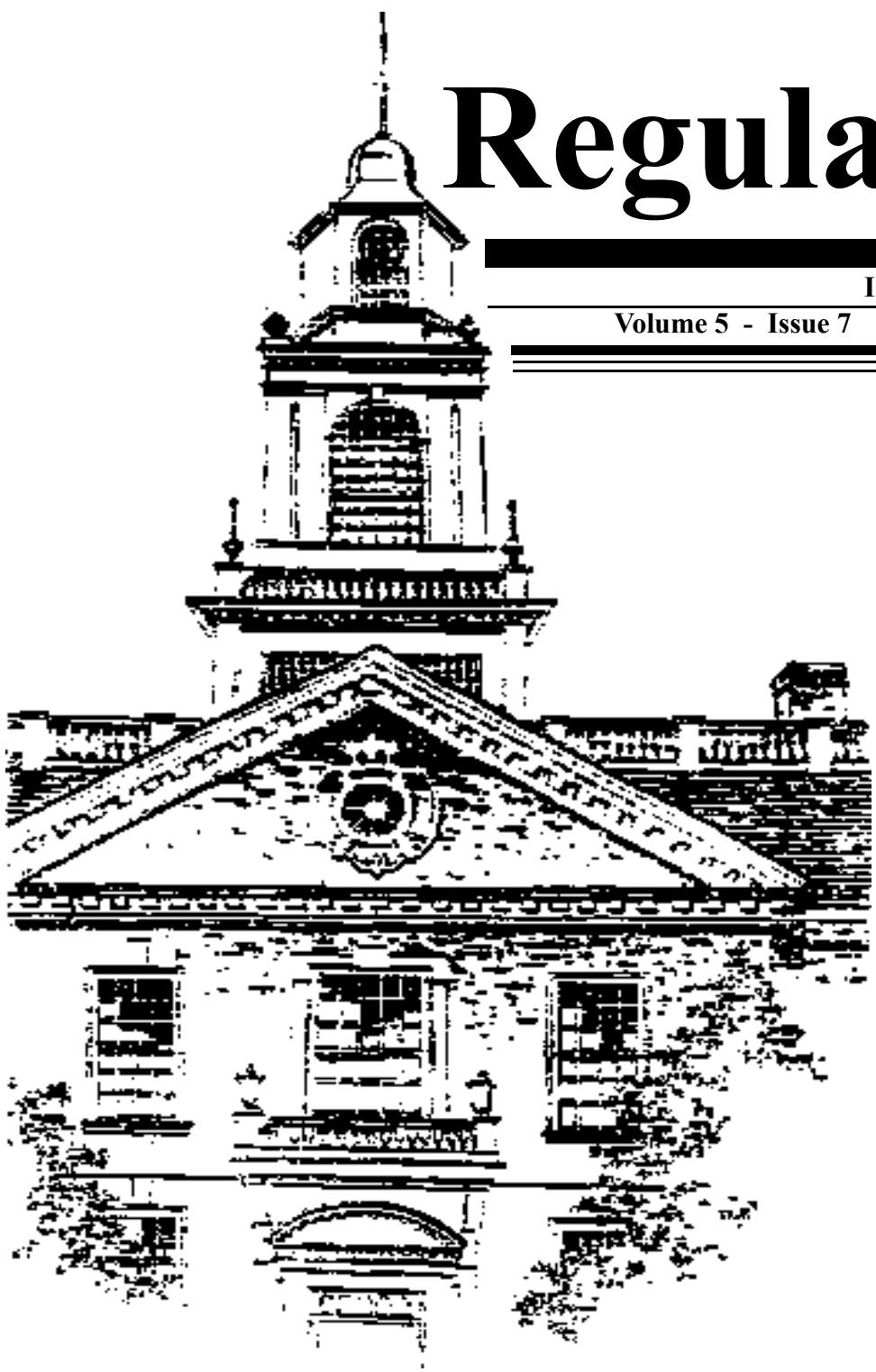

Delaware Register of Regulations



Issue Date: January 1, 2002

Volume 5 - Issue 7

Pages 1325 - 1543

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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 December 15, 2001.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

4 DE Reg. 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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

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Reg. No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....5 **DE Reg.** 94 (Prop.)

Reg. No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....5 **DE Reg.** 665 (Final)

Reg. No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....5 **DE Reg.** 96 (Prop.)

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Symbol Key

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

Emergency Regulations

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

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,
Section 3103 (16 **Del.C.** §3103)

Nature of the Proceedings

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision to the Regulation Governing the Care and Transportation of the Dead, Section 6 Preparation of Bodies Dead of Certain Diseases, is not implemented without prior notice or hearing. Failure to update this Section will result in unnecessary health risk to mortuary workers and the general public due to improper handling and preparation of a dead body as a result of smallpox, plague, anthrax or other diseases caused by terrorist events.

Nature of Proposed Revisions

(Revisions indicated by underlined type and strike through):

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective immediately.

Vincent P. Meconi,
Secretary

12.14.2001

~~Section 6. Preparation Of Bodies Dead Of Certain Diseases~~

~~In the preparation for burial of the body of any person who has died of smallpox, plague, anthrax, or other diseases which the State Board of Health may specify, it shall be the duty of the funeral director or person acting as such to accomplish the following:~~

- ~~a. To wash the surface of the body with an approved germicidal solution.~~
- ~~b. To effectively plug all body orifices immediately.~~
- ~~c. To embalm by arterial and cavity injection with an approved disinfectant fluid. No preparation containing arsenic shall be used for this purpose.~~

~~It shall be the duty of every funeral director engaged for or in charge of the preparation and burial of the body of a person who died of smallpox, plague, anthrax, or other disease which the State Board of Health may specify, or of the bringing of the dead body of any such person to Delaware, to give immediate notice thereof to the State Board of Health. No burial, cremation or transit permit for the body of any person who has died of these diseases shall be granted by telephone, but must be obtained in accordance~~

with those regulations. Such body shall be immediately placed in a metal lined coffin or casket and the same shall be immediately and permanently sealed by the funeral director. If metal linings for coffins or caskets are unobtainable, the casket is to be constructed so as to not allow any seepage whatsoever therefrom and it is to be sealed as hereinbefore directed.

If it is desired to cremate the body of a person who has died of smallpox, plague, anthrax, or other diseases which the State Board of Health may specify, the casket need not be metal lined, but must be sealed as herein provided and removed to the crematory for immediate cremation. It shall be unlawful to invite or permit any person or persons other than the members of the immediate family on the premises where such deceased person has died of said diseases of where the body of such person has been held or prepared for burial. In the case of a person who has died of smallpox, plague, anthrax, or other diseases which the State Board of Health may specify, no public funeral shall be permitted.

Section 6. Preparation, Transport, and Disposal of Bodies Dead of Designated High-risk Diseases.

The Director of the Division of Public Health or Designee shall designate communicable diseases determined to be high-risk from the point of view of handling after death. Currently designated diseases include Anthrax, Smallpox, Plague, and the various Hemorrhagic Fevers.

Should death occur before a definitive diagnosis can be made and when there is even the remote suspicion of one of these illnesses, the physician or hospital should consult with the Chief Medical Examiner or the Division Director. Should it be necessary to hold a body for longer than six hours pending completion of definitive diagnostic work, the body should be sealed immediately following the taking of such specimens as may be needed. The sealing should be completed as described in *Preparation a.* (below) and held in isolation (refrigerated when possible) pending removal. Otherwise, removal, transport, and cremation should proceed as prescribed by these regulations.

Whenever death occurs from a designated high-risk disease, immediate notification shall be provided by the reporting physician, other provider, or the hospital to the Division of Public Health, the family, and the funeral director who will have responsibility to handle, transport, or dispose of said body. These reports may be made by fax, telephone, or electronic mail. After hours, the Division of Public Health emergency line is (302) 739-4700.

The Chief Medical Examiner, hospital or funeral director shall ensure that anyone handling a body so designated shall follow strict universal precautions in a manner that minimizes contact between the body, other persons, and the environment. Detailed explanation of

universal precautions required can be found in the Occupational Safety and Health Administration (OSHA) Regulations, 29 CFR, Part 1910.1030, Bloodborne Pathogens and any updates thereto. These regulations can be found at the OSHA website: (www.osha.gov) or by contacting the Office of Vital Statistics, Division of Public Health.

Preparation:

a. The body shall be wrapped in a sheet saturated with a suitable disinfectant. This may be concentrated commercial disinfectant approved for such purpose or it may be embalming powder or high index cavity fluid. This shall be followed by enclosure in a heavy-duty impervious bag designed for such purpose to assure against leakage.

b. For transport the body prepared as in "a." shall be placed in a suitable firm container such as a "cremation container" in which case it shall be cremated therein or it may be transported in a temporary firm protective container from which it may be removed for cremation.

c. For burial or other exempted disposition, the body shall be enclosed in a metal casket liner or a casket that is constructed so as to not allow any seepage whatsoever therefrom and is to be sealed. Burial must be at a depth of at least 2 meters.

Labeling:

It will be the responsibility of the funeral director to ensure that there are attached to the body and its containers in several visible places labels bearing in prominent legible letters the words, "This body is infected with a designated high-risk disease specified by the Division of Public Health and must be handled and transported in accordance with the precautions required by these regulations".

Handling:

Neither embalming nor autopsy shall be performed on such bodies unless specifically authorized by the Chief Medical Examiner or designee.

Transport:

Transport of a body so designated must be under the conditions described above with the addition that the body must be protected in such a way as to assure that it shall not become uncovered in any reasonably foreseeable accident. Transport out of state shall be prohibited unless approved by the Director of Public Health or designee and the receiving jurisdiction.

Removal:

A body may be removed from the firm protective container in which it was transported once it has reached the funeral home or crematory where the body shall be prepared for cremation or other disposition if authorized. Such

container used exclusively for transport may be re-used following suitable disinfection.

Services:

No viewing of the body or public services in the presence of the body shall be permitted.

Cremation is the disposal method of choice for any designated high-risk communicable disease. If burial is permitted as an exception, it must be promptly performed and the body must remain sealed as described above throughout the burial process.

The Director of Public Health or designee upon request may waive any requirement of these regulations in order to accommodate religious or traditional practices if he or she is satisfied that the proposed practices present no substantial additional risk to any person or the environment.

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH**

24 DE Admin. Code 3000

Statutory Authority: 24 Delaware Code,
Section 3006(a)(1), (24 **Del.C.** §3006(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3006(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes to revise its Rules and Regulations. The proposed revisions delete the International Christian Institute Certification Board and Commission on Rehabilitation Counselor Certification Board as national mental health specialty certifying organizations automatically considered acceptable by the Board for purposes of initial licensure and renewal of licenses. Substantive changes include inserting a new rule that permits licensees to maintain membership in the certifying organization acceptable to the Board at the time of their initial licensure for purposes of renewal of their license notwithstanding that such organization is no longer deemed acceptable by the Board for failing to meet certain criteria.

A public hearing will be held on the proposed Rules and Regulations on Friday, February 1, 2002 at 3:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle

Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address by calling (302) 744-4520.

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

- 1.0 Meetings and Elections
- 2.0 Licensure by Certification
- 3.0 Licensure by Reciprocity
- 4.0 Licensure of Associate Counselors of Mental Health
- 5.0 Application and Fee, Affidavit and Time Limit
- 6.0 Renewal of Licensure
- 7.0 Ethics
- 8.0 Return to Active Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Meetings and Elections

1.1 Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

1.2 Election of Officers - The Board shall elect officers annually at the regular December meeting.

Statutory authority: 24 *Del.C.* §3004

2.0 Licensure by Certification

Applicants for LPCMH licensure by certification shall

fulfill the following requirements:

2.1 Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board.

2.2 Certifying Organization - Certifying organizations acceptable to the Board shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), ~~formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), International Christian Institute Certification Board, Commission on Rehabilitation Counselor Certification Board,~~ and other certifying organizations that meet all of the following criteria:

2.2.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.2.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.2.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.2.4 The organization shall require the minimum of a master's degree in the counseling or behavioral science field. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.2.5 Individuals licensed prior to the effective date of this Rule may maintain certification or membership in the certifying organization acceptable to the Board at the time of their initial licensure in order to qualify for renewal of their license notwithstanding that such certifying organization is no longer deemed acceptable to the Board for failure to meet the criteria of this Rule.

2.3 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.4 Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

2.4.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a

professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.4.2 Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.4.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

2.5 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

2.5.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.5.2 Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.5.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.5.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.5.2.3 Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.5.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the

Board by the approved clinical supervisor.

Statutory authority: 24 *Del.C.* §3008.

See 4 DE Reg. 970 (12/1/00)

3.0 Licensure by Reciprocity

Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:

3.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

3.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

3.3 Determination of Substantial Similarity of Licensing Standards- The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements set forth in Title 24, *Delaware Code*, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

3.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the experience requirements of §3008(a)(2), the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2). The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

Statutory authority: 24 *Del.C.* §§3010.

See 4 DE Reg. 970 (12/1/00)

4.0 Licensure of Associate Counselors of Mental Health

4.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, and signed by the approved professional supervisor.

Statutory authority: 24 *Del.C.* §3009.

See 4 DE Reg. 970 (12/1/00)

5.0 Application and Fee, Affidavit and Time Limit

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health provider,

5.2.3 that he/she does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a LPCMH or LACMH,

5.2.4 that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 *Del.C.* §§3008, 3009, 3010.

See 4 DE Reg. 970 (12/1/00)

6.0 Renewal of Licensure

6.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years, beginning with September 30, 1994.

6.2 Requirements for Renewal - Requirements for licensure renewal are as follows:

6.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the Board. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

6.2.2 Continuing Education

6.2.2.1 Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

6.2.2.2 Acceptable Continuing Education -

Acceptable continuing education shall include the following:

6.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter, or by designated official of the sponsoring organization.

6.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to twenty (20) clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances, may there be less than twenty (20) hours of face-to-face participation in continuing education as outlined above.

6.2.2.3 Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

6.2.3 Hardship. The Board shall have the authority to make exceptions to the continuing education requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily limited to, disability, illness, military service, extended absence from the jurisdiction and exceptional family responsibilities. Request for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.

6.2.4 Verification - Verification of continuing education hours shall be by the "Continuing Education Form for Licensed Professional Mental Health Counselors," with appropriate documentation for each item listed attached to the form.

6.2.5 Fees - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division of Professional Regulation for that licensure renewal period. A fifty percent (50%) late charge shall be imposed upon any fee paid after the renewal date.

6.2.6 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal applications will be sent to the last address on file with the Division.

Statutory authority: 24 *Del.C.* §§3006(a)(5), 3012.

See 4 DE Reg. 970 (12/1/00)

See 5 DE Reg. 452 (8/1/01)

7.0 Ethics

7.1 The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").

7.2 The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

Statutory authority: 24 *Del.C.* §§3006(b), 3013.

See 4 DE Reg. 970 (12/1/00)

8.0 Return to Active Status

8.1 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

8.1.1 Written Request - Written request to the Board requesting return to active status.

8.1.2 Certification - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

8.1.3 Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

8.1.4 Fee - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

Statutory authority: 24 *Del.C.* §30012(d).

9.0 Disciplinary Proceedings and Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del. C.* §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice

of hearing shall fully comply with 29 *Del. C.* Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 *Del.C.* §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 *Del.C.* §§3013 and 3016; 29 *Del.C.* §§10111, 10122 and 10131

9.2. Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if at least four members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 *Del.C.* §515.

9.2.6 Any decision by the Board to suspend or revoke a license shall be made public by publishing notice of the suspension or revocation in at least two (2) Delaware newspapers of general circulation. Such publication shall

take place following the Board's execution of the final order.

Statutory authority: 24 *Del.C.* §§3004, 3013, 3015, 3016; 29 *Del.C.* §§10111

See 4 DE Reg. 970 (12/1/00)

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment

Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

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

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

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice

as outlined in the agreement under the Voluntary Treatment Option.

