yearly expenditures. These reports shall be presented in a format agreed to by DeIDOT and OMB staff.

3. There is established a Transportation Finance Advisory Committee, consisting of the Secretary of DeIDOT, the Secretary of Finance, the Director of OMB and such other members as shall be appointed by the Governor. A chairperson of the Transportation Finance Advisory Committee shall be designated by the Governor.

4. The Transportation Finance Advisory Committee shall develop and review revenue and expenditure estimates for the TTF on a regular basis. The Transportation Finance Advisory Committee shall advise the Delaware Financial Advisory Council on revenue and expenditure estimates for the TTF.

5. At least annually, the Transportation Finance Advisory Committee shall conduct a comprehensive review of revenue and expenditure estimates in coordination with a review of the Capital Improvements Program adopted pursuant to Title 29, **Delaware Code**, Chapter 84. The Committee shall present findings and conclusions concerning the feasibility and sustainability to the Council on Transportation and to the Governor. This review will also include an assessment of the extent to which the Capital Improvements Plan meets the 50/50 "pay go" standard and the 2.25 coverage test historically used in the State's transportation budget program. The first comprehensive review of revenue and expenditure estimates and the Capital Improvements Plan shall be undertaken on or before October 31, 2006.

Approved: January 9, 2006

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SEVENTY-NINE**

RE: Establishing a Governance Structure for the Delaware Veterans' Home

WHEREAS, the State of Delaware is committed to establishing a dedicated long term care facility to serve the State's veterans; and

WHEREAS, in April 2004, the General Assembly passed legislation to expedite funding and construction of a State veterans' home, in cooperation with the United States Department of Veterans' Affairs; and

WHEREAS, a special steering committee formed in 2004 has been working to organize, oversee and guide the significant decisions relating to the development, siting, design and construction of the Veterans' Home (the "Home"); and

WHEREAS, the special steering committee has included representation by, among others, the Office of the Governor, members of the General Assembly, the Office of Management and Budget, the Controller General's office, the Secretary of State, and the Commission on Veterans' Affairs; and

WHEREAS, it is now appropriate to designate the appropriate organizational structure to further prepare for the opening of this facility in January, 2007; and

WHEREAS, to ensure the effective operation and administration of the Home and to ensure it will focus on the unique needs of veterans, it is best to establish the Home as a separate organizational unit within the Department of State; and

WHEREAS, Delaware veterans must continue to be integral partners in the success of the Home; and

WHEREAS, a Delaware Veterans' Home Advisory Board (the "Board") is necessary to oversee the operations of the Delaware Veterans' Home and serve as an advocate for those who reside there,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the powers vested in me as the Governor of the State of Delaware, **DO HEREBY ORDER AND DECLARE**, this 19th day of January, 2006, as follows:

1. The Delaware Veterans' Home shall be established as a separate division within the Department of State. The Secretary of State is directed to undertake all action authorized or required under Title 29, Delaware Code, Section 8703 to organize administrative activities for the Home.

2. The Secretary of State shall have responsibility of the operations and oversight of the Home to include but not be limited to the following:

a. Report annually to the Governor and General Assembly regarding the Home's budget and operations;

b. Appoint a Veterans' Home administrator who shall have responsibilities for the day to day operations of the Home which shall include but not limited to:

(1) Providing long term care or domiciliary care services to eligible veterans residing at the Home in accordance with all applicable Delaware and federal statutes;

(2) With the concurrence of the Veterans' Home Advisory Board as established in paragraph 3 below, establishing admissions criteria and policies for entrance into the Home;

(3) Establishing, revising, and collecting charges for residential room and board. Such procedures and charges shall require the concurrence of the Veterans' Home Advisory Board;

(4) Employing all other staff necessary for the efficient management of the Home;

(5) Ensuring the appropriate accounting for all financial transactions of the Home;

(6) Ensuring that all laws, rules, regulations, and policies pertaining to the Home are observed;

(7) Coordinating with the federal Department of Veterans' Affairs for services provided at the Home; and

(8) Producing reports concerning the Home to the Veterans' Home Advisory Board at such times and in such detail as the Board directs.

3. There is hereby established a Veterans' Home Advisory Board.

a. The Board shall consist of (13) members, all of whom shall be residents of this State as follows;

- i. Lieutenant Governor;
- ii. The Secretary of State;
- iii. Secretary of Health and Social Services;
- iv. Chair of Veterans' Commission;
- v. Executive Director of Veterans Affairs;
- vi. a representative nominated by the

American Legion;

vii. a representative nominated by Veterans of Foreign Wars;

viii. a representative nominated by the Wilmington Veterans' Administration Medical Center Administrator;

ix. a physician who is a veteran;

x. a nurse who is a veteran;

xi. a representative of Delaware's business community; and

xii. Chair of the House Veterans' Committee and Chair of the Senate Veterans' Committee or

xiii. An honorably discharged veteran appointed by the Speaker and another honorably discharged veteran appointed by the Pro Tempore.

b. The Governor shall appoint all non-legislative members of the Board and shall designate a member of the Board to serve as Chairperson at the pleasure of the Governor. Members of the Board designated by subsections a.i. through a.v. of paragraph 3 shall serve during their terms of office in the positions identified in paragraph 3. All other members shall serve terms of three years. Each Board member shall serve until a successor has been appointed. In the event a Board member vacates his or her position, is unable to serve, or is removed for cause, the Governor shall appoint a replacement to serve the unexpired term of the departing Board member.

c. Except as otherwise provided, the Board shall have the following powers:

i. Establish the mission and purpose of the Home;

ii. Approve the Home's programs and services and evaluate their effectiveness;

iii. Advise the Secretary of State and the Veterans' Home Administrator as to the effective operations of the Home;

iv. Approve key policies for operations of the Home, including significant changes affecting on-going programs, proposed programs, and long-range planning;

v. Hear and render decisions on veterans' appeals regarding admissions or affordability;

vi. Help raise resources for the Home;.

vii. Advocate to the Governor, General Assembly and to the public on critical issues facing the Home; and

viii. Adopt policies, procedures, and bylaws regarding the operation of the Board.

Approved: January 19, 2006

Ruth Ann Minner,
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Cabinet Committee on Energy, Chair	The Honorable Jennifer W. Davis	Pleasure of the Governor
Cabinet Committee on Energy, Member	Mr. Phillip J. Cherry	Pleasure of the Governor
	Ms. Lee Ann Walling	Pleasure of the Governor
Council on Real Estate Appraisers	Mr. Stephen R. Huston	11/22/2008
Council on the Blind	Ms. Audrey M. Markel	10/13/2007
Court of Common Pleas, Chief Judge	The Honorable Alex J. Smalls	12/2/2017
Delaware Advisory Council on Career and Technical Education	Mr. Paul T. Morris, Jr.	Pleasure of the Governor
Delaware Technical and Community College Board of Trustees, Trustee	Mr. John M. Maiorano	11/8/2008
	Ms. Suzanne C. Moore	11/8/2008
	Louis F. Owens, Jr., M.D.	11/8/2008
Department of Education Equalization Committee	Ms. Emily M. Falcon	Pleasure of the Governor
Diamond State Port Corporation, Board of Directors, Director	Mr. Frederick C. Sears, II	11/8/2008
Family Court, Commissioner	The Honorable David W. Jones	12/7/2011
	The Honorable Sonja Truitt Wilson	12/2/2011
Healthy Mother and Infant Consortium	Ms. Marihelen Barrett	Pleasure of the Governor
	Garrett H. Colmorgen, M.D.	Pleasure of the Governor
	Katherine L. Esterly, M.D.	Pleasure of the Governor
	Reverend John F. Holden	Pleasure of the Governor
	Ms. Catharine A. Kanefsky	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Healthy Mother and Infant Consortium	Ms. Lolita Lopez	Pleasure of the Governor
	Ms. Susan Noyes	Pleasure of the Governor
	Anthony M. Policastro, M.D.	Pleasure of the Governor
	Ms. Mariann Powell	Pleasure of the Governor
	Agnes M. Richardson, Ph.D.	Pleasure of the Governor
	Ms. Rosa Rivera	Pleasure of the Governor
	Mr. Alvin Snyder	Pleasure of the Governor
	Judy Walrath, Ph.D.	Pleasure of the Governor
Healthy Mother and Infant Consortium, Chair	David A. Paul, M.D.	Pleasure of the Governor
Healthy Mother and Infant Consortium, Vice Chair	Ms. Jacquelyne W. Gorum	Pleasure of the Governor
Industrial Accident Board	Mr. Terrence M. Shannon	11/8/2011
Kent County Justice of the Peace	The Honorable Ernst M. Arndt	11/16/2011
	The Honorable Ellis B. Parrott	11/16/2011
	The Honorable Robert B. Wall, Jr.	11/16/2011
Merit Employees Relations Board	Mr. Joseph D. Dillon	11/8/2008
New Castle County Family Court, Associate Judge	Mr. Alan N. Cooper	12/7/2017
	The Honorable Joelle P. Hitch	12/7/2017
New Castle County Justice of the Peace	The Honorable Sidney J. Clark, Jr.	11/17/2011
	The Honorable Wayne R. Hanby	11/14/2011
	The Honorable Kathleen C. Lucas	11/14/2011
	The Honorable Sean P. McCormick	11/10/2011
	The Honorable Katharine B. Ross	11/14/2011
	The Honorable Rosalie O. Rutkowski	11/10/2011