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

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

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

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

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

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

DEPARTMENT OF AGRICULTURE

FOOD PRODUCTS INSPECTION SECTION

Statutory Authority: 3 Delaware Code,
Section 8708(8) (3 Del.C. §8708(8))

NOTICE

The Delaware Department of Agriculture, Food Products Inspection Section is proposing to amend its regulations concerning the rules of practice that apply to

agency enforcement actions by bringing them into the conformity with federal law. The Department is proposing to define each type of enforcement action that it may take, the conditions under which it likely to take each of these actions, and the procedures it will follow in doing so.

These proposed amendments are part of the Department's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations. To that end, the Department is proposing to adopt by reference, in their entirety, the federal regulations published in the Federal Register at Volume 64, Number 228, dated November 29, 1999, amending the Code of Federal Regulations at 9 CFR Sections 304, 305, 327, 335, 381 and adding a new Part 500 which became effective January 25, 2000.

The proposed amendments to the regulations will be considered at a public hearing scheduled for February 15, 2002 at 1:00 p.m. at the Department of Agriculture Building in Conference Room 1, located at 2320 South DuPont Highway, Dover, Delaware. Interested persons are invited to attend and make comments. Comments concerning the proposed amendments to the regulations can be submitted in writing to H. D. Shockley for consideration by the Department at the public hearing.

Copies of the relevant portions of the Code of Federal Regulations and the Federal Register may be obtained by contacting the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402-9328. For more information, or to request accommodations for disabilities, contact Debbie Whitmore by calling (302) 698-4505.

AUTHORITY

These proposed amendments to regulations governing food product inspection are promulgated pursuant to the Department's authority set forth in Section 8708(a) of Title 3 of the Delaware Code.

PURPOSE

The purpose of these proposed amendments to regulations is to consolidate, streamline, and clarify the meat and poultry product inspection regulations thereby insuring that Department enforcement actions are fair by identifying the situations that may lead to such actions.

SUBSTANTIVE PROVISIONS

The Department incorporates by reference herein, in its entirety, the language found at page 66545 of the Federal Register at Volume 64, Number 228, beginning with the heading "Part 304-Application for Inspection; Grant of Inspection" and ending at page 66547 at the end of Section

500.8(c).

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE

Statutory Authority: 16 Delaware Code,
Sections 3001A-3006A (16 Del.C. §§3001A-3006A)

Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

Public Notice

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared six (6) revised draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in 16 Del. C., Chapter 30A. The remainder of the regulations addressing certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification appear as final regulations in the January 1, 2002 Register of Regulations. The following six (6) draft regulations, revised after the November 8 public hearing, will be the subject of a further public hearing: Regulations 69.111, 69.301E, 69.301F, 69.303D5g, 69.303D6, 69.600B. Regulation 69.502A5 is deleted.

Invitation For Public Comment

A Public Hearing Will Be Held As Follows:

Wednesday, February 6, 2002
9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

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

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

Elise MacEwen
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308

Wilmington, DE 19806

The last time to submit written comments will be at the public hearing February 6, 2002.

The Regulations currently in place are being replaced in their entirety by the final regulations printed in the January Register of Regulations and the six (6) revised draft regulations being submitted for publication on January 1, 2002.

SECTION 69.100 - DEFINITIONS

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

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

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

69.104 Department – the Department of Health and Social Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 69.200 – GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST

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

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

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

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

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

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware shall be deemed qualified to meet the Department's requirements based on a current certificate from the jurisdiction where he/she presently practices, documentation of the equivalent of one year of full-time experience as a certified nursing assistant and verification that he/she is in good standing on that jurisdiction's Registry.

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

69.207 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program **may** be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

SECTION 69.300 - CNA TRAINING PROGRAM REQUIREMENTS

69.301 General

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

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

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

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

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

E. The RN instructor shall directly supervise students at all times during clinical instruction. Students

shall remain in visual contact with a licensed nurse in the clinical setting while performing any skills for which they have not yet demonstrated and the program has documented proficiency.

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

69.302 Equipment

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

- A. Audio/Visual (Overhead projector and/or TV with VCR)
- B. Teaching Mannequin, Adult, for catheter and perineal care
- C. Hospital Bed
- D. Bedpan/Urinal
- E. Bedside commode
- F. Wheelchair
- G. Scale
- H. Overbed Table
- I. Sphygmomanometer
- J. Stethoscope
- K. Resident Gowns
- L. Thermometers, Glass and Electronic
- M. Crutches
- N. Canes (Variety)
- O. Walker
- P. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors.
- Q. Foley Catheter Drainage Bag
- R. Hydraulic Lift
- S. Adaptive eating utensils/equipment

69.303 Curriculum Content

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

A. THE NURSING ASSISTANT ROLE AND FUNCTION

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

care and resident rights are presented. Relevant Federal and State statutes are also reviewed.

Competencies:

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

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

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

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

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

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

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

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

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

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

a. Provide privacy and maintenance of confidentiality.

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

c. Give assistance in resolving grievances.

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

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

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

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

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

B. ENVIRONMENTAL NEEDS OF THE RESIDENT

Key Concepts: Introduces the nursing assistant to

the need to keep residents safe from injury and infection in the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

(1) Apply the basic principles of infection control.

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

b. Demonstrate proper hand washing technique.

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

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

(2) Assist with basic emergency procedures.

a. Follow safety and emergency procedures.

b. Identify safety measures that prevent accidents to residents.

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

d. Assist with clearing obstructed airway.

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

f. Follow disaster procedures.

g. Report emergencies accurately and immediately.

h. Identify potential fire hazards.

(3) Provide a safe, clean environment.

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

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

c. Report evidence of pests to appropriate supervisory personnel.

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

e. Prepare soiled linen for laundry.

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

environment safe.

C. PSYCHOSOCIAL NEEDS OF THE RESIDENT

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

Competencies:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Demonstrate appropriate and effective communication skills.

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

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

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

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

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

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

D. PHYSICAL NEEDS OF THE RESIDENT

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

Competencies:

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

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

b. Understand basic physiology of nutrition and hydration.

c. Understand basic physiology of malnutrition and dehydration.

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

i. compromised skin integrity

ii. underweight or overweight

iii. therapeutic or mechanically

altered diet

iv. poor dental status

v. drug-nutrient interactions

vi. acute/chronic disease

vii. depression or confusion

viii. decreased appetite

e. Recognize how the aging process affects digestion.

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

g. Accurately calculate and document

fluid intake and report inadequate intake or changes in normal intake.

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

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

j. Incorporate food service principles into meal delivery including:

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

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

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

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

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

l. Demonstrate understanding of how to read menus.

m. Assist residents who are unable to feed themselves.

n. Demonstrate techniques for feeding someone who:

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

thrust

- ix. will not open mouth

o. Demonstrate proper positioning of residents at mealtime.

p. Demonstrate skills for feeding residents who:

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

q. Demonstrate positioning techniques for residents who:

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

vi. have physical deformities

r. Demonstrate use of assistive devices.

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

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

liquids

iii. refusal of meal

iv. choking on food or fluids

v. excessive drooling

vi. vomiting while eating

vii. significant change in vital signs

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

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

v. Ensure residents are dressed appropriately.

w. Allow residents to eat at their own pace.

x. Encourage independence and assist as needed.

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

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

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

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

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

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

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

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

d. Cardiovascular conditions – Report

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

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

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

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

h. Infectious diseases.

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

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

b. Assist the resident to dress and undress.

c. Assist the resident with bathing and personal grooming.

d. Observe and report condition of the skin.

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

f. Administer oral hygiene for the unconscious resident.

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

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

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

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

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

l. Distribute nourishment and water.

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

i. Blood pressure

ii. Height and weight

iii. Temperature, pulse, respiration

n. Assist the resident with shaving.

o. Shampoo and groom hair.

p. Provide basic care of toenails unless medically contraindicated.

q. Provide basic care of fingernails unless medically contraindicated.

r. Demonstrate proper catheter care.

s. Demonstrate proper perineal care.

t. Assist the licensed nurse with a physical examination.

u. Apply a non-sterile dressing properly.

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

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

x. Demonstrate how to properly apply elastic stockings.

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

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

a. Assist the resident in bowel and bladder training.

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

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

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

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

f. Assist in care and use of prosthetic devices.

g. Assist the resident while using proper body mechanics.

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

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

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

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

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

a. Discuss own feelings and attitude about death.

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

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

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

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

SECTION 69.400 – MANDATORY ORIENTATION PERIOD

69.401 - SKILLED AND INTERMEDIATE CARE FACILITIES

A. GENERAL REQUIREMENTS

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

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

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

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

B. ORIENTATION PROGRAM REQUIREMENTS

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

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

- reporting
 - transfer techniques
 - procedures
 - weight
 - techniques
 - and nail care
 - denture care
 - orthotic devices
 - ankle protectors
- (c.) Safety and body mechanics:
 - (d.) Vital signs
 - (e.) Psychosocial needs
 - (f.) Facility policies and
- (2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:
- a. Taking and recording vital signs
 - b. Measuring and recording height and
 - c. Handwashing and infection control
 - d. Caring for the resident's environment
 - e. Bathing and skin care, including foot
 - f. Grooming and mouth care, including
 - g. Dressing
 - h. Toileting, perineal and catheter care
 - i. Assisting with eating and hydration
 - j. Proper feeding techniques
 - k. Positioning, turning and transfers
 - l. Range of motion
 - m. Bowel and bladder training
 - n. Care and use of prosthetic and
 - o. Assisting with ambulation
 - p. Measuring intake and output
 - q. Use of elastic stockings, heel and
 - r. Bedmaking skills

69.402 - ASSISTED LIVING FACILITIES

A. GENERAL REQUIREMENTS

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

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

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

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

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

B. ORIENTATION PROGRAM REQUIREMENTS

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

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

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

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

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

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

h. Role and function of the CNA/NA

i. Resident rights/abuse reporting

j. Safety and body mechanics: transfer techniques

k. Vital signs

l. Psychosocial needs

m. Facility policies and procedures

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

a. Taking and recording vital signs

b. Measuring and recording height and weight

c. Handwashing and infection control techniques

d. Caring for the resident's environment

e. Bathing and skin care

f. Grooming and mouth care, including denture care

g. Dressing

h. Toileting, perineal and catheter care

i. Assisting with eating and hydration

j. Proper feeding techniques

k. Positioning, turning and transfers

l. Range of motion

m. Bowel and bladder training

n. Care and use of prosthetic and orthotic devices

o. Assisting with ambulation

p. Measuring intake and output

q. Use of elastic stockings, heel and ankle protectors

r. Bedmaking skill

69.403 - TEMPORARY AGENCIES

A. GENERAL REQUIREMENTS

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

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

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

B. ORIENTATION PROGRAM REQUIREMENTS

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

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

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

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

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

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

SECTION 69.500 - VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION

69.501 - TRAINING REQUIREMENTS AND COMPETENCY TEST

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

minimum requirements:

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

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

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

69.502 - VOLUNTARY SENIOR CNA CURRICULUM

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

A. LEADERSHIP TRAINING AND MENTORING SKILLS

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

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

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

(2) Identify principles of adult learning.

(3) Recognize various learning styles and communication barriers.

(4) Assess learner knowledge.

~~(5) Supervise, evaluate and act as a preceptor for the Nursing Assistant and Certified Nursing Assistant during orientation.~~

(6) Demonstrate effective communication techniques.

(7) Recognize the importance of teamwork.

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

(9) Identify strategies for conflict management.

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

B. DEMENTIA TRAINING

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

resource person for other CNAs.

Competencies: Demonstrate appropriate skills and techniques necessary to provide care to residents exhibiting signs and symptoms of dementia.

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

(2) Identify types of dementias.

(3) Discuss methods for managing difficult behavior.

(4) Demonstrate effective communication techniques.

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

C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING

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

Competencies:

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

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

b. Describe signs and symptoms of common disorders.

c. Describe the pathophysiology of common disorders.

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

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

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

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

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

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

c. Identify ways to prevent contractures.

d. Effectively communicate with the Rehabilitation Department.

SECTION 69.600 – SENIOR CNA TRAINING PROGRAM INSTRUCTORS

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

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

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

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

SECTION 69.700 – TRAIN-THE-TRAINER PROGRAM REQUIREMENTS

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

69.701 TRAINING COURSE CONTENT

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

69.702 COURSE MANAGEMENT INFORMATION

- A. Training time shall consist of sixteen minimum

hours.

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

DIVISION OF SOCIAL SERVICES

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

Public Notice
Division of Social Services
Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 9085. This change is based on the option and waiver of 7 CFR 273.12(a)(1)(i) through (vi).

Summary of Change

- The option allows DSS to require households with earned income to only report a change of income when the total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) during a six-month certification period.
- The waiver allows DSS to make changes on all reported changes, not just those that increase the benefits.
- The six-month reporting option is strongly being encouraged by Food and Nutrition Service (FNS). The waiver approval will allow DSS to take the option.

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

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

Revision**DSSM 9085 Reporting Changes**

Certified households are required to report the following changes in circumstances:

Reporting requirements for households with countable earned income and six-month certification periods:

Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of certification or recertification.

When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.

Households will not have to report any changes in household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2,000, and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours per week.

Reporting requirements for households without countable earned income:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form.

~~Changes in the amount of gross earned income will be reported as follows:~~

- ~~a) New source of employment, or~~
- ~~b) Changes in the hourly rate or salary of current employment, or~~
- ~~e) Changes in employment status from part-time to full-time or full-time to part-time.~~

- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;

- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 ;
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000;
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

**DEPARTMENT OF
TRANSPORTATION**

Statutory Authority: 17 Delaware Code,
Chapter 11 (17 Del.C. Ch. 11)

Regulations for Outdoor Advertising**Nature of the Proceedings:**

The Department of Transportation initiated proceedings to update its "Delaware Department of Transportation Rules and Regulations of Outdoor Advertising" as issued in 1975. The proposed re-written regulations were published in the August 1, 2001 issue of the Delaware Register of Regulations. Written comments were requested and accepted through October 1, 2001.

The Department received and evaluated nine letters that set out a wide range of comments. The results of the evaluation are summarized below. The Department revised the draft regulations as a result of the comments received and is presenting the revised draft here, along with the original 1975 regulations for comparison. The Department invites written comments on the current draft until February 1, 2002. Comments should be sent to:

William F. Smith, III
 Department of Transportation
 Field Services
 P.O. Box 778
 Dover, DE 19903

Summary of Evidence/Findings of Fact

COMMENT 1: Outdoor advertising signs that were designated on-premise and displayed advertising messages for on-premise activities using electronic message signs were previously allowed under the Del Code. Since this was the case those sign owners that argued this point should be omitted from these revised regulations. A provision for "a grandfather clause" should be introduced into regulations to accommodate sign owners that are mentioned above.

RESPONSE: The Department of Transportation is given authority to regulate Outdoor Advertising by Chapter 11 of Title 17 of the Delaware Code. The Department's current regulations do not authorize the use of "electro-mechanical variable message" signs, except for official use and public service messages, such as time, date and temperature, and also as described under the circumstances described in response to Comment 2, below. Since the use of electro-mechanical variable message signs was excluded in the 1975 regulations, such signs that have been erected since 1975 are considered to have been in noncompliance with the Department's regulations. Therefore, consideration cannot be given to a "grandfather clause" that will exclude them from regulations now being proposed.

COMMENT 2: 17 Del.C. Section 1110 [(b)](3) notes that zoned and unzoned commercial and industrial areas may not have signs which contain, include or are illuminated by flashing, intermittent or moving light or lights, except those giving public service information such as weather, temperature, time and date. How can State code not permit this sign and the proposed DelDOT regulations give consideration to regulating this type of sign?

RESPONSE: The comment's basic premise is incorrect, though understandably so, given the complex wording and structure of 17 Del.C. Chapter 11.

The first sentence of Section 1110, in Subchapter I, exempts from coverage signs that "advertis[e] the sale or lease of the property on which they are located, or activities conducted thereon...." Therefore, the restrictions later set forth in Section 1110(b)(3) do not apply to such signs. However, even these signs are subject to the provisions of Subchapter II of Chapter 11, if they are within the controlled areas adjacent to the highways of the primary system (now the National Highway System). Under Section 1121 in Subchapter II, such signs are subject to the regulations promulgated by the Department under Section 1103, thus referring back to the lighting restrictions in the current

regulations.

Accordingly, signs with such devices can be used, but only if they are not located in controlled areas adjacent to the primary road network, which makes them subject to Subchapter II's provisions. In addition, the signs' content is limited to advertising the sale or lease of the property on which they are located, or activities conducted thereon.

In addition, 17 Del.C. Section 1110's restrictions are taken directly from a DelDOT and FHWA agreement entitled 'Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System.' The Department entered into this agreement with FHWA on May 1, 1968, pursuant to 23 U.S.C. Section 131 and the State's own enactment of Subchapter II of 17 Del.C. Chapter 11. The agreement was directed toward regulation of off-premise signs used for outdoor advertising. The Federal statute was amended in 1978 at Section 131(c)(3) to allow the Department to approve the use of electro-mechanical variable message signs for display of on-premise activities adjacent to the primary system, if the signs met established State test criteria for on-premise activities and if messages were displayed at reasonable intervals. However, 17 Del.C. Chapter 11 was not also amended to give this authority to the Department under the applicable state law. The Department's proposed regulations for outdoor advertising are now consistent with the current limitations of Chapter 11.

COMMENT 3: Spacing of one mile between electro-mechanical variable message signs is excessively restrictive.

RESPONSE: This distance is recommended to insure that the pleasant surroundings and vistas of "Livable Delaware" are not rapidly filled with electro-mechanical advertising signs that are viewed to be somewhat obtrusive by some Delaware residents. This regulation will apply along all applicable state maintained roadways on which the Department is authorized to control outdoor advertising.

COMMENT 4: Spacing of one mile between electro-mechanical variable message signs with a State permit going to the first approved applicant will result in limited use of above signs and possibly deny a competitor the use of the same type of advertising if businesses offering the same services or products are within a distance of one mile from one another. Since these are not off-premise signs but on-premise signs then each business should have the right to use an approved sign to advertise on-premise activities on their property.

RESPONSE: See response to Comment 3.

COMMENT 5: Spacing between electro-mechanical variable message signs and static message signs is not

necessarily appropriate.

RESPONSE: Spacing imposed in the revised regulations for distances between an electro-mechanical variable message sign and a static sign is the same as that between two static message signs and follows FHWA guidelines.

COMMENT 6: Confusion exists between spacing requirements between electro-mechanical variable message signs and other on premise signs.

RESPONSE: See response to Comment 5.

COMMENT 7: Time for message display is too long.

RESPONSE: The time for a complete message to be displayed has been changed from a minimum of 60 seconds as in the regulations printed in the Delaware Register in August 1, 2001 to a minimum of 30 seconds. This makes the time consistent with the time set by the City of Dover in its recent regulations, which were enacted after an extensive review.

COMMENT 8: Time for message display and time interval between message display is not needed or should be reduced to 0.5 seconds.

RESPONSE: The interval required for message changes remains at 2 seconds or less as stated in the August 1, 2001 publication. This timing has been reviewed by the Department of Transportation and FHWA, and is considered not to create traffic safety problems.

COMMENT 9: Term “nondistractive” is vague – i.e. message changes must be accomplished by “nondistractive” means.

RESPONSE: This term has been deleted from the text of the document printed below.

COMMENT 10: Definition of “complete message” needs to be further clarified to reduce misunderstanding by advertisers.

RESPONSE: This comment was incorporated into the text of the document printed below.

COMMENT 11: Add definition for “decorative subdivision” sign and specify criteria that is acceptable.

RESPONSE: This comment was incorporated into the text of the document printed below.

COMMENT 12: Improve item 1.13, II, I (Spacing), item 6 for clarity by adding “same side of the roadway.”

RESPONSE: This comment was incorporated into the text of the document printed below.

COMMENT 13: Add definition for “message content” so there is no misunderstanding by advertisers on what is

permitted and what is specifically not permitted.

RESPONSE: This comment was incorporated into the text of the document printed below.

COMMENT 14: Add provision for action to be taken by DelDOT upon failure of sign owner to renew sign permit by paying his or her annual permit fee.

RESPONSE: This comment was incorporated into the text of the document printed below.

COMMENT 15: Clarification needed regarding jurisdiction of towns/cities vs. DelDOT, and the process for Certification of Political Subdivisions.

RESPONSE: The Department promulgates regulations for outdoor advertising on Interstate Highways, Primary System Highways, and, outside of the boundaries of incorporated municipalities, all other state maintained roadways within the State of Delaware. Within the boundaries of incorporated municipalities, the Department, as directed by 17 Del.C. Sections 1102 and 1103, does not assert regulatory authority over outdoor advertising on roadways that are not interstates, primaries or toll roads. Counties and municipalities may also regulate outdoor advertising, but the more restrictive regulation will apply. “Certification of Political Subdivisions” is a process whereby the state certifies to the administrator, the FWHA, that the political subdivision has met all criteria to regulate outdoor advertising as established by the FWHA. The intention of certification is generally recognized to be used by larger cities than exist in Delaware.

COMMENT 16: Condense prohibitions into one section entitled “General Prohibitions”

RESPONSE: The organization of the regulations was kept the same to enable comparison to the 1975 version.

COMMENT 17: Correct typographical error “oving” for moving.

RESPONSE: This correction was made in the document printed below.

COMMENT 18: Broaden criteria for subdivision signs to include design, submission of plan requirements, ownership, maintenance provisions, review and approval process.

RESPONSE: This was a good suggestion, and may be considered for a future revision.

COMMENT 19: Increase height limit from 15’ for electro-mechanical variable message signs to some undefined higher limit, increase size of face to some undefined limit in excess of 150 sq. ft.

RESPONSE: The 15-foot limit of height or length is intended to preclude the erection of long, narrow “ticker-

tape” or “streamer” type signs. The face limit of 150 square feet is based on the model of the City of Dover's sign ordinance, but increased from the City's 100 square foot limit for electronic variable message signs to 150 square feet, to allow greater visibility of advertising on roadways with higher speed limits outside of municipal boundaries than within.

COMMENT 20: Introduce an appeals process into regulations where applicants can seek relief from the strict application of the regulations in cases where legitimate hardships can be demonstrated. Establish criteria for legitimate hardship. Incorporate into appeals process a mechanism for resolution of differences in interpretation of the meaning of any portion of the regulations.

RESPONSE: Any party who feels disadvantaged by the Department's application of these regulations has the option to address a written appeal to the Secretary of the Department of Transportation.

COMMENT 21: Add exempted signs section, i.e. signs that are not regulated by DelDOT outdoor advertising regulations.

RESPONSE: All outdoor advertising signs in the State, with the exception of official signs, are subject to regulation by The Department, and require either a letter of permission or a permit. Official signs require approval of the Department before they can be erected.

COMMENT 22: Reconstruct part 'B' of rule 1.05 to specify that the controlled areas of State maintained roadways that are neither interstates or primaries are also within line of sight, or within 660 feet when in municipalities. Technical correction that eliminates an apparent contradiction between rules 1.02 and 1.05.

RESPONSE: This was an error in the 1975 version of the Regulations and has been corrected in the text of the document printed below.

Delaware Department of Transportation

CHAPTER

SECTION 1.00 OUTDOOR ADVERTISING PARAGRAPH

~~1.01 AUTHORITY~~

~~1.02 APPLICABILITY~~

~~1.03 PURPOSE~~

~~1.04 DEFINITIONS~~

~~1.05 STATUTORY REQUIREMENTS~~

~~1.06 STANDARDS FOR DIRECTIONAL SIGNS~~

~~1.07 STANDARDS FOR OFFICIAL SIGNS AND NOTICES~~

~~1.08 STANDARDS FOR PUBLIC UTILITY AND~~

~~RAILROAD SIGNS~~

~~1.09 STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES~~

~~1.10 STANDARDS FOR PUBLIC SERVICE SIGNS~~

~~1.11 STANDARDS FOR ON PREMISE SIGNS~~

~~1.12 STANDARDS FOR AGRI-PRODUCE SIGNS~~

~~1.13 STANDARDS FOR OUTDOOR ADVERTISING SIGNS~~

~~1.14 BONDING REQUIREMENTS~~

~~1.15 MAINTENANCE OF SIGNS~~

~~1.16 DESTRUCTION OF TREES~~

~~1.17 PERMITS AND FEES~~

~~1.18 CERTIFICATION OF POLITICAL SUBDIVISIONS~~

~~1.19 POLITICAL SUBDIVISION REGULATIONS~~

~~1.20 PENALTIES~~

~~1.21 SEPARABILITY~~

~~SECTION I OUTDOOR ADVERTISING AUTHORITY~~

~~1.01 AUTHORITY~~

~~A. The following rules and regulations are issued under the authority granted to the Department by Section 1104, Subchapter 1, Chapter 11, Title 17 of the Delaware Code.~~

~~B. The Department of Highways and Transportation shall have overall jurisdiction and control throughout the State subject to the certification process for political subdivisions as defined under paragraph 1.18 following. Within the Department, the responsibility for administration of the program shall rest with the Roadside Control Section in the Division of Highways.~~

~~C. All interpretations will be made by the Secretary of the Department of Highways and Transportation and his decision will be final except in those cases where a point of law is raised.~~

~~1.02 APPLICABILITY~~

~~A. The following rules and regulations apply to all outdoor advertising or outdoor advertising signs which are erected and maintained within 660 feet of the nearest edge of the right-of-way of any State maintained highway in this State and which are visible from the main traveled way of such systems.~~

~~B. These rules and regulations shall become effective upon approval by the Secretary of the Department of Transportation.~~

~~1.03 PURPOSE~~

~~A. Under Section 1101, Subchapter 1, Chapter 11, Title 17 of the Delaware Code: the General Assembly has declared that it is in the public's interest to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Inter-state and Primary systems in order to protect the public investment in such highways.~~

B. The General Assembly by enactment of Section 1104, Subchapter 1, Chapter 11, Title 17 of the Code directed the Department to enforce the provisions of Chapter 11 and to issue regulations to implement the policy and accomplish the purpose of the Chapter.

C. The following rules and regulations are issued in response to that directive and to clarify and implement the Department's policy regarding the control of outdoor advertising.

1.04 - DEFINITIONS

A. For the purpose of this Section, the following definitions shall apply:

1. "Outdoor Advertising" or "Outdoor Advertising Signs" shall mean and shall include any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

2. "Interstate System" means that portion of the National System of Interstate and Defense Highways located within the State of Delaware officially designated as such, or as may hereafter be designated as such, by the Department and approved by the Secretary of Transportation of the United States pursuant to the provisions of Title 23, United States Code.

4. "A controlled area" shall mean, and "controlled areas" shall include any area inside the boundaries of the State of Delaware which is adjacent to and within 660 feet of the edge of the right-of-way of a highway of the Interstate System or the Primary System, and after July 1, 1975 beyond 660 feet.

5. "State law" means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state agency or political subdivision of a State pursuant to a State constitution or statute.

6. "Safety rest areas" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

7. "Sign Panels" means one sign facing.

8. "Department" means the Department of Highways and Transportation.

9. "Division" means the Division of Highways under the Department of Highways and Transportation.

10. "Section" means the Roadside Control Section under the Division of Highways.

11. "Noneonforming Sign" is one which was lawfully erected, but which does not comply with the provisions of the Laws of the State of Delaware or State regulations passed at a later date or which later fails to comply with such law or regulations due to changed

conditions.

12. "Illegal Sign" means any sign which was erected and/or maintained in violation of the Delaware Law.

13. "Illuminated Sign" means any sign that is lighted internally or externally and shall be defined as illuminated whether or not the light is attached directly to the sign structure.

14. "Centerline of the highway" means (1) a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or (2) the centerline of the main-traveled way of a nondivided highway, or (3) the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

15. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

16. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

17. "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

18. "Legible" means capable of being read without visual aid by a person of normal visual acuity.

19. "Maintain" means to allow to exist.

20. "Freeway" means a divided arterial highway for through traffic with full control of access.

21. "Abandoned Sign" means any sign in which the owner has not demonstrated an interest by maintaining it in good condition.

22. "Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce or trade pursuant to a State regulation or local zoning ordinance.

23. "Lease (license, contract, or easement)" means an agreement in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

24. "Directional and other official signs and notices" shall mean and include only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

25. "Official signs and notices" means sign's and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization

contained in Federal, State or local law for the purposes of carrying out an official duty or responsibility or historical marker, authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

26. "Public utility signs" means warning signs, informational signs, notices, or marker which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

27. "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services.

28. "Public service signs" means signs located on school bus stop shelters.

29. "Directional signs" means signs containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately owned natural phenomena; historic, cultural, scientific, educational, and religious sites; areas of natural scenic beauty, and areas which are naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

30. "On premises signs" shall mean those signs, displays and devices advertising the sale or lease of property upon which they are located and those signs, displays, and devices advertising activities conducted on the property on which they are located.

31. "Double faced, back to back, or V-type signs" shall mean those configurations of multiple sign structures as those terms are commonly understood, except that in no instance shall these terms include two or more signs which are not in the same ownership, which are not physically contiguous, or which are not connected by the same structure or crossbracing, or in the case of back to back or "V" type signs located less than 15 feet apart at their nearest points.

32. "Agri-produce signs" shall mean those signs located on the property of a farmer indicating the sale of seasonal agricultural products.

33. "Information Center" means an area or site established and maintained at a safety rest area for the purpose of providing information to the public of places of interest within the State and other information the Department deems desirable.

34. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance of a sign or sign structure.

35. "Commercial or industrial activities for purposes of unzoned commercial or industrial areas" means those activities generally recognized as commercial or industrial by zoning authorities within the State of Delaware,

except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor Advertising structures.

(b) Forestry, ranching, grazing, and farming including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities more than 660 feet from the nearest edge of the right-of-way along the Interstate and Federal Aid Primary Route.

(e) Activities conducted in buildings principally used as a residence.

(f) Railroad tracks and minor sidings.

(g) Activities not visible from the main-traveled way.

36. "Customary maintenance" means the action necessary to keep a sign in good condition by (1) replacement of parts damaged or worn by age and (2) painting of areas exposed to the weather as the major portion of the sign, but shall not include either maintenance which would be necessary for signs over 50% damaged (except Act of God circumstances) or in 50% disrepair or maintenance which would increase the size or monetary value of the sign.

37. "Free standing sign" means any sign not attached or affixed to a building for its principal means of support.

38. "Political subdivision" means any municipal or county government duly established under the provisions of the Delaware Code.

39. "Sign facing" means, a single sign message separated from other sign facings by border or trim.

1.05 - STATUTORY REQUIREMENTS

A. Section 1121, Chapter 11, Title 17 of the Delaware Code provides that signs within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the Interstate and Primary system shall be limited to the following types:

1. Directional and other official signs and notices which shall include only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

2. On Premise signs which shall include only:

(a) Those signs, displays and devices advertising the sale or lease of the real property upon which they are located, and

(b) Those signs, displays and devices advertising activities conducted on the real property upon which they are located.

3. Signs, displays, and devices located in the controlled areas adjacent to highways of the Interstate and Primary systems which are zoned industrial and commercial under authority of State Law.

B. For ease of operation, the aforementioned limitations shall be applicable to all other highway systems with the

approval of these rules and regulations.