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
New Castle County Justice of the Peace	The Honorable David R. Skelley	11/14/2011
	The Honorable Paul J. Smith	11/14/2011
Public Integrity Commission	Mr. William W. Dailey, Jr.	11/8/2012
	Ms. Barbara H. Green	11/8/2012
Public Service Commission	Mr. Jeffrey J. Clark	5/1/2009
State Board of Education	Mr. Gregory A. Hastings	11/8/2010
	Ms. Barbara B. Rutt	11/8/2011
State Coastal Zone Industrial Control Board	Mr. Robert D. Bewick, Jr.	11/8/2010
State Employee Benefits Advisory Council	Mr. Thomas J. Chapman	11/29/2008
	Ms. Patricia A. McKinney	11/29/2008
	Mr. Edwin A. Tos	5/16/06
Superior Court, Associate Judge	The Honorable M. Jane Brady	12/7/2017
	The Honorable Fred S. Silverman	11/30/2017
Superior Court, Commissioner	The Honorable Mark S. Vavala	11/22/2011
	The Honorable David A. White	11/22/2011
Superior Court, Member	The Honorable William C. Carpenter, Jr.	11/29/2017
Sussex County Justice of the Peace	The Honorable Jeni L. Coffelt	11/21/2011
	The Honorable Herman G. Hagan	11/29/2011
	The Honorable Richard D. Comly, Jr.	12/2/2011
Unemployment Insurance Appeals Board	Mr. A. Wayne Meluney	5/1/2009
	Mr. Elmer L. Newlin, III	5/1/2011
Wastewater Facilities and Surface Water Management Advisory Council	Mr. Gary L. Burcham	11/8/2008
	Mr. Andrew T. Manus	11/8/2008
	Mr. Brian M. McGlinchey	11/8/2008
	Mr. Christopher M. O'Keefe	11/8/2008
	The Honorable Daniel B. Short	11/8/2008
	Mr. David W. Singleton	11/8/2008

GENERAL NOTICES

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**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT**

AIR QUALITY MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 60 (70 Del.C. Ch. 60)

General Register Notice

1. Title of the regulations:

2006, 2007 and 2008 Clean Air Act Title V and Synthetic Minor Operating Permit Program Fees

2. Brief synopsis of the subject, substance and issues:

Pursuant to 7 Del.C. §6097(c) and amending 143rd General Assembly SB113 signed July 12, 2005; the Department shall publish each source name, base fee information and user fee information in the Delaware *Register of Regulations*. The latest fee structure as outlined in SB113 will be charged to Title V and Synthetic Minor permitted facilities during calendar years 2006, 2007 and