1.06 STANDARDS FOR DIRECTIONAL SIGNS

A. General: Permits as mentioned in Paragraph 1.17 of these regulations will not be required for directional signs.

1. A sign shall only be erected after first securing approval of the Department. Requests for approval to erect a directional sign shall be in writing directed to the Department for the attention of the Manager of the Roadside Control Section. All requests shall be processed in accord with procedures promulgated by the Department.

2. The following directional signs are prohibited:

(a) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

(b) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersection traffic.

(c) Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

(d) obsolete signs.

(e) Signs which are structurally unsafe or in disrepair.

(f) Signs which move or have any animated or moving parts.

(g) signs located in rest areas, parklands or scenic areas.

(h) Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot.

(i) Signs for privately owned facilities unless such facilities are determined to be eligible for signing under the criteria and methods described in subparagraph F of this section.

B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area ... 150 square feet

(b) Maximum height ... 20 feet

(c) Maximum length ... 20 feet

2. All dimensions include border and trim, but exclude supports.

C. Lighting

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary

system highway or which are of such intensity or brilliance as to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

D. Spacing

1. Each location of a directional sign must be approved by the Department.

2. A directional sign must be located beyond 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way), unless erected by the Division.

3. A directional sign shall be located beyond 2,000 feet of a rest area, parkland, or scenic area, unless erected by the Division.

4.

(a) Two directional signs facing the same direction of travel shall be placed more than 1 mile apart.

(b) A maximum of three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(c) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(d) Signs located adjacent to the Primary system shall be within 50 air miles of the activity.

5. In determining the distance between signs facing in the same direction and those within a seventy-five air mile radius, signs beyond the 660' limit shall not be considered.

6. Signs legally in place within the 660' controlled area shall be considered as though it were a sign erected under these regulations.

E. Message Content

1. The message of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

F. Criteria for Eligibility

1. The criteria for determining whether or not a privately owned facility is eligible for directional signing shall be that criteria presently utilized or hereafter adopted by one of the existing State agencies where primary purpose is the control and administration of the type of specific unique phenomena or site for which a directional sign application may be made.

2. A determination by the State agency to which a request is referred as to whether or not a privately owned facility is eligible for directional signing will be binding on

the Department.

G. Eligible Activities

1. Privately owned activities or attractions eligible for directional signing shall be limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas any of which must be nationally or regionally known, and of outstanding interest to the traveling public as determined by the appropriate State agency authority.

1.07 STANDARDS FOR OFFICIAL SIGNS AND NOTICES

A. General

1. Permits as defined in section 1.17 of these Regulations will not be required for official signs and notices. An Official sign or notice shall be erected however, only after first securing approval of the Department. Requests for approval to erect such signs shall be made and processed in the same manner as for directional signs (See paragraph 1.06).

B. Official signs and notices shall be limited to the following:

1. Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization by Federal, State or local law for the purposes of carrying out an official duty or responsibility and

2. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies.

C. The following signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersection traffic.

2. Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

D. Size

1. The following limits are applicable to official signs and notices:

(a) Maximum area ... 15 square feet

(b) Maximum height ... 5 feet

(c) Maximum length ... 5 feet

2. All dimensions shall include border and trim but shall exclude supports.

E. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except those giving public service information.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

F. Spacing

1. Each location of official sign or notice sign must be approved by the Department.

2. An Official sign or notice, except when erected by the Division, shall be located beyond 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

3. An official sign or notice, except when erected by the Division, shall be located beyond 2,000 feet of a rest area, parkland, or scenic area.

1.08 STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS

A. General

1. The erection of a public utility or railroad sign may be undertaken without Department approval. Such signs will, however, be limited to warning signs, informational signs, and notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operation.

B. Size

1. The following limits are applicable to public utility and railroad signs:

(a) maximum area ... 4 square feet

(b) Maximum height ... 4 feet

(c) Maximum length ... 4 feet

2. All dimensions include border and trim but exclude supports.

C. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at

any portion of the traveled way of an Interstate or Primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

D. Spacing

1. The number and spacing of public utility and railroad signs shall be limited to those customarily erected and maintained as essential to the operation of a particular utility or railroad.

1.09 STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES

A. General

1. service club or religious notices shall be erected or maintained only after first securing approval from the Department. Applications shall be made and processed in accord with procedures promulgated by the Department. Service club and religious signs shall be limited to the following:

(a) Signs and notices relating to meetings of nonprofit service clubs.

(b) Signs and notices of charitable associations.

(c) Signs and notices stating place and time of religious services.

2. The following signs are expressly prohibited:

(a) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

(c) Obsolete signs.

(d) Signs which are structurally unsafe or in disrepair.

(e) Signs which move or have any animated or moving parts.

(f) Signs located in rest areas, parklands or scenic areas.

(g) Signs not in conformance with applicable wind pressure requirements.

B. Size

1. The following limits are applicable to service club religious notices:

(a) Maximum area ... 4 square feet

(b) Maximum height ... 2 feet

(c) Maximum length ... 2 feet

C. Lighting

1. Illumination of service club and religious notices

is prohibited

D. Spacing

1. A sign may be placed on a major route entering the vicinity of the involved activity but must be located within one-half mile of the meeting place.

E. Number

1. Total number of service club and religious notices to a particular locale shall not exceed two.

1.10 STANDARDS FOR PUBLIC SERVICE SIGNS

A. General

1. Public service sign shall be erected or maintained without first securing a permit from the Department as required by these regulations. Applications for permits shall be processed in accord with procedures promulgated by the Department. A certification by the Department of Public instruction that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location shall accompany each application. Applications and approval shall be processed in accord with procedures promulgated by the Department.

B. Public Service signs shall be limited to the following:

1. Signs which identify the donor, sponsor, or contributors of the shelter in which the sign is erected, and or

2. Which contain safety slogans or messages which shall occupy not less than 60 percent of the area of the sign and

3. Which contain no other message.

C. Size

1. Public service sign shall not exceed 30 square feet in area.

D. Lighting

1. Lighting of public service signs is prohibited.

E. Spacing

1. Only two public service signs shall be permitted at any one location. Signs will only be approved for a shelter provided it does not in any way obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or which obstructs or interferes with the driver's view of approaching, merging, or intersection traffic, or which interferes with the safe and free flow of traffic in any way.

1.11 STANDARDS FOR ON PREMISE SIGNS

A. General

1. Section 1114, Subchapter 1, Chapter 11, Title 17 of the Delaware Code exempts on premise signs from all provisions of subchapter 1, except that such signs shall be subject to the Rules and Regulations adopted by the Department as required by Section 1104 of Subchapter 1, Chapter 11 of Title 17. Consistent with the stated policy of Chapter 11 of Title 17 for protecting the public's investment in highways and enhancing the natural scenic beauty, the

following shall apply to all on premise signs within the controlled area—

B. Eligibility

1. A sign display, or device shall be considered an on premise sign if:

- (a) It is located on the same premises as the activity or property advertised and
- (b) It has as its purpose the identification of the activity conducted on the premises or Advertises the sale or lease of the property on which it is located.—
- (c) meets the size requirement as specified by law.

C. Premise Test

1. As used in these regulations, the premises on which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incidental to the activity including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted and any signs located on such land will be considered "off premise" advertising:

- (a) Any lands not used as an integral part of the principal activity, or
- (b) Any land used for a separate purpose unrelated to the advertised activity, or
- (c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal, activity, and which serve no reasonable purpose other than to. qualify the land for signing purposes, or
- (d) Any configuration of land which is such that it cannot be put to any reasonable use related to the Principal activity other than for signing purposes, or
- (e) Any land which is nonbuildable, such as swamp, marsh or other wetland, or
- (f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located;
- (g) With the exception of agri-produce signs, any land in excess of 50 feet from the principal activity or accessory uses.

D. Purpose Test

1. The following signs, displays, and devices shall be considered as having as their purpose, (1) the identification of the activity located on the premises or its products or services, or (2) the sale or lease of the property on which the sign is located:—

- (a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishments principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than for sale or lease.—

2.—Signs in the following categories shall be considered as not fulfilling requirements and shall be treated as "off premise" advertising:

- (a) A sign which brings rental income to the property owner, or
- (b) Which consists principally of brand or trade name advertising, or
- (c) Which advertises a product only incidental to the principal activity, or
- (d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises, or
- (e) One which in addition to the sale or lease aspects of the property advertises any product or service not located upon and unrelated to the business of selling or leasing the land on which the sign is located.—

E. Applications

1. A permit shall not be required for an "on premise" sign. Any such sign shall be erected, however, only after first securing written approval of the Department. Application for permission to erect on premise signs shall be made and processed in the same manner as applications for directional signs. (See Section 1.06). Such signs may be either free standing or attached to buildings providing they meet the requirements of this section.—

F. The following "on premise" signs are prohibited:

- 1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.
- 2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
- 3. Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features:
- 4. obsolete signs.
- 5. Signs which are structurally unsafe or in disrepair.
- 6. Signs which move or have any animated or moving parts.—
- 7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot.—

G. Size

- 1. A sign either attached or free standing erected or maintained upon property to identify a business conducted thereon shall not exceed 30 square feet in area.
- 2. A sign advertising the sale or lease of property

shall not exceed 6 square feet in area.

3. All measurements shall include border and trim but shall exclude supports.

H. Lighting

1. On premise signs may be illuminated subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or, moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary system highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) A sign may be so illuminated provided it does not interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

I. Spacing

1. Spacing requirements shall not apply to "on premise" signs except that a maximum of 10 business signs shall be allowed at any one location with a combined total of 500 square feet.

2. Free standing signs shall be limited to two per highway and shall be permitted only along the highway or highways to which access has been provided.

3. For sale or lease signs shall be limited to a total of two for any one property.

4. Distance shall be measured from the edge of the right of way horizontally along a line perpendicular to the centerline of the highway.

J. Subdivision Signs

1. Subdivision signs which basically indicate the name of the individual suburban community are, for the purposes of these rules and regulations, considered a type of on premise signs and are allowable provided

(a) They are erected within the subdivision limits;

(b) The prime intent is identification

(c) They have received prior approval from the Division and

(d) They meet all eligibility tests specified in this paragraph.

1.12 STANDARDS FOR AGRI-PRODUCE SIGNS

A. General

1. Agri-produce signs shall not be allowed to be erected on the Interstate system unless it meets fully the requirements for "on premise" signs as set out in Section 1.11 of these regulations.

2. On other systems, agri-produce signs shall be considered as "on premise" signs and shall be subject to the same requirements and conditions as described for "on

premise" signs in Section 1.11 of these regulations with the following exceptions:

(a) Free standing agri-produce signs shall be allowed to remain erected only during the seasonal period from May 1 through September 30. During the off season signs of this type shall be removed.

(b) Free standing signs may be located more than 50 feet but no more than 500 feet from the activity and on the same property as the activity being conducted.

B. Size

1. The following limits are applicable to agri-produce signs:

(a) Maximum area ... 30 square feet

(b) Maximum height ... 8 feet

(c) Maximum length ... 8 feet

(d) Total sign area allowable per site ... 100 square feet (maximum)

C. Lighting

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle is prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

D. Spacing

1. Each location of an agri-produce sign must be approved by the Department and shall receive written approval prior to erection of any signs.

2. Each sign must be located within 500 feet of the activity, on the same property and same side of highway as the activity.

E. Number

1. Each location may have a variable number of agri-produce signs necessary for the individual site provided total site sign area allowable is not exceeded. Each application must be made to the Department and directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

F. Safety of traveling public

1. At all times the Division must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of

time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign until such time that corrective measures have been implemented.

1.13 — STANDARDS FOR OUTDOOR ADVERTISING SIGNS, DISPLAYS, AND DEVICES IN AREAS ZONED INDUSTRIAL OR COMMERCIAL WITHIN THE CONTROLLED AREA

A. General

1. Except as otherwise provided in these regulations, no signs, displays, or devices will be permitted to be erected or maintained unless it is within an area zoned as commercial or industrial under authority of State law. Permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the locality had regulations governing the size, spacing, and lighting of signs, such regulations shall control and govern.

3. Signs, displays, and devices erected and maintained within all other zoned industrial and commercial areas shall be subject to the following conditions and requirements.

B. The following signs shall be prohibited:

1. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

C. Size

1. The maximum area for any outdoor advertising sign facing shall be 1,200 square feet with a maximum height of 25 feet and a maximum length of 60 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim but shall exclude supports.

4. A sign structure may contain one or two signs per facing and two sign facings may be placed back to back or V-type at one location but in no event shall the total area of any facing exceed 1,200 square feet.

5. A sign which exceeds 600 square feet in area

may not be on the same sign facing with any other sign.

D. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of any highway and which are of such intensity or brilliance as to cause glare or to impair the vision of a driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obstructs an official traffic sign, device, or signal is prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

E. Spacing

1. For Interstate and controlled access highways, the structure for outdoor advertising sign shall be at least 500 feet from any similar structure.

2. For non-controlled access highways, outside incorporated areas, the structure for any sign shall be at least 300 feet from any similar structure. For non-controlled access highways within incorporated areas, the structure for any sign shall be at least 100 feet from any similar structure.

3. When structures are separated by building or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at one time, variances may upon application be granted by the Department.

4. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and is applicable only to structures located on the same side of the highway.

5. Outside incorporated areas outdoor advertising signs shall be located 500 feet (minimum from any interchange, intersection, at grade, safety rest area or information center (measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit or entrance to the main traveled way)).

6. Except for roof signs, wall signs and free standing signs against the wall of a building, no ground signs shall be placed within 35 feet of either highway right of way at an intersection where they converge, unless the base of such sign is at least 8 feet above ground level or road bed, whichever is higher.