2008. Any questions should be directed to the Air Quality management Section at (302)739-9402.

3. Possible terms of the action agency:

N/A

4. Statutory basis:

7 Del.C. Ch. 60 §6097 and Clean Air Act Amendments of 1990

5. Other regulations that may be affected by the proposal:

None

6. Notice of public comment:

N/A

7. Prepared by:

Carol Cassell Rhodes on January 12, 2006

**Clean Air Act Title V Operating Permit Program
Sources and Information as of Calendar Year 2006**

	Source Name	User Fee Ban	User Fee Billing	Base Fee Category	Base Fee Billing	Billing Total
1	Alfred I. DuPont Hospital for Children	H	\$ 5,000	E	\$6,000	\$11,000
2	Allen Family Foods, Inc.	G	2,000	E	6,000	\$8,000
3	Allens Hatchery Inc., Allens Milling Division	G	2,000	D	15,000	\$17,000
4	American Infrastructure - MD, Inc. dba Independence Construction Materials	G	2,000	F	3,000	\$5,000
5	AMI	G	2,000	D	15,000	\$17,000
6	Amtrak Wilmington Maintenance Facility	G	2,000	E	6,000	\$8,000
7	Arlon, Inc.	G	2,000	F	3,000	\$5,000
8	AstraZeneca Pharmaceutical LLC, Fairfax	G	2,000	D	15,000	\$17,000
9	AstraZeneca, Newark	G	2,000	F	3,000	\$5,000
10	Bank One/JP Morgan Chase Core Data Center 2	G	2,000	F	3,000	\$5,000

11	Bayhealth Medical Center - Kent General Hospital	G	2,000	E	6,000	\$8,000
12	Bayhealth Medical Center - Milford Memorial Hospital	G	2,000	F	3,000	\$5,000
13	Camdel Metals Corporation	G	2,000	E	6,000	\$8,000
14	Christiana Care - Christiana Hospital Power Plant Department	H	5,000	E	6,000	\$11,000
15	Christiana Materials, Inc.	G	2,000	F	3,000	\$5,000

GENERAL NOTICES

16	Ciba Specialty Chemicals Corporation	G	2,000	D	5,000	\$17,000
17	Citisteel USA	I	12,000	E	6,000	\$18,000
18	City of Dover - McKee Run Generating Station	K	50,000	C	30,000	\$80,000
19	City of Dover - Van Sant Generating Station	G	2,000	D	15,000	\$17,000
20	City of Lewes, Board of Public Works	G	2,000	F	3,000	\$5,000
21	City of Seaford - Electric Power Plant	H	5,000	F	3,000	\$8,000
22	Clean Earth of New Castle	G	2,000	D	15,000	\$17,000
23	Coastal Coatings	G	2,000	F	3,000	\$5,000
24	Coker Concrete	G	2,000	F	3,000	\$5,000
25	Color-Box, LLC	G	2,000	E	6,000	\$8,000
26	Computer Science Corporation	G	2,000	E	3,000	\$5,000
27	Conectiv Delmarva Generation - Christiana Peaking Station	G	2,000	F	3,000	\$5,000
28	Conectiv Delmarva Generation - Delaware City Peaking Station	G	2,000	F	3,000	\$5,000
29	Conectiv Delmarva Generation - Edge Moor Power Plant	M	125,000	C	30,000	\$155,000
30	Conectiv Delmarva Generation - West Substation	G	2,000	F	3,000	\$5,000
31	Conectiv Thermal Systems	G	2,000	F	3,000	\$5,000
32	Conectiv Delmarva Generation - Hay Road Power Complex	J	25,000	B	60,000	\$85,000
33	Crowell Corporation	G	2,000	E	6,000	\$8,000
34	Custom Decorative Moldings	G	2,000	F	3,000	\$5,000
35	Cytec Industries, Inc.	G	2,000	F	3,000	\$5,000
36	Dade Behring Inc.	G	2,000	F	3,000	\$5,000
37	Dana Railcar Service, Inc.	G	2,000	E	6,000	\$8,000
38	Dassault Falcon Jet - Wilmington Corporation	G	2,000	D	15,000	\$17,000
39	Delaware Hospital for the Chronically Ill	G	2,000	F	3,000	\$5,000
40	Delaware Recyclable Products, Inc.	G	2,000	E	6,000	\$8,000
41	Delaware Solid Waste Authority - Cherry Island	G	2,000	C	30,000	\$32,000
42	Delaware Solid Waste Authority - Sandtown	G	2,000	D	15,000	\$17,000

43	Delaware Solid Waste Authority - Southern	G	2,000	C	30,000	\$32,000
44	Delaware State University	G	2,000	E	6,000	\$8,000
45	Delaware Terminal Company (Magellan Midstream Partners LP)	G	2,000	E	6,000	\$8,000
46	Department of Corrections - Delaware Correctional Center, Smyrna	G	2,000	C	30,000	\$32,000
47	Department of Corrections - Howard R. Young Correctional Institute, Wilmington	G	2,000	E	6,000	\$8,000