7. Official and "on premise" signs, as defined in

~~these regulations shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.~~

~~F. Non-Conforming Signs~~

~~1. Legally erected signs found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accord with Policy and Procedures developed and adopted by the Department.~~

~~2. In any instance where it is found that two or more signs do not meet spacing requirement, the date of the issuance of the original permit shall control with the older being allowed to remain.~~

~~G. Control by Political Subdivisions~~

~~1. At Any time that a political subdivision adopts comprehensive zoning that provides for and enforces regulation of size lighting and spacing of signs in commercial and industrial zones and applies for and is certified by the Department under the provisions of Section 1.18 of these regulations, control shall pass to such political subdivision.~~

~~1.14 BONDING REQUIREMENTS~~

~~A. Any non-resident or foreign corporation engaged in the business of outdoor advertising shall be granted a permit for the posting or display of any advertisement or the erection, use or maintenance of any advertising structure, only after such persons shall have furnished and filed with the Roadside Control Section a bond payable to the State of Delaware with surety approved by the Department, and in the sum of \$5,000.00, conditioned that said individual company or corporation fulfills all the requirements of law and regulations and orders of the Department relating to the display of advertisements or the erection of advertising structures. Such bond shall remain in full force and effect until such obligations of such licensee to the State are satisfied.~~

~~1.15 MAINTENANCE OF SIGNS~~

~~A. General~~

~~1. All signs within the controlled areas shall be maintained in a good state of repair at all times. When any sign is damaged or falls into disrepair to the extent that obvious repairs are needed, the owner shall be notified by Certified Mail to make all necessary and allowable repairs. If the sign is not repaired, rebuilt, or removed within six months of said notification the applicable sign permit shall lapse and become null and void in these cases where permits are not required, such signs will be considered as being abandoned and will be removed by the Department.~~

~~B. Alterations~~

~~1. The size and shape of signs may be altered during repair with the exception of non-conforming signs~~

~~providing that:~~

~~(a) At least ten working days prior to beginning of alterations written notice is furnished the Department fully defining the nature and extent of the proposed alterations.~~

~~(b) Alterations do not exceed permit limits and~~

~~(c) Other requirements of these regulations are met.~~

~~C. Relocation of Signs~~

~~1. With the exception on non-conforming signs, signs may be relocated provided they meet all criteria and requirements of these regulations. Any sign moved to a new location will require a new permit and permit number and will be considered and processed as a new sign.~~

~~D. Maintenance of Non-conforming Signs~~

~~1. General~~

~~(a) Non-conforming signs may be maintained or rebuilt when destroyed by vandalism or by acts of God providing they are rebuilt to substantially be the same as they are in existence on June 30, 1970. Such signs may continue as long as they are not abandoned, destroyed or discontinued.~~

~~2. Discontinued signs~~

~~(a) A non-conforming sign which has displayed obsolete or damaged advertising matter or has not displayed advertising matter for a period of six months subsequent to receipt of written notice from the Department shall be considered as a discontinued sign and shall be required to be removed by the owner without compensation.~~

~~3. Abandoned signs~~

~~(a) Non-conforming signs which are in need of substantial repair either to the face or support structure and are not repaired within a period of six months after receipt of written notice from the Department shall be considered as an abandoned sign and shall be required to be removed by the owner without compensation.~~

~~4. Destroyed signs~~

~~(a) Non-conforming signs which have been damaged, except by vandalism or by Acts of God, to the extent that the cost of reconstructing the sign exceeds 50% of the sign if it were constructed new shall be considered as being destroyed and shall be required to be removed by the owner without compensation.~~

~~5. Owners Liability~~

~~(a) Any signs listed in subparagraph 2, 3 and 4 of this paragraph removed by Division personnel, the sign owners shall be responsible for all costs incurred.~~

~~1.16 DESTRUCTION OF TREES~~

~~A. General~~

~~1. In no case will the destruction of trees or shrubs within the right of way of any highway for the purpose of increasing or enhancing the visibility of an outdoor advertising sign be allowed.~~

B. Penalties-

1. Persons who undertake such action will be

- and-
- (a) Subject to possible criminal prosecution
- and-
- (b) Have the permit for the involved sign revoked and-
- (c) Responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

1.17 PERMITS AND FEES-

A. General-

1. Section 1105, Subchapter 1, Chapter 11, Title 17 of the Delaware Code includes provisions for:-

(a) The Department to issue and renew permits for each sign for a period of at least one year for the erection and maintenance of outdoor advertising signs, displays, and devices, and

(b) The Department to establish and collect fees for the issuance of permits and renewals thereof in an amount deemed necessary to defray the costs of this operation.-

B. Duration of Permits

1. Each permit shall be valid for the period beginning January 1 and ending December 31 of each calendar year.

2. Permits granted during any month of the year shall expire on December 31 of the same calendar year.-

C. Fees-

1. Each calendar year the Department shall review its administrative costs and the number of signs and determine the adequacy of present permit fees to defray the involved costs.-

2. When a change in fee is necessary, the new fee shall become effective for all new permits immediately upon receipt of Department approval and for renewals on January 1 of the next calendar year following approval.

3. The fee for a portion of the calendar year will be the same as determined necessary for the entire calendar year.-

4. The Department shall notify all interested parties of any change in fee.-

1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS

A. General-

1. Subsection (a) of Section 1103, Subchapter 1, Chapter 11, Title 17 of the Delaware Code provides for the Department to certify a political subdivision as having effective control when such political subdivision has established and is enforcing regulations as to the size, spacing, and lighting of outdoor advertising signs, displays and devices in zoned commercial and industrial areas within its zoning jurisdiction.

2. Until such time as a political subdivision has

been certified by the Department, full responsibility for the control of outdoor advertising within the controlled area shall remain with the Department. Upon certification, the authority and responsibility for the control of outdoor advertising shall pass to the political subdivision. A certified political subdivision shall implement control and surveillance procedures and maintain such records as may be necessary to assure compliance with its regulations.

3. The Department shall have the right to inspect any certified subdivisions procedures and records and if it is found that a subdivision's regulations are not being enforced, shall after 30 days written notice, resume full authority and responsibility for control of outdoor advertising in the controlled area.

4. Applications for certification shall be initiated by political subdivisions and shall be in writing addressed to the Secretary of the Department. Applications shall be processed in accordance with procedures promulgated by the Department.

5. The authority and responsibility for the control and regulation of directional and other official signs and notices as described in these regulations shall remain with the Department.

1.19 - POLITICAL SUBDIVISION REGULATIONS-

A. A political subdivision of the State of Delaware may establish and maintain standards which are more restrictive with respect to certain signs than the standards in these rules and regulations.

1.20 - PENALTIES

A. Whoever violates the provisions of these regulations shall be fined not less than \$10.00 nor more than \$50.00.

B. Each day that a violation is allowed to continue beyond the legal notice shall be considered a separate offense.

1.21 - SEPARABILITY

A. The various paragraphs of these rules and regulations are declared to be separable and should any word, phrase, sentence or portion be declared invalid, the remaining portions shall not be affected, but shall remain in full force and effect.

Outdoor Advertising Regulations

1.01 - Authority

1.02 - Applicability

1.03 - Purpose

1.04 - Definitions

1.05 - Statutory Requirements

1.06 - Standards For Directional Signs

1.07 - Standards For Official Signs And Notices

1.08 - Standards For Public Utility And Railroad Signs
1.09 - Standards For Service Club And Religious Notices
1.10 - Standards For Public Service Signs
1.11 - Standards For Signs Requiring A Letter Of Permission From The State
1.12 - Standards For Agri-produce Signs
1.13 - Standards For Signs Requiring A State Outdoor Advertising Permit
1.14 - Bonding Requirements
1.15 - Maintenance Of Signs
1.16 - Destruction Of Trees
1.17 - Permits And Fees
1.18 - Certification Of Political Subdivisions
1.19 - Political Subdivision Regulations
1.20 - Penalties
1.21 - Severability

1.01 - Authority

A. The following regulations are issued under the authority granted to the Department by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (a) (2).

B. The Department of Transportation shall have overall jurisdiction and control throughout the State subject to the zoning process; the certification of political subdivisions; and the boundaries of incorporated municipalities and defined urban areas as provided in Title 17 DE Code, Chapter 11, Subchapter I, Sections 1102 (4) and (14); 1103 (c); and 1110 (b) (2) b. 2. and c. 1. and 2. and (4); and Subchapter II, Section 1121 (4); and Subchapter III, section 1131. Within the Department, the responsibility for administration of the program shall rest with the Field Services Section of the Division of Highway Operations.

C. All interpretations will be made by the Secretary of the Department of Transportation of the State of Delaware, and his or her decisions will be final except in those cases where a point of law is raised.

D. With the approval of the Secretary of the Department of Transportation of the State of Delaware, these regulations shall become effective on 01 March, 2002.

1.02 - Applicability

A. The following regulations shall apply to all outdoor advertising or outdoor advertising signs which are and shall be erected and maintained within sight of the nearest edge of the right-of-way (or within 660 feet, if within a defined urban area) of any State-maintained roadway in this State that is part of the Interstate or federal-aid primary systems, and which are visible from the main traveled way of any such roadway, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1102 (b) (1) and (4); and as further provided in Subchapter II, Section 1121.

B. The following regulations shall also apply to all outdoor advertising or outdoor advertising signs which are or shall be erected and maintained within sight of the nearest

edge of the right-of-way (or within 660 feet, if within a defined urban area) of any State-maintained roadway in this State that is a limited-access State toll road, and which are visible from the main traveled way of any such roadway, as established by Title 17 DE Code, chapter 11, subchapter III, section 1131.

C. In order to provide equal and consistent protections and opportunities for all citizens of this State, the following regulations shall also apply to all outdoor advertising or outdoor advertising signs which are and shall be erected and maintained within sight of the nearest edge of the right-of-way (or within 660 feet, if within a defined urban area) of any State-maintained roadway in this State that is not a limited-access State toll road nor part of the Interstate or federal-aid primary systems in this State, and which are visible from the main traveled way of any such roadway, except that such controlled areas shall not be established, nor shall the State regulate such advertising and signs adjacent to the rights-of-way of such roadways that are within the boundaries of incorporated municipalities of the State of Delaware, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (c).

1.03 - Purpose

A. In Section 1101, Subchapter I, Chapter 11, Title 17 of the Delaware Code, the General Assembly has established that it is in the public's interest to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate and primary systems in order to protect the public investment in such highways.

B. The General Assembly, by enactment of Section 1103, Subchapter I, Chapter 11, Title 17 of the Delaware Code, has directed the Department to enforce the provisions of Chapter 11 and to issue regulations to implement the policy and accomplish the purposes of the Chapter.

C. The following regulations are issued in response to that directive and to clarify and implement the Department's policy regarding the control of outdoor advertising.

1.04 - Definitions

A. For the purposes of these regulations, the following definitions shall apply:

1. "Outdoor advertising" or "outdoor advertising signs" or "sign" shall mean and shall include any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of an Interstate or Federal-aid primary highway, or any other State-maintained roadway.

2. "Interstate system" means that portion of the National System of Interstate and Defense Highways located

within the State of Delaware and officially designated as such, or as may hereafter be designated as such by the Department and approved by the Secretary of Transportation of the United States pursuant to the provisions of Title 23, United States Code.

3. "Primary system" means that portion of connected main highways of this State officially designated as such as of June 1, 1991, and any roads of the National Highway System as are now or may hereafter be designated as such by the Department and approved by the Secretary of Transportation of the United States, pursuant to Title 23, United States Code.

4. A "controlled area" shall mean, and "controlled areas" shall include, any area inside the boundaries of the State of Delaware that is within sight of an edge of a right-of-way of any State-maintained roadway, or, if within an urban area (as defined in 23 US Code 101 [a]), within 660 feet of an edge of a right-of-way of any State-maintained roadway, except that controlled areas shall not be established adjacent to the rights-of-way of roadways that are not limited-access State toll roads or parts of the Interstate or federal-aid primary systems, where such roadways are within the boundaries of incorporated municipalities of the State of Delaware, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (c).

5. "State law" or "Delaware law" means a State constitutional provision or statute; or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State constitutional provision or statute.

6. "Safety rest area" means an area or site established and maintained within or adjacent to a right-of-way, by or under public supervision or control, for the convenience of the traveling public.

7. "Sign panel" or "panel" means a single advertising message on a rigid medium, physically and / or visually separate from other such messages by edges of materials or visual borders or boundaries; trim; etc.

8. "Department" means the Department of Transportation of the State of Delaware.

9. "Division" means the Division of Highway Operations under the Department of Transportation.

10. "Section" means the Field Services Section under the Division of Highway Operations.

11. "Nonconforming sign" is one which was lawfully erected, but which does not comply with the provisions of the laws of the State of Delaware or State regulations enacted at a later date, or which later fails to comply with such laws or regulations due to changed conditions.

12. "Illegal sign" means any sign which was erected and / or is maintained in violation of Delaware law.

13. "Illuminated sign" means any sign that is

lighted internally or externally, and shall be defined as illuminated whether or not the light is attached to the sign structure.

14. "Centerline of the highway" means (1) a line equidistant from the edges of a median separating the main traveled ways of a divided highway; or (2) the centerline of the main traveled way of a nondivided highway; or (3) the centerline of each of the main traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

15. "Main traveled way" means the traveled way of a highway on which through-traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

16. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in lands which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

17. "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.

18. "Legible" means capable of being read without visual aid by a person of normal visual acuity.

19. "Maintain" means to allow to exist.

20. "Freeway" means a divided arterial highway for through-traffic, with full control of access.

21. "Abandoned sign" means any sign in which the owner has not demonstrated an interest by maintaining it in good condition.

22. "Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce or trade pursuant to a State regulation or local zoning ordinance.

23. "Lease (license, contract, or easement)" means an agreement in writing by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

24. "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction, pursuant to and in accordance with direction or authorization contained in Federal, State or local law, for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

25. "Public utility and railroad signs" means warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to

their operations.

26. "Service club and religious notices" means signs and notices which relate to meetings of nonprofit service clubs or charitable associations, or religious services.

27. "Public service signs" means signs located on school bus stop shelters.

28. "Directional signs" means signs containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately owned natural phenomena; historic, cultural, scientific, educational, or religious sites; areas of natural scenic beauty; and areas which are naturally suited for outdoor recreation; for which such signs are deemed to be in the interest of the traveling public.

29. "On-premises signs" means those signs, displays and devices advertising the sale or lease of property upon which they are located; or those signs, displays, and devices advertising activities conducted on the property on which they are located.

30. "Double-faced; back-to-back; and V-type signs" shall mean those configurations of multiple sign structures as those terms are commonly understood, except that in no instance shall these terms include two or more signs which are not (1) in the same ownership; (2) physically contiguous; (3) connected by the same structure or crossbracing; or (4) in the case of back-to-back or V-type signs, less than 15 feet apart at their nearest points.

31. "Agri-produce signs" means those signs located on the property of a farmer, indicating the sale of seasonal agricultural products.

32. "Information center" means an area or site established and maintained at a safety rest area for the purpose of providing information to the public about places of interest within the State, and other information the Department deems desirable.

33. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the non-electro-mechanical change of advertising message or customary maintenance of a sign or sign structure.

34. "Commercial or industrial activities for purposes of unzoned commercial or industrial areas" means those activities generally recognized as commercial or industrial by zoning authorities within the State of Delaware, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

(b) Forestry, ranching, grazing, and farming including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities more than 600 feet from the

nearest edge of the right-of-way along Interstate and Federal-aid primary routes and all other State-maintained roadways.

(e) Activities conducted in buildings principally used as residences.

(f) Railroad tracks and minor sidings.

(g) Activities not visible from the main traveled way.

35. "Customary maintenance" means the action necessary to keep a sign in good condition by (1) replacement of parts damaged or worn by age, or (2) painting of areas exposed to the weather (as the major portion of the sign); but shall not include either (a) maintenance which would be necessary for signs over 50% damaged (except by vandalism or Act of God circumstances) or in 50% disrepair, or (b) maintenance which would increase the size or monetary value of the sign.

36. "Free-standing sign" means any sign not attached or affixed to a building for its principal means of support.

37. "Political subdivision" means any municipal or county government duly established under the provisions of the Delaware Code.

38. "Sign facing" or "face" means a side (such as "the front" or "the back" or "the north-facing side") of a sign, to or upon which one or more sign panels are or may be affixed or attached.

39. "Electro-mechanical variable-message sign" means a sign that displays different messages, one at a time, within defined time intervals, and that changes messages by mechanical and / or electrical means.

40. "Static-message sign" means a sign that displays a message that does not change except by replacement, re-painting, or similar means.

41. "Time of message display" means the length of time that a single message is displayed by an electro-mechanical variable-message sign.

42. "Time interval between messages" means the time interval required for one message on an electro-mechanical variable-message sign to finish changing to a different message.

43. "Urban area" or "urban boundaries" is as defined in 23 U.S.C. 101 (a).

44. "Manually-changeable-message sign" means a sign, the message of which can be changed (such as by the replacement of individual letters) by hand (or with the assistance of a hand-operated tool), and only by hand.

45. "Obsolete" means a sign that identifies or advertises a business or other entity that has relocated or no longer exists, or products or services that are no longer available, or events or activities that have transpired.

46. "State" means the State of Delaware.

47. "Complete message" means a message that

communicates a complete idea or concept, and not one which suggests or implies that more information will be displayed, subsequent to that which is currently being displayed (as by an electro-mechanical variable-message sign) that will complete or continue a message begun by the current display.

48. "Decorative subdivision entrance signs" are those signs, free-standing or attached to a decorative structure (such as, but not limited to, a decorative gate or headwall), that identify a residential housing subdivision, and that have no other message or content than the name of the subdivision.

1.05 - Statutory Requirements

A. Section 1121, Subchapter II, Chapter 11, Title 17 of the Delaware Code provides that signs, displays or devices within the controlled area and visible from the main traveled way of the Interstate and primary systems shall be limited to the following types:

1. Official signs and notices; public utility and railroad signs; service club and religious notices; public service signs; and directional signs.