GENERAL NOTICES

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48	Department of Veterans Affairs Medical Center	G	2,000	F	3,000	\$5,000
49	Design Contracting	G	2,000	F	3,000	\$5,000
50	DiamlerChrysler Corporation	J	25,000	C	30,000	\$55,000
51	Diamond Materials, LLC	G	2,000	E	6,000	\$8,000
52	Dover Air Force Base	H	5,000	C	30,000	\$35,000
53	Dover Downs Gaming and Entertainment, Inc.	G	2,000	F	3,000	\$5,000
54	Dover Products Company	G	2,000	F	3,000	\$5,000
55	Dow Reichhold Specialty Latex LLC	G	2,000	B	60,000	\$62,000
56	DuPont Chestnut Run	I	12,000	D	15,000	\$27,000
57	DuPont Edgemoor	H	5,000	C	30,000	\$35,000
58	DuPont Experimental Station	J	25,000	B	60,000	\$85,000
59	DuPont Stine - Haskell Laboratory	H	5,000	C	30,000	\$35,000
60	DuPont Wilmington Office Buildings	G	2,000	E	6,000	\$8,000
61	E-A-R Specialty Composites S.B.U. AEARO	G	2,000	D	15,000	\$17,000
62	Eastern Shore Natural Gas Co. - Bridgeville Compressor Station	G	2,000	F	3,000	\$5,000
63	Eastern Shore Natural Gas Co. - Delaware City Compressor Station	G	2,000	E	6,000	\$8,000
64	Edgemoor Materials, Inc.	G	2,000	F	3,000	\$5,000
65	FMC Corporation	G	2,000	C	30,000	\$32,000
66	Formosa Plastics Corporation	H	5,000	C	30,000	\$35,000
67	FP International, Inc.	G	2,000	E	6,000	\$8,000
68	Gardner Asphalt Corporation (GAC) - Seaford Delaware Plant	G	2,000	E	6,000	\$8,000
69	GE Energy - Ceramic Composite Products, LLC	G	2,000	F	3,000	\$5,000
70	General Motors Corporation	I	12,000	C	30,000	\$42,000
71	Hanover Foods Corporation	G	2,000	E	6,000	\$8,000
72	Hardcore Composites	G	2,000	F	3,000	\$5,000
73	Harris Manufacturing Company, Inc.	G	2,000	E	6,000	\$8,000
74	Hercules Incorporated - Research Center	H	5,000	C	30,000	\$35,000
75	Hirsh Industries, Inc.	G	2,000	E	6,000	\$8,000
76	Honeywell International - Delaware Plant	G	2,000	C	30,000	\$32,000
77	IKO Production Wilmington, Inc.	G	2,000	E	6,000	\$8,000
78	ILC Dover LP	G	2,000	F	3,000	\$5,000
79	Indian River Power LLC	M	125,000	B	60,000	\$185,000
80	International Petroleum Corporation of Delaware	G	2,000	E	6,000	\$8,000
81	INVISTA	L	75,000	B	60,000	\$135,000
82	Justin Tanks, LLC	G	2,000	E	6,000	\$8,000
83	Kraft Foods North America, Inc. - Dover	G	2,000	D	15,000	\$17,000
84	Kuehne Company	G	2,000	E	6,000	\$8,000
85	Macdermid, Inc.	G	2,000	E	6,000	\$8,000