2. Those signs, displays and devices advertising the sale or lease of the real property upon which they are located.

3. Those signs, displays and devices advertising activities conducted on the real property upon which they are located.

4. Signs, displays, and devices located either (1) in controlled areas adjacent to the Interstate system and within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property is subject to municipal regulations and control, which are zoned industrial and commercial; or (2) in other controlled areas adjacent to the Interstate system zoned industrial or commercial which were zoned industrial or commercial as of September 21, 1959.

5. Signs, displays and devices located in controlled areas adjacent to highways of the primary system which are zoned industrial or commercial.

6. Signs, displays and devices located in unzoned commercial and industrial controlled areas adjacent to highways of the primary system and defined by regulations to be promulgated by the Department.

7. Any school bus waiting shelter displaying a sign provided such sign does not exceed 32 square feet in area and with a limit of 2 signs per shelter at its present location. Should the Department of Education determine that there is no longer a need for a waiting shelter at its present location, the exemption provided by this paragraph shall then terminate.

B. As per rule 1.02 ("Applicability"), part 'C,' the limitations established by this rule (1.05) shall also apply within the controlled areas of all other State-maintained

roadways, except that controlled areas shall not be established, nor shall outdoor advertising or outdoor advertising signs be regulated by the State, adjacent to the rights-of-way of roadways that are not limited-access State toll roads or parts of the Interstate or federal-aid primary systems, where such roadways are within the boundaries of incorporated municipalities of the State of Delaware, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (c).

1.06 - Standards For Directional Signs

A. General: Permits as described in section 1.17 of these regulations shall not be required for directional signs.

1. A directional sign shall be erected only after first securing the written approval of the Department. Requests for approval to erect a directional sign shall be in writing, directed to the Department for the attention of the Manager of the Roadside Control Section. All requests shall be processed in accordance with procedures promulgated by the Department.

2. The following directional signs are prohibited:

(a) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

(b) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

(c) Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

(d) Obsolete signs.

(e) Signs which are structurally unsafe or in disrepair.

(f) Signs which move or have any animated or moving parts.

(g) Signs located in rest areas, parklands or scenic areas.

(h) Signs not in conformance with applicable wind pressure requirements as specified by adopted local building code, or 25 pounds per square foot (whichever is greater).

(i) Signs for privately owned facilities unless such facilities are determined to be eligible for signing under the criteria and methods described in part 'F' of this section (1.06).

B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area: 150 square feet

(b) Maximum height: 20 feet

(c) Maximum length: 20 feet

2. All dimensions shall include border and trim but

shall exclude supports.

C. Lighting

1. Directional signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary system highway or any other State-maintained roadway, or which are of such intensity or brilliance as to impair the vision of a driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) No sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device or signal.

D. Spacing

1. Each location of a directional sign must be approved by the Department.

2. A directional sign must be located beyond 2,000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way), unless erected by the Department.

3. A directional sign must be located beyond 2,000 feet of a rest area, parkland, or scenic area (measured as for an interchange or intersection at grade, as described above), unless erected by the Department.

4. Number and mileage requirements

(a) Directional signs facing the same direction of travel must be placed more than 1 mile apart.

(b) A maximum of three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(c) Signs located adjacent to the Interstate system must be within 75 air miles of the activity.

(d) Signs located adjacent to the primary system must be within 50 air miles of the activity.

5. In determining the distance between signs facing in the same direction, and those within a seventy-five air mile radius, signs beyond the controlled area shall not be considered.

6. Signs legally in place within the controlled area shall be considered as though they were erected under these regulations.

E. Message content

1. The message of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.

Descriptive words or phrases, or pictorial or photographic representations of the activity or its environs, are prohibited.

F. Criteria for eligibility

1. The criteria for determining whether or not a privately owned facility is eligible for directional signing shall be that criteria presently utilized or hereafter adopted by one of the existing State agencies where primary purpose is the control and administration of the type of specific unique phenomena or site for which a directional sign application may be made.

2. A determination by the State agency to which a request is referred as to whether or not a privately owned facility is eligible for directional signing shall be binding on the Department.

G. Eligible activities

1. Privately owned activities or attractions eligible for directional signing shall be limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas, any of which must be nationally or regionally known, and of outstanding interest to the traveling public, as determined by the appropriate State agency authority.

1.07 - Standards For Official Signs And Notices

A. General: Permits as described in section 1.17 of these regulations shall not be required for official signs and notices.

1. An official sign or notice shall be erected only after first securing written approval of the Department. Requests for approval to erect such signs shall be made and processed in the same manner as for directional signs, as described in section 1.06 of these regulations.

B. Official signs and notices shall be limited to the following:

1. Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization by Federal, State or local law for the purposes of carrying out an official duty or responsibility.

2. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies.

C. The following signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

2. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

D. Size

1. The following limits shall apply to official signs and notices:

- (a) Maximum area: 15 square feet
- (b) Maximum height: 5 feet
- (c) Maximum length: 5 feet

2. All dimensions shall include border and trim but shall exclude supports.

E. Lighting

1. Official signs and notices may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except those giving only public service information.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

F. Spacing

1. Each location of an official sign or notice must be approved by the Department.

2. An official sign or notice, except when erected by the Department, shall be located beyond 2,000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

3. An official sign or notice, except when erected by the Department, shall be located beyond 2,000 feet of a rest area, parkland, or scenic area (measured as for an interchange or intersection at grade, as described above).

1.08 - Standards For Public Utility And Railroad Signs

A. General: The erection of a public utility or railroad sign may be undertaken without Department approval.

1. Such signs will be limited to warning signs, informational signs, and notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operation.

B. Size

1. The following limits shall apply to public utility and railroad signs:

(a) Maximum area: 4 square feet

(b) Maximum height: 4 feet

(c) Maximum length: 4 feet

2. All dimensions shall include border and trim but shall exclude supports.

C. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited (except railroad crossing signals).

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

D. Number and spacing

1. The number and spacing of public utility and railroad signs shall be limited to those customarily erected and maintained as essential to the operation of a particular utility or railroad.

1.09 - Standards For Service Club And Religious Notices

A. General: Service club or religious notices shall be erected or maintained only after first securing approval from the Department.

1. Requests for permission must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

B. Service club and religious notice signs shall be limited to the following:

1. Signs and notices relating to meetings of nonprofit service clubs.

2. Signs and notices of charitable associations.

3. Signs and notices stating place and time of religious services.

C. The following service club and religious notice signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

2. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

5. Signs which move or have any animated or moving parts.

6. Signs located in rest areas, parklands or scenic areas.

D. Size

1. The following limits shall apply to service club and religious notices:

(a) Maximum area: 4 square feet

(b) Maximum height: 2 feet

(c) Maximum length: 2 feet

E. Lighting

1. Illumination of service club and religious notices is prohibited.

F. Spacing

1. A sign may be placed on a major route entering the vicinity of the involved activity, but must be located within one-half mile of the meeting place.

G. Number

1. Total number of service club and religious notices about a particular locale shall not exceed two.

1.10 - Standards For Public Service Signs

A. General: Public service signs shall be erected or maintained only after first securing approval from the Department.

1. Requests for permission must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

2. A certification by the Delaware State Department of Education that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location, shall accompany each application.

B. Public service signs shall be limited to the following:

1. Signs which identify the donor, sponsor, or contributors of the shelter on which the sign is erected; and

2. Which contain safety slogans or messages which shall occupy not less than 60 percent of the area of the sign; and

3. Which contain no other message.

C. Size

1. Public service signs shall not exceed 32 square feet in area.

D. Lighting

1. Illumination of public service signs is prohibited.

E. Number and placement

1. Only two public service signs shall be permitted at any one location. A sign or signs will only be approved for a shelter if the shelter does not in any way obscure or otherwise interfere with the effectiveness of an official traffic

sign, signal, or device; obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic; or interfere with the safe and free flow of traffic in any way.

1.11 - Standards For Signs Requiring A Letter Of Permission From The State

A. General: Section 1114, Subchapter I, Chapter 11, Title 17 of the Delaware Code exempts certain signs from all provisions of Subchapter I, except that such signs shall be subject to the regulations established by the Department as required by Section 1103 of Subchapter I, Chapter 11 of Title 17.

B. Eligibility

1. An outdoor advertising sign, display, or device in a controlled area shall require a letter of permission from the State, but shall not require a State outdoor advertising permit, if:

(a) It is located on the same premises as the activity or property advertised; and

(b) It has as its sole purpose the identification of the activity conducted on the premises, or the advertisement of the sale or lease of the property on which it is located; and

(c) It meets the size requirements as specified in Title 17 DE Code, Chapter 11, Subchapter I, Section 1114 (1) or (2); or

(d) It is a sign of one of the classes of signs specified as excepted in Title 17 DE Code, Chapter 11, Subchapter I, Section 1114 (3) through (7).

C. Premise test

1. As used in these regulations, the premises on which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted, and any signs located on such land will be considered signs requiring a State outdoor advertising permit:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the roadway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the

principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses (except that this restriction shall not apply to agri-produce signs).

D. Purpose test

1. The following signs, displays, and devices shall be considered as having as their purpose (1) the identification of the activity located on the premises or its products or services; or (2) the sale or lease of the property on which the sign is located:

(a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishment's principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than "for sale" or "for lease."

2. Signs in the following categories shall be considered as not fulfilling purpose requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

E. Applications

1. No sign, unless it is specifically exempted from State regulation by DE Code or the terms of these regulations, shall be erected before written approval is secured from the Department.

2. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

F. The following are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official

traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

G. Size

1. In order not to require a State outdoor advertising permit, a sign (either attached or free-standing) erected or maintained upon property to identify a business conducted thereon may not exceed 32 square feet in total area (sum of all faces and / or panels).

2. A sign advertising the sale or lease of property may not exceed 12 square feet (sum of all faces and / or panels) for a residential zoned property and 32 square feet for any other zoning.

3. All measurements shall include border and trim, but shall exclude supports.

4. Signs exceeding these size limits shall be considered as not fulfilling size requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit.

H. Lighting

1. Signs may be illuminated subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

I. Spacing

1. Spacing requirements shall not apply except that a maximum of 10 signs, with a combined total area of not more than 500 square feet, shall be allowed at any one location.

2. Free-standing signs shall be limited to two per highway and shall be permitted only along the highway or highways to which access is provided.

3. "For-sale" or "for-lease" signs shall be limited to a total of two for any one property.

J. Decorative subdivision entrance signs

1. Decorative subdivision entrance signs which state the name of an individual suburban community are allowable, provided:

- (a) They are erected within the subdivision limits.
- (b) The sole intent is identification.
- (c) They have received prior approval from the Department.
- (d) They meet all tests and requirements established by this rule (1.11).

1.12 - Standards For Agri-produce Signs

A. General: Agri-produce signs may not be erected on the Interstate system unless they meet fully the requirements for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, as established in section 1.11 of these regulations.

1. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

2. On other systems, agri-produce signs shall be considered as signs requiring a letter of permission from the State and shall be subject to the same requirements and conditions as described for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, in section 1.11 of these regulations, with the following exceptions:

a) Free-standing agri-produce signs shall be allowed to remain erected only during the seasonal period from May 1 through September 30. During the off-season, signs of this type shall be removed.

(b) Free-standing agri-produce signs may be located more than 50 feet, but not more than 500 feet, from the activity, and on the same property as the activity being conducted.

B. The following signs are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or

moving parts.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

C. Size

1. The following limits shall apply to agri-produce signs:

(a) Maximum area: 32 square feet

(b) Maximum height: 8 feet

(c) Maximum length: 8 feet

(d) Total sign area allowable per property: 100 square feet (maximum)

D. Lighting

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

E. Spacing

1. Each location of an agri-produce sign must be approved by the Department, and written approval must be received prior to erection of any signs.

2. Each sign must be located within 500 feet of the activity, on the same property and on the same side of the roadway as the activity.

F. Number

1. Each location may have a variable number of agri-produce signs, provided the total sign area allowable per property is not exceeded.

G. Safety of the traveling public

1. At all times the Department must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign or signs until such time that corrective measures have been implemented.

1.13 - Standards For Signs Requiring A State Outdoor Advertising Permit

I. Static-message Signs

A. General: Except as otherwise provided in DE Code and these regulations, no static-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

3. This category includes manually-changeable-message signs.

B. Order of consideration of applications

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a state outdoor advertising permit shall be issued one.

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

C. The following static-message signs are prohibited:

1. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in

disrepair.

6. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code, or 25 pounds per square foot, whichever is greater.

7. Signs which move or have any animated or moving parts.

D. Size

1. The maximum area for any static-message outdoor advertising sign facing shall be 1,200 square feet, with a maximum height of 25 feet or a maximum length of 60 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim but shall exclude supports.

4. A static-message sign structure may contain one or two static-message sign panels per facing and two sign facings may be placed back-to-back or V-type at one location, but in no event shall the total area of any facing exceed 1,200 square feet.

5. A static-message sign panel which exceeds 600 square feet in area may not be on the same sign facing with any other panel.

E. Lighting

1. Static-message signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

F. Spacing

1. Within controlled areas of Interstate and other State-maintained controlled-access highways, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 500 feet from any other such structure.

2. Within controlled areas of State-maintained non-controlled-access roadways outside of incorporated municipalities, the structure for any static-message outdoor

advertising sign requiring a State outdoor advertising permit shall be at least 300 feet from any other such structure.

3. Within controlled areas of State-maintained non-controlled-access roadways that are part of the federal-aid primary system and are within the boundaries of incorporated municipalities, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 100 feet from any other such structure.

4. When static-message outdoor advertising signs requiring State outdoor advertising permits are separated by buildings or other permanent obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply.

5. The distances between static-message outdoor advertising signs requiring State outdoor advertising permits shall be measured along the nearest edge of the pavement between points directly opposite the signs and shall apply only to outdoor advertising structures located on the same side of a roadway.

6. Outside of incorporated municipalities, any outdoor advertising signs shall be located 500 feet (minimum distance) from any interchange, intersection at grade, safety rest area or information center on any Interstate or primary roadway (as measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

7. Except for a free-standing sign against the wall of a building, no outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road grade, whichever is higher.

8. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

9. Except for signs, displays or devices advertising the sale or lease of, or activities conducted upon, the real property where they are located, or any outdoor advertising signs displayed on any school bus waiting shelter located and approved by the State Department of Education, as provided in 17 DE Code 11, Section 1108 (c), no outdoor advertising sign, display or device requiring a State outdoor advertising permit shall be erected within 25 feet of the right-of-way line of any public highway if visible from any portion of the same, as provided in 17 DE Code 11, section 1108 (a).

G. Non-conforming sign

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section

shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirements, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

H. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in commercial and industrial zones, and enforces such laws, and applies for and is certified under the provisions of section 1.18 of these regulations, control of outdoor advertising and outdoor advertising signs located entirely within such political subdivision shall pass to such political subdivision.

II. Electro-mechanical Variable-message Signs

A. General: Except as otherwise provided in DE Code and these regulations, no electro-mechanical variable-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

B. Eligibility

1. An electro-mechanical variable-message outdoor advertising sign, display or device shall be eligible for a State outdoor advertising permit only if:

(a) It is located on the same property and premises as the activity or property advertised; and

(b) It has as its purpose the identification of the activity conducted on the premises, or advertises the sale or lease of the property on which it is located; and

(c) It meets the size and other requirements as specified in these regulations.

C. Premise Test

1. As used in these regulations, the premises on which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses.

D. Purpose test

1. The following signs, displays, and devices shall be considered as having as their purpose (1) the identification of the activity located on the premises or its products or services; or (2) the sale or lease of the property on which the sign is located:

(a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishment's principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than "for sale" or "for lease."

2. Signs in the following categories shall be considered as not fulfilling purpose requirements:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

E. Order of consideration of applications

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a State outdoor advertising permit shall be issued one.

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

F. The following are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts other than the electro-mechanical variable-message part.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

G. Size

1. The maximum area for any electro-mechanical variable-message outdoor advertising sign facing shall be 150 square feet with a maximum height or length not to exceed 15 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim, but shall exclude supports.

4. Two electro-mechanical variable-message sign facings may be placed back-to-back or in a V-type

configuration, but in no event shall the total area of any facing exceed 150 square feet.

H. Lighting

1. Electro-mechanical variable-message signs may be illuminated, subject to the following restrictions:

(a) Electro-mechanical variable-message signs shall have a time of message display for complete messages of no less than 30 seconds and have a time interval between messages of 2 seconds or less.

(b) Electro-mechanical variable-message signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of any roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Electro-mechanical variable-message signs so illuminated as to interfere with the effectiveness of, or obstruct, an official traffic sign, device, or signal, are prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

I. Spacing

1. Electro-mechanical variable-message outdoor advertising signs within controlled areas of limited-access highways must be at least 500 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

2. Outside of the boundaries of incorporated municipalities, electro-mechanical variable-message outdoor advertising signs within controlled areas of non-limited-access State-maintained roadways must be at least 300 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

3. Within the boundaries of incorporated municipalities, electro-mechanical variable-message outdoor advertising signs within controlled areas of non-limited-access State-maintained roadways that are part of the federal-aid primary system must be at least 100 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

4. When electro-mechanical variable-message outdoor advertising sign structures are separated from any static-message outdoor advertising sign requiring a State outdoor advertising permit by buildings or other permanent obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply. This exception shall not be construed to mean that electro-mechanical variable-message outdoor advertising signs may be erected nearer to each other than specified in paragraphs five and six (following) if only one of them could

be seen from the roadway at any one time due to an intervening obstruction (as above).

5. An electro-mechanical variable-message outdoor advertising sign that is within the controlled area of any State-maintained roadway shall not be located less than 5,280 feet (one mile) from any other electro-mechanical variable-message outdoor advertising sign that is within the controlled area of the same roadway (whether on the same or the opposite side of the roadway).

6. Where State-maintained roadways intersect, if there is an electro-mechanical variable-message outdoor advertising sign within the controlled area of one of them, and the sign is within a mile of the intersection, no electro-mechanical variable-message outdoor advertising signs may be erected on the other roadway(s) within a mile of the intersection.

7. The distances between electro-mechanical variable-message outdoor advertising signs and static-message signs requiring State outdoor advertising permits shall be measured along the nearest edge of the pavement between points directly opposite the signs and shall apply only to outdoor advertising structures located on the same side of a roadway.

8. The distances between electro-mechanical variable-message outdoor advertising signs shall be measured along the nearest edge of the pavement (or, if on opposite sides of the controlling roadway, the edge nearest to the existing or the oldest existing sign) between points directly opposite the signs and shall apply to outdoor advertising structures located on the same or opposite sides of a roadway.

9. Outside of incorporated municipalities, any outdoor advertising signs shall be located 500 feet (minimum distance) from any interchange, intersection at grade, safety rest area or information center on any Interstate or primary roadway (as measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

10. Except for a free-standing sign against the wall of a building, no outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road grade, whichever is higher.

11. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

J. Non-conforming signs

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be

purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirement, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

K. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in commercial and industrial zones, and enforces such laws, and applies for and is certified under the provisions of section 1.18 of these regulations, control of outdoor advertising and outdoor advertising signs located entirely within such political subdivision shall pass to such political subdivision.

L. Number of panels

1. An electro-mechanical variable-message sign facing may not contain more than one electro-mechanical variable-message panel. A static message panel may be affixed to the same sign facing as an electro-mechanical variable-message panel, but the total square footage of the facing may not exceed 150 square feet.

M. Message content

1. Every message displayed on an electro-mechanical variable-message outdoor advertising sign must be a complete message. No message or display on an electro-mechanical variable-message outdoor advertising sign may in any way entice or encourage a viewer to continue looking at the sign after they have read its current message. The viewer is not to be enticed or encouraged to desire to see what message the electro-mechanical variable-message outdoor advertising sign will display when it changes from the message currently being displayed.

1.14 - Bonding Requirements

A. Any non-resident or foreign corporation engaged in the business of outdoor advertising shall be granted a permit for the posting or display of any advertisement; or the erection, use or maintenance of any advertising structure; only after such persons shall have furnished and filed with the Roadside Control Section a bond payable to the State of Delaware, with surety approved by the Department, and in the sum of \$5,000.00, conditioned that said individual company or corporation fulfills all the requirements of law and regulations and orders of the Department relating to the display of advertisements or the erection of advertising structures. Such bond shall remain in full force and effect until such obligations of such licensee to the State are satisfied.

1.15 - Maintenance Of Signs

A. General

1. All signs within the controlled areas shall be maintained in a good state of repair at all times. When any sign is damaged or falls into disrepair to the extent that obvious repairs are needed, the owner shall be notified by Certified Mail to make all necessary and allowable repairs. If the sign is not repaired, rebuilt, or removed within six months of said notification, the applicable sign permit shall lapse and become null and void. In these cases where permits are not required, such signs will be considered as being abandoned and will be removed by the Department.

B. Alterations

1. The size and shape of signs may be altered during repair, with the exception of non-conforming signs, providing that:

(a) At least ten working days prior to beginning of alterations, written notice is furnished to the Department, fully defining the nature and extent of the proposed alterations; and

(b) Alterations do not exceed permit limits; and

(c) Other requirements of these regulations are met.

C. Relocation of signs

1. With the exception of non-conforming signs, signs may be relocated provided they meet all criteria and requirements of these regulations. Any sign moved to a new location will require a new permit and permit number, and will be considered and processed as a new sign.

D. Maintenance of non-conforming signs

1. General

(a) Non-conforming signs may be maintained or rebuilt when destroyed by vandalism or by Acts of God providing they are rebuilt to be substantially the same as they were in existence on June 30, 1970. Such signs may continue as long as they are not abandoned, destroyed or discontinued.

2. Discontinued signs

(a) A non-conforming sign which has displayed obsolete or damaged advertising matter, or has not displayed advertising matter for a period of six months subsequent to receipt of written notice from the Department, shall be considered as a discontinued sign and shall be required to be removed by the owner without compensation.

3. Abandoned signs

(a) Non-conforming signs which are in need of substantial repair either to the face or support structure, and are not repaired within a period of six months after receipt of written notice from the Department, shall be considered as an abandoned sign and shall be required to be removed by the owner without compensation.

4. Destroyed signs

(a) Non-conforming signs which have been damaged, except by vandalism or by Acts of God, to the

extent that the cost of reconstructing the sign exceeds 50% of the cost of the sign if it were constructed new, shall be considered as being destroyed and shall be required to be removed by the owner without compensation.

5. Owner's liability

(a) If any signs as described in subparagraphs 2, 3 and 4 of this paragraph are removed by Department personnel, the sign owners shall be responsible for all costs incurred.

1.16 - Destruction Of Trees

A. General

In no case will the destruction of trees or shrubs within the right of way of any highway for the purpose of increasing or enhancing the visibility of an outdoor advertising sign be allowed.

B. Penalties

1. Persons who undertake such action shall:

(a) Be subject to possible criminal prosecution; and

(b) Have the permit for the involved sign revoked; and

(c) Be responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

1.17 - Permits And Fees

A. General

1. Section 1104, Subchapter I, Chapter 11, Title 17 of the Delaware Code includes provisions for:

(a) The Department to issue and renew permits for each sign for a period of at least one year for the erection and maintenance of outdoor advertising signs, displays, and devices; and

(b) The Department to establish and collect fees for the issuance of permits and renewals thereof in an amount deemed necessary to defray the costs of this operation.

B. Duration of permits

1. Each permit shall be valid for the period beginning January 1 and ending December 31 of each calendar year.

2. Permits granted during any month of the year shall expire on December 31 of the same calendar year.

C. Fees

1. Each calendar year the Department shall review its administrative costs and the number of signs and determine the adequacy of present permit fees to defray the involved costs.

2. When a change in fee is necessary, the new fee shall become effective for all new permits immediately upon receipt of Department approval and for renewals on January 1 of the next calendar year following approval.

3. The fee for a portion of the calendar year will be

the same as determined necessary for the entire calendar year.

4. The Department shall notify all interested parties of any change in fee.

D. Non-payment of permit renewal fees

1. Failure to pay the full and correct annual outdoor advertising sign permit renewal fee within 60 days of being notified to do so by a second written notice (invoice) shall cause the applicable permit(s) to lapse and become null and void.

1.18 - Certification Of Political Subdivisions

A. General

1. Subsection (a) of Section 1110, Subchapter I, Chapter 11, Title 17 of the Delaware Code provides for the Department to certify a political subdivision as having effective control when such political subdivision has established and is enforcing regulations as to the size, spacing, and lighting of outdoor advertising signs, displays and devices in zoned commercial and industrial areas within its zoning jurisdiction.

2. Until such time as a political subdivision has been certified by the Department, full responsibility for the control of outdoor advertising within the controlled area shall remain with the Department. Upon certification, the authority and responsibility for the control of outdoor advertising shall pass to the political subdivision. A certified political subdivision shall implement control and surveillance procedures and maintain such records as may be necessary to assure compliance with its regulations.

3. The Department shall have the right to inspect any certified subdivision's procedures and records, and if it is found that a subdivision's regulations are not being enforced, shall, after 30 days written notice, resume full authority and responsibility for control of outdoor advertising in the controlled area.

4. Applications for certification shall be initiated by political subdivisions and shall be in writing addressed to the Secretary of the Department. Applications shall be processed in accordance with procedures promulgated by the Department.

5. The authority and responsibility for the control and regulation of directional and official signs and notices as described in these regulations shall remain with the Department.

1.19 - Political Subdivision Regulations

A. A political subdivision of the State of Delaware may establish and maintain standards which are more restrictive with respect to certain signs than the standards in these regulations.

1.20 - Penalties

A. Whoever violates the provisions of these regulations

shall be fined not less than \$10.00 nor more than \$50.00.

B. Each day that a violation is allowed to continue beyond the legal notice shall be considered a separate offense.

1.21 - Severability

A. The various paragraphs of these regulations are declared to be severable and should any word, phrase, sentence or portion be declared invalid, the remaining portions shall not be affected, but shall remain in full force and effect.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION
24 DE Admin. Code 2900
Statutory Authority: 24 Delaware Code,
Section 2905(a)(1), (24 Del.C. §2905(a)(1))**

Order Adopting Rules and Regulations

AND NOW, this 13th day of December, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware (hereinafter "the Commission") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Commission's authority under 24 *Del. C.* § 2905(a)(1), the Commission proposed to revise its existing Rules and Regulations. Certain proposed revisions relating to advertising and the maintenance of offices were the subject of a public hearing held by the Commission on August 9, 2001 at which the Commission received both oral and written comments. Following the August 9, 2001 hearing, the Commission determined not to adopt the proposed revisions as written and to make further revisions.

Thereafter, the Commission again proposed to revise its existing Rules and Regulations. The proposed revisions include changes to the existing rules and regulations relating to advertising and the maintenance of offices reflecting further revisions made following the August 9, 2001 public hearing. In addition, the proposed revisions include, *inter alia*, deleting the class size limit in real estate courses, deleting Rule 4.1.3 relating to qualifications for licensure of non-residents, and increasing the required period of retention of documents demonstrating compliance with the continuing education requirement for license renewal. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the *Delaware Register of Regulations* dated October 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on November 8, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Commission's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. No public comment was received at the November 8, 2001 hearing regarding the

proposed revisions.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Commission with comments.

2. The proposed amendments to the Rules and Regulations are necessary to clarify the existing rules relating to advertising, the maintenance of offices, requirements for non-resident licensure, and the required time for retention of documents demonstrating compliance with the continuing education requirement for renewal of licenses. In addition, the proposed amendments will assist licensees in understanding their responsibilities, and provide protection to the public.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 2905(a)(1).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 29.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

By Order Of The Real Estate Commission (As Authenticated By A Quorum Of The Commission)

Mary B. Parker, Chairperson, Public Member
Marvin R. Sachs, Vice Chairperson, Professional Member
Joseph P. Connor, Jr., Secretary, Professional Member
Ann K. Baker, Professional Member
Judy L. Bennett, Public Member
John R. Giles, Professional Member
James D. McGinnis, Professional Member
Marcia Shihadeh, Public Member

Real Estate Commission

Statutory Authority: 24 *Del.C.* 2905

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License

- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Introduction

1.1 Authority

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

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

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

1.2 Applicability

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

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

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

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

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

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

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

2.0 Requirements for Obtaining a Salesperson's License

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

2.1 Course

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

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

2.2 Examination

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

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

2.3 Ability to conduct business

2.3.1 The Commission reserves the right to ~~reject~~ deny licensure to an applicant based on a determination that the applicant is not competent to transact business of a

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

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

2.4 Fees

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

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

3.0 Requirements for Obtaining a Real Estate Broker's License

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

3.1 Course

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

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

3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

See 4 DE Reg. 846 (11/01/00)

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

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

3.3 Examination

3.3.1 Within twelve (12) months of completing an

accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by ~~Paragraph E of this rule~~ Rule 3.5.1 to the Commission to be considered for licensure.

3.4 Ability to conduct business

3.4.1 The Commission reserves the right to ~~reject deny licensure to~~ an applicant based upon a determination tha the applicant is not competent to transact the business of a real estate broker, including a determination that on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience. , a reputation for honesty, truthfulness and fair dealings.

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

3.5 Credit Report

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

3.6 Fees

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

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

4.0 Reciprocal Licenses

4.1 Requirements

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

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

~~4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.~~

5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has

been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

See 4 DE Reg. 457 (9/1/00)

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

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

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

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

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

6.0 Transfer of Broker or Salesperson

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

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

6.3 All brokers of record who move the physical

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

7.0 Business Transactions and Practices

7.1 Written Listing Agreements

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

7.2 Copy of agreements

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

7.3 Advertising

~~7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee. Any licensee who advertises in newspapers, the Internet, or any other media, real property personally owned or real property in which the licensee has any ownership interest must include in the advertisement that he or she is the owner of said property, and that he or she is a real estate licensee. This subsection does not apply to signs.~~

~~7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs. Any licensee who advertises on signs, newspapers, the Internet, or any other media an offer to purchase real property must include in the advertisement that he or she is a real estate licensee.~~

7.3.3 Any licensee who advertises, by signs, or in newspapers, the Internet, or any other media, any real property for sale, lease, exchange, or transfer that is listed with a broker must include in legible print in the advertisement the complete business name that has been registered with the Commission, and office phone number of the broker registered by the broker of record with the Commission for that office location, of record under whom the licensee is licensed. Nothing contained herein shall preclude the listing of additional phone numbers. All such advertising shall also contain language or abbreviations that clearly identify each phone number listed; examples include, but are not limited to: "Office"; "Home"; "Res.;" "Car"; and

"Cell".

7.3.4 All advertisements for personal promotion of licensees must include the complete business name that has been registered with the Commission, and office phone number of the company registered by the broker of record with the Commission for that office location, under whom the licensee is licensed.

7.4 Separate Office

7.4.1 Each licensed broker who is a resident of this State shall maintain an office in this State approved by the Commission in which to transact real estate business. Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. No licensee shall transact real estate business at any office location unless an office application has been filed with and approved by the Commission. Nothing contained herein, however, shall preclude said persons from sharing facilities approved by the Commission with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 If a broker maintains more than one place of business within the State, the broker shall apply for and obtain approval by the Commission for each office location.

~~7.4.2~~ 7.4.3 Any Where the office is located in a private home must be approved by the Commission and have, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed registered with the Commission in a conspicuous location.