GENERAL NOTICES

86	Maritrans	K	50,000	E	6,000	\$56,000
87	Material Recovery	G	2,000	F	3,000	\$5,000
88	MBNA America Bank, NA, Bracebridge Corp. - Bracebridge Complex	G	2,000	D	3,000	\$5,000
89	MBNA America Bank, NA, Bracebridge Corp. - Christiana Complex	G	2,000	F	3,000	\$5,000
90	MBNA America Bank, NA, Bracebridge Corp. - Crozier Center	G	2,000	F	3,000	\$5,000
91	MBNA America Bank, NA, Bracebridge Corp. - Deerfield Center	H	2,000	F	3,000	\$5,000
92	Medal, LP	G	2,000	F	15,000	\$17,000
93	Metal Masters Food Service Equipment Company	G	2,000	E	6,000	\$8,000
94	Middletown Materials, LLC (Christiana Materials - Middletown)	G	2,000	F	3,000	\$5,000
95	Mountaire Farms of Delaware, Inc. - Millsboro	I	12,000	C	30,000	\$42,000
96	Mountaire Farms of Delmarva - Selbyville	H	5,000	E	6,000	\$11,000
97	Mountaire Farms of Delmarva, Inc. (Frankford Feedmill)	H	5,000	E	6,000	\$11,000
98	Multi-Tech, Inc., D & B Products Insulation Division	G	2,000	E	6,000	\$8,000
99	Nanticoke Memorial Hospital	G	2,000	F	3,000	\$5,000
100	New Castle Hot Mix, Inc.	G	2,000	F	3,000	\$5,000
101	New London Textile, Inc.	G	2,000	F	3,000	\$5,000
102	Noramco, Inc.	G	2,000	E	6,000	\$8,000
103	NRG Dover Energy Center, LLC	K	50,000	B	60,000	\$110,000
104	NVF Company, Yorklyn	G	2,000	D	15,000	\$17,000
105	Occidental Chemical Corporation	G	2,000	E	6,000	\$8,000
106	Orient Corporation of America	G	2,000	F	3,000	\$5,000
107	P & A LLC - Maryland	G	2,000	F	3,000	\$5,000
108	Pats Aircraft LLC	G	2,000	F	3,000	\$5,000
109	Pennsy Supply, Inc. dba Tilcon - Bay Road	G	2,000	E	6,000	\$8,000
110	Pennsy Supply, Inc. dba Tilcon - Edward J. Kaye Construction	G	2,000	F	3,000	\$5,000
111	Pennsy Supply, Inc. dba Tilcon - Georgetown	G	2,000	E	6,000	\$8,000
112	Pennsy Supply, Inc. dba Tilcon - Gumboro	G	2,000	D	15,000	\$17,000
113	Pennsy Supply, Inc. dba Tilcon - Portable Crusher	G	2,000	F	3,000	\$5,000
114	Pennsy Supply, Inc. dba Tilcon - Terminal Avenue	G	2,000	C	30,000	\$32,000
115	Perdue Agri-Recycle, LLC	G	2,000	D	5,000	\$17,000
116	Perdue Farms, Inc. - Bridgeville	G	2,000	E	6,000	\$8,000
117	Perdue Farms, Inc. - Georgetown	H	5,000	E	6,000	\$11,000
118	Perdue Farms, Inc. - Milford	G	2,000	F	3,000	\$5,000

GENERAL NOTICES

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119	Pinnacle Food Corporation	G	2,000	F	3,000	\$5,000
120	Playtex Products, Inc. – Plant 1	G	2,000	E	6,000	\$8,000
121	PPG Industries, Inc.	G	2,000	F	3,000	\$5,000
122	Premcor Refining Group - Marketing Terminal (Valero)	G	2,000	F	3,000	\$5,000
123	Premcor Refining Group, Inc. - Delaware City (Valero)	M	125,000	A	200,000	\$325,000
124	Printpack, Inc.	H	5,000	C	30,000	\$35,000
125	Procter & Gamble Dover Wipes Company	H	5,000	D	15,000	\$20,000
126	PTFE Compounds Inc.	G	2,000	F	3,000	\$5,000
127	Pure Green Industries, Inc.	G	2,000	F	3,000	\$5,000
128	Rohm & Haas Electronic Materials, CMP TE	G	2,000	C	30,000	\$32,000
129	Sara Lee Intimate Apparel	G	2,000	E	6,000	\$8,000
130	Sea Watch International LTD	G	2,000	F	3,000	\$5,000
131	SPI Pharma, Inc.	G	2,000	F	3,000	\$5,000
132	SPI Polyols, Inc.	J	25,000	D	15,000	\$40,000
133	St. Francis Hospital (Christiana Care Health Services)	G	2,000	F	3,000	\$5,000
134	Sunoco, Inc. (R&M)	K	50,000	B	60,000	\$110,000
135	Transflo Terminal Services, Inc.	G	2,000	F	3,000	\$5,000
136	Uniqema	G	2,000	D	15,000	\$17,000
137	Unisource Worldwide, Inc.	G	2,000	F	3,000	\$5,000
138	University of Delaware, Newark	G	2,000	D	15,000	\$17,000
139	VFL Technology Corporation	G	2,000	F	3,000	\$ 5,000
140	W. L. Gore & Associates, Inc. - Papermill Road	G	2,000	E	6,000	\$8,000
141	Warren F. "Sam" Beasley Power Station - DEMEC	G	2,000	D	15,000	\$17,000
142	Wilmington Hospital (Christiana Care Health Services)	G	2,000	E	6,000	\$8,000
143	Wilmington Wastewater Treatment Plant	G	2,000	D	15,000	\$17,000
	Program Grand Totals		\$1,091,000		\$1,889,000	\$2,980,000

**DELAWARE RIVER BASIN
COMMISSION
NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, March 1, 2006 at 10:15 a.m. at the Commissioner's office, 25 State Police Driver, West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, February 16, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
NOTICE OF PUBLIC HEARING**

**Notification of Revised Program Regulations for the
Green Energy Fund**

Pursuant to Title 29 **Delaware Code**, Chapter 80, Section 8055, the Secretary is required to promulgate rules and regulations necessary to establish the administration of the Green Energy Fund.

The proposed modification to the Green Energy Fund Program Regulation will be available on the DNREC Website at www.dnrec.state.de.us under "Delaware Energy Office" and will also be available at the Energy Office web site, www.delaware-energy.com.

Comments will be accepted by the Delaware Energy Office, 146 South Governors Avenue, Dover, DE 19901 via e-mail to charlie.smisson@state.de.us, or fax to 302-739-1527 during the comment period of 2/01/2006 to 3/01/2006.

A Public Hearing has been scheduled at the Delaware Energy Office, 146 South Governors Avenue, Dover, DE 19901 for 6:00 p.m. on March 1, 2006.

**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 Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board adopted a compliance requirement stipulating that all states in the management regime (Massachusetts through North Carolina) for Black Sea Bass include language in their regulations that clarify the methodology to be used when measuring Black Sea Bass for minimum size determinations. Specifically, each state is required to include language in total length definitions for Black Sea Bass that exclude any caudal filament as part of the measurement. It is proposed to amend tidal finfish regulation No. 3507 (1) and (2) in order to include language regarding the caudal filament.

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 2006. Delaware is obligated to cap the summer flounder recreational harvest at 116,000 fish for 2006. The harvest cap has been adjusted downward 22 percent from the previous year's level of 150, 000 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of the Delaware 2005 harvest indicated that landings of summer flounder were 29 percent below the adjusted cap imposed for 2006. As such, it is anticipated that management measurers for summer flounder in 2006 can be liberalized and still restrain the harvest below the cap target. It is proposed that a suite of management options will be developed that take into consideration the relatively low landings projected for 2005 and adjust the options that were presented in the previous years to reflect 29 percent liberalization in the harvest. These options will include potential minimum size limits ranging between 16.5 and 17.5 inches in combination with various creel limits that can range from 2 to 8 fish per day and also incorporate seasonal closures, if necessary, to restrain the harvest within the 2006 cap. These management options will be reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. Once the technical review is completed, those options that were approved will be presented at a public hearing in order to

receive input from the fishing community on the various options.

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) 739-9914. A public hearing on these proposed amendments will be held on March 9, 2006 at 7:30 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 10, 2006.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION****300 Board of Architecture
NOTICE OF PUBLIC HEARING**

The Delaware Board of Architecture in accordance with 24 **Del.C.** §306 has proposed changes to its rules and regulations to clarify the late renewal process for continuing education requirements.

A public hearing will be held on March 1, 2006 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architecture, 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.

Pursuant to 29 **Del.C.** Section 10115 the Delaware Board of Architects is proposing to revise its Rules and Regulations in order to clarify the late renewal process for continuing education requirements. The proposed changes delete the existing Section 6.5 of the Board's Regulations in their entirety.

**DIVISION OF PROFESSIONAL REGULATION
2000 Board of Occupational Therapy
NOTICE OF PUBLIC HEARING**

The State Board of Occupational Therapy Practice in accordance with 24 **Del.C.** §2006(a)(1) has proposed

changes to its rules and regulations related to the online renewal and continuing education.

A public hearing will be held at 4:30 p.m. on March 15, 2006 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.

**PUBLIC SERVICE COMMISSION
NOTICE OF PUBLIC HEARING**

On May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition with the Public Service Commission ("PSC" or "Commission") asking the Commission to make revisions and amendments to its regulations concerning the *Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment for Such Contributions and Advances* ("the Regulations"). These Regulations were originally adopted in PSC Order No. 2928 (Mar. 15, 1988) and revised in PSC Order No. 4310 (Sept. 24, 1996).

In PSC Order No. 6198 (June 16, 2003), the Commission accepted the DPA's petition to reopen those earlier regulations. In PSC Order No. 6538 (December 7, 2004), the Commission issued a revised set of regulations for public comment and designated a Hearing Examiner to conduct further proceedings. On November 18, 2005, the Hearing Examiner issued a written report with revised regulations that were proposed for adoption by the Commission. On December 20, 2005, the Commission voted to adopt the Hearing Examiner's Report and publish the revised regulations for further public comment.

The revised regulations address the following: (a) the definitions of Contributions In-Aid-Of Construction ("CIAC"), Advances, Facilities Extension, and New Services; (b) the computation of CIAC, including costs categories; (c) the nature of advances; (d) refunds of advances; (e) the ratemaking treatment of advances; (f) the gross-up of CIAC; (g) the ratemaking treatment of CIAC; (h) the true-up of CIAC and advances; (i) that the regulations apply only to Class A water utilities; (j) that the regulations

will only have prospective application; and (k) matters necessarily related to the foregoing. The Commission proposes that its Order promulgating the final version of the new regulations will provide that the regulations (and the related docket) will be reopened two years from the effective date of the new regulations to review the new rate-making methodology, and to assess its effectiveness, the CIAC computation, and related costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications of the regulations.

Copies of the present Regulations, the proposed regulations, and the DPA's petition to reopen are available for public inspection at the Commission's address set out below during normal business hours.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before March 3, 2006. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate on or before March 3, 2006. The Commission will hold a public hearing to consider the proposed regulations on March 14, 2006 at 1:00 PM at its Dover office identified above.

The proposed regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801, and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

PUBLIC SERVICE COMMISSION

PUBLIC NOTICE OF PROPOSED RULES

In PSC Order No. 5933 (Apr. 16, 2002), the Commission felt that it might be prudent to explore whether the Commission should adopt specific rules governing what actions are, or are not, permissible in the case of an alleged breach of the terms of an interconnection agreement and what procedures, including notice to the Commission and Commission approval, might have to precede any such actions. The premise for such rules would be to ensure that consumers not suffer the consequences of contractual disputes between carriers and find themselves disconnected or limited in their choices. Therefore, the Commission opened Regulation Docket No. 52.

Staff has developed rules to address the Commission's concerns by instructing telecommunications carriers that during disputes between carriers, the companies cannot terminate or suspend service which would affect Delaware consumers and instructing telecommunications carriers who want to abandon service of the process of informing customers and relevant parties before terminating service.

The text of these proposed rules are attached to PSC Order No. 6801. That Order and the exhibits are reproduced in the February 2006 edition of the *Delaware Register of Regulations*. The Order and exhibits can also be reviewed on-line at the PSC's website at www.state.de.us/delpsc. You can also obtain a paper copy of the Order at the PSC's Dover office. Those paper copies will cost \$0.25 per page.

You can file written comments, suggestions, briefs, compilations of data, or other materials concerning these proposed amendments to the Telecom Rules. Such material (10 copies) must be submitted to the Commission on or before Friday, March 3, 2006. Send the material to the Commission's Dover office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. No. 52

In addition, the PSC will conduct a public hearing on these proposed changes on Wednesday, March 22, 2006, beginning at 10:00 AM. The hearing will take place in the Commission's Office located at the address denoted above. You may also submit additional materials then.

If you are handicapped and need assistance or aids in participating in this matter, please contact the PSC to discuss the needed assistance or aids. You can contact the PSC with questions or requests about this matter at the Commission's

toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You can also send inquiries by Internet e-mail addressed to karen.knickerson@state.de.us.

**DEPARTMENT OF
TRANSPORTATION
DIVISION OF MOTOR VEHICLES
NOTICE OF PUBLIC COMMENT PERIOD**

The Delaware Department of Transportation Division of Motor Vehicles, pursuant to 21 **Del.C.** §302 and 29 **Del.C.** Chapter 101, Subchapter II, proposes to repeal thirty-three rules and regulations previously enforced by the Division, and described in detail below this notice. The repeals are proposed because these rules and regulations are either obsolete under later-enacted state or federal laws, or have already become part of state law. Written comments concerning this proposed repeal should be sent by March 2, 2006 to Jack Eanes, Chief of Operations, Division of Motor Vehicles, 303 Transportation Circle, P.O. Box 698, Dover, Delaware 19903.

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