7.5 Compensation

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

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

7.6 Duty to Cooperate

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

8.0 Renewal of Licenses

8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the

Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of ~~one (1) year~~ two (2) years, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

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

8.3 Reinstatement of License

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

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

9.0 Availability of Rules and Regulations

9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real

estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

10.0 Disclosure

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

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

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

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

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services,

provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

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

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

11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

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

12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

13.0 Necessity of License

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

13.2 For new construction, subdivision, or development

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

14.0 Out of State Land Sales Applications

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

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

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

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

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

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

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

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

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

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

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

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

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

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

15.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public

records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

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

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

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

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

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

AND NOW, this 13th day of December, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware (hereinafter "the Commission") enters this Order adopting amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

I. Nature of the Proceedings

Pursuant to the Commission's authority under 24 *Del. C.* §§ 2905(a)(1), and 2911(b), the Commission proposed to revise its existing Guidelines for Fulfilling the Delaware Real Estate Education Requirements to insert a new guideline relating to student requests for approval of an educational activity. Notice of the public hearing to consider the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements was published in the Delaware *Register of Regulations* dated October 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on November 8, 2001 at 9:30 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. This is the Commission's Decision and Order ADOPTING the amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements as proposed.

II. Evidence and Information Submitted

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. At the November 8, 2001 hearing, no public comment was received.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements and offered an adequate opportunity to provide the Commission with comments.

2. The proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are necessary to establish a guideline relating to student requests for approval of an educational activity. The proposed amendments will assist licensees in understanding the process by which such requests are handled.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 2905(a)(1), and to publish guidelines as to acceptable courses of instruction, seminars and lectures in

DIVISION OF PROFESSIONAL REGULATION

REAL ESTATE COMMISSION

REAL ESTATE COMMISSION EDUCATION COMMITTEE

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,

Section 2905(a)(1), 2911(b)

(24 *Del.C.* §2905(a)(1), §2911(b))

Order Adopting Guidelines for Fulfilling The Delaware Real Estate Education Requirements

accordance with 24 *Del. C.* § 2911(b).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 29.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

By Order Of The Real Estate Commission (As Authenticated By A Quorum Of The Commission)

Mary B. Parker, Chairperson, Public Member
Marvin R. Sachs, Vice Chairperson, Professional Member
Joseph P. Connor, Jr., Secretary, Professional Member
Ann K. Baker, Professional Member
Judy L. Bennett, Public Member
John R. Giles, Professional Member
James D. McGinnis, Professional Member
Marcia Shihadeh, Public Member

Real Estate Commission Education Committee

Statutory Authority: 24 *Del.C.* 2911(b)

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
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- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
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Guidelines for Fulfilling the Delaware Real Estate Education Requirements

1.0 Introduction -- Mandate for Continuing Education

1.1 24 *Del.C.* §2911(b) sets forth a requirement that "...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to

furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses....."

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

2.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

3.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

4.0 Education Committee

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

4.4 Term of Office

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim

period of at least one (1) year has passed since such person last served.

4.4.2 A majority of members (7) shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

4.5 Committee Responsibilities

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

5.0 Course Approval

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

— Any course given as part of a preparation for examination.

— Offerings in mechanical office and business skills such as typing, business machines and computer operations.

— Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

— Correspondence courses and program learning courses not under the direct supervision of a certified instructor.

— General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

— Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

— Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities are, but not limited to:

— membership or service in a professional, occupational or other society or organization;

— attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

— writing or presentation of articles or research papers;

— a program or other type of organizational assignment;

— self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, **at least sixty (60) days prior to the date that the course is to be held.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining

7.3 An application for an individual student request for approval of an educational activity (on forms approved by the Commission), course outline, instructor resume of a qualified instructor, and any other documentation that may be required, may be filed by the individual student with the Delaware Real Estate Commission, Real Estate Education Committee within twelve (12) months. Recommendations of the Education Committee shall be made to the Commission

within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed. The subject educational activity must comply with Section 6.0 herein and any other applicable Guidelines.

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- _ Student Name
- _ Sponsors Name
- _ Topic Area Name
- _ Course Title
- _ Date course was completed
- _ Number of Credit Hours
- _ Course Approval Number
- _ Instructor Name(s)
- _ Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the

second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

9.0 Instructor Qualifications

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the

qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing

education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF VETERINARY MEDICINE

24 DE Admin. Code 3300

Statutory Authority: 24 Delaware Code,
Section 3306(a)(1) (24 Del.C. 3306(a)(1))

Summary of the Evidence and Information Submitted

Written Comments

There were no written comments received addressing the proposed rules and regulations.

Sworn Testimony

Dr. Bruce Damme testified that the Rules and Regulations should establish a separate classification of veterinary technicians. Dr. Damme testified that he believed that the proposed Rules and Regulations should establish veterinary technicians and that the Board would be following the example of surrounding states by creating a classification of veterinary technicians. Dr. Damme testified that there is support for veterinary technicians in the Delaware veterinary community. Dr. Damme testified that veterinary technicians should be allowed to perform some of the tasks relegated to support personnel in the proposed Rules and Regulations. Dr. Damme testified that the proposed Rules and Regulations were "too liberal" by allowing support personnel to perform too many tasks. Dr. Damme further testified that support personnel should not be allowed to induce anesthesia but that veterinary technicians should be allowed to induce anesthesia given their education.

Dr. Paul Hanebutt testified and supported the comments made by Dr. Damme concerning the establishment of veterinary technicians. Dr. Hanebutt also testified concerning the minimum number of years that records must be kept pursuant to proposed Rule 2.1.7. According to Dr. Hanebutt, the three (3) year requirement to keep veterinary records was not long enough. Dr. Hanebutt related various scenarios regarding the life expectancy of pets (especially large animals), livestock feed miscalculations, the keeping of radiographs (imaging technologies), and vaccine records to illustrate the need to retain veterinary records for a longer period of time. Dr. Hanebutt suggested that a longer time frame, seven (7) to nine (9) years, would be more appropriate regarding the retention of veterinary records.

Dr. Valerie Quillen, a resident veterinarian and department chair for the veterinary technician program for Delaware Technical and Community College, also testified that veterinary technicians should be established in the proposed Rules and Regulations. Dr. Quillen testified that two types of supervision should be established – indirect and direct supervision. According to Dr. Quillen, direct supervision should require that the veterinarian be “on the premises.” Dr. Quillen suggested that indirect supervision should require that the veterinarian should be available by other means (i.e. electronic means). Dr. Quillen stated that the tasks of cystocentesis and urinary catheterization placement should not be performed by support personnel as stated in the proposed Rules and Regulations. Dr. Quillen had previously suggested that these tasks be included in the proposed Rules and Regulations so that her veterinary technician students could gain these skills.

Findings of Fact

1. Pursuant to 24 *Del. C.* § 3306 (a) (1), the Board of Veterinary Medicine of the State of Delaware (the "Board") proposed to revise to its Rules and Regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on November 13, 2001, at 1:00 p.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on November 13, 2001, at which a quorum of the Board of Veterinary Medicine was present. The hearing was in the Cannon Building in the Public Service Commission Room on the 1st floor. Signs were posted informing the public of the change in room

assignment and are attached hereto as Exhibit "D" and incorporated herein.

5. The Board of Veterinary Medicine finds the proposed revisions serve to implement or clarify specific sections of 24 *Del. C.* Chapter 33.

6. The Board finds that the Rules and Regulations cannot incorporate veterinary technicians because the Board does not have the authority to do so under the current practice act. The Board finds that the incorporation of veterinary technicians as a separate classification must come from a statutory change enacted by the General Assembly. Significant issues, including the required qualifications for veterinary technicians, the possibility of reciprocity with other jurisdictions, the fate of current support personnel, would more properly be addressed by the legislature. The decision not to include veterinary technicians into the Rules and Regulations does not in any way reflect an opposition by the Board to the possible future inclusion of veterinary technicians into Chapter 33 of the *Delaware Code*.

7. The Board finds that the induction of anesthesia by support personnel is prohibited by 24 *Del. C.* § 3303 (a) (10).

8. The Board finds that its statute only allows for the direct supervision of persons performing support activities (support personnel) pursuant to 24 *Del. C.* § 3303 (a) (10). The Board finds that its definition of direct supervision in its Rules and Regulations to be sufficient to protect the public while allowing support personnel to assist veterinarians. The Board also finds that the Rules and Regulations are not “too liberal” in the assignment of various tasks to support personnel.

9. The Board finds that cystocentesis and urinary catheterization are activities that may properly be performed by support personnel under the direct supervision of a licensed Delaware veterinarian.

Text and Citation

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 5, Issue 4 (October 1, 2001). The text is attached hereto as Exhibit “E” with the changes noted.

Decision

NOW, THEREFORE, based on the Board of Veterinary Medicine’s authority to formulate rules and regulations pursuant to 24 *Del. C.* § 3306 (a) (1), it is the decision of the Board of Veterinary Medicine to adopt a majority of the proposed revisions of its Rules and Regulations. The Board has decided to strike proposed Rule 2.1.7 to further clarify the retention of veterinary records. The proposed changes to Rule 2.1.7 will be published in the Register of Regulations and the Board will proceed to a public hearing in accordance with the Delaware Administrative Procedures Act. The Board has also decided to change the incorrect cited statutory reference for

Rule 5.1.4 from 24 *Del. C.* § 3303 to 24 *Del. C.* § 3309. The remainder of the Proposed Rules and Regulations have been passed by the Board. A copy of the rules and regulations is attached hereto as Exhibit "F" and incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this 11th day of December, 2001.

Delaware State Board Of Veterinary Medicine

John T. Gooss, V.M.D., President
William Cross, Vice-President, Public Member
Caroline Hughes, V.M.D., Professional Member
Sharon Little, D.V.M., Professional Member
Peggy Swygert, Public Member

Board of Veterinary Medicine
Statutory Authority: 24 *Del.C.* 3306(a)(1)

- 1.0 Filing Date for Examinations
- 2.0 Qualification for Licensure by Examination as a Veterinarian
- 3.0 Character of Examination – National Board Examination and Clinical Competency Test
- 4.0 Licensure – Renewal
- 5.0 Licenses, Certifications and Registrations Display
- 6.0 Continuing Education
- 7.0 Reciprocity
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Filing Date for Examinations

1.1 An applicant taking examinations in the State of Delaware must have the completed application filed with the Board office nine weeks before the announced date of the examination as established by the testing service.

1.2 The examination will be given at least once annually on the date(s) established by the testing service.

See 1 DE Reg. 1573 (4/1/98)

2.0 Qualification for Licensure by Examination as a Veterinarian

2.1 Applicant shall file the following documents:

2.1.1 Completed application form obtained from the Board office.

2.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

2.1.3 Letters of good standing from any other jurisdictions in which applicant is/or has been licensed.

2.1.4 Official National Board Examination (NBE)

and Clinical Competency Test (CCT) scores.

2.1.5 Check or money order payable to the "State of Delaware" for the amount prescribed by the Division of Professional Regulation

See 1 DE Reg. 1573 (4/1/98)

2.2 Only completed applications will be accepted. In case of incomplete applications, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

See 1 DE Reg. 1573 (4/1/98)

3.0 Character of Examination – National Board Examination and Clinical Competency Test

3.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the National Board Examination ("NBE") and the Clinical Competency Test ("CCT").

3.1.1 Passing scores for the NBE and CCT shall be the score as recommended by the National Board Examination Committee.

4.0 Licensure – Renewal

4.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

4.2 All licensees must meet the continuing education requirements of a total of twenty-four (24) hours for two (2) years.

4.3 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the prescribed renewal fee.

5.0 Licenses, Certifications and Registrations Display

Each licensed veterinarian shall have posted or displayed at his/her office, in full view of clients, his/her Delaware license to practice veterinary medicine.

6.0 Continuing Education

6.1 Any veterinarian (active or inactive) licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

6.1.1 Twenty-four (24) hours of approved certified continuing education credits for the immediate two-year

period preceding each biennial license renewal date.

6.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board.

6.2 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

6.3 The following organizations are approved for formal continuing education activities:

6.3.1 AVMA

6.3.2 AVMA accredited schools

6.3.3 Federal/State/County Associations

6.3.4 Correspondence and In-House: Compendium on continuing education for the practicing veterinarian; Internet; NOAH; VIN. This may be used to satisfy ½ of the continuing education requirement.

6.3.5 Other forms of CE as long as a Veterinary Board Certified Diplomate or Veterinary Board Qualified Presenter presents the activity and the activity is approved by the Delaware Board of Veterinary Medicine. This may be used to satisfy ½ of the continuing education requirement.

6.3.6 University course work consisting of post-graduate credits, subject to Board approval.

6.4 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

6.5 The Board may at any time re-evaluate an accredited course or sponsor and withdraw its approval of a previously accredited continuing education course or sponsor.

See 1 DE Reg. 1573 (4/1/98)

7.0 Reciprocity

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in Section 2.0

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and

inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

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

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the

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

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

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

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

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

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

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

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

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

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

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

- 1.0 Direct Supervision
- 2.0 Unprofessional Conduct
- 3.0 Privileged Communications
- 4.0 Veterinary Premises and Equipment
- 5.0 Qualification for Licensure by Examination as a Veterinarian
- 6.0 Character of Examination - North American Veterinary Licensing Examination (NAVLE)
- 7.0 Reciprocity
- 8.0 Licensure - Renewal
- 9.0 Continuing Education
- 10.0 Voluntary Treatment Option

1.0 DIRECT SUPERVISION (24 Del. C. § 3303(10))

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 Del.C. §3302 (6) must be performed under direct supervision. Direct supervision of support personnel also

includes:

1.1.1 The initial examination of the animal by the veterinarian prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support personnel to administer emergency measures prior to the initial examination.

1.1.2 The development of a treatment plan by the veterinarian that shall be referenced by support personnel.

1.1.3 The authorization by the veterinarian of the work to be performed by support personnel.

1.2 At no time may support personnel perform the following activities (24 Del. C. § 3303(10)):

1.2.1 Diagnosing.

1.2.2 Prescribing.

1.2.3 Inducing Anesthesia.

1.2.4 Performing Surgery.

1.2.5 Administration of Rabies Vaccinations.

1.2.6 Operative dentistry and oral surgery.

1.2.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters).

1.2.9 Splinting or casting of broken bones in other than emergency situations.

1.2.10 Euthanasia.

1.2.11 Issue health certificates.

1.2.12 Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are regulated by federal and state guidelines.

2.0 UNPROFESSIONAL CONDUCT (24 Del.C. §3313(a)(1))

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks without the required direct supervision as specified in Section 1.1 of the Rules & Regulations.

2.1.3 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.4 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.5 Intentionally performing or prescribing

treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.6 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

~~2.1.7 Destruction of patient records (including rabies records, radiographs and ultrasounds) before three years have elapsed.~~[Intentionally left blank]

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del.C. §1325.

2.1.8.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.8.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.8.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

2.1.9 Leaving an animal during the maintenance stage of anesthesia.

2.1.10 Improper labeling of prescription drugs. The package or label must contain:

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

2.1.11 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.12 Misrepresenting continuing education hours to the Board.

2.1.13 Failure to obey a disciplinary order of the Board.

3.0 PRIVILEGED COMMUNICATIONS (24 Del.C. §3313(a)(7))

3.1 Privileged Communications. Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal. The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the

purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

4.0 VETERINARY PREMISES & EQUIPMENT (24 Del.C. §3313 (9))

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

5.0 QUALIFICATION FOR LICENSURE BY EXAMINATION AS A VETERINARIAN (24 Del.C. §3307)

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the applicant meets the statutory exemptions in 24 Del. C. § ~~3303~~[3309].

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

6.0 CHARACTER OF EXAMINATION - NORTH AMERICAN VETERINARY LICENSING EXAMINATION (NAVLE) (24 Del.C. §3306)

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) after November 2000 or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

7.0 RECIPROCITY (24 Del.C. §3309)

Applications for licensure by reciprocity shall be the

same application used for licensure by examination and be subject to the same application requirements set forth in 24 Del.C. §3309.

8.0 LICENSURE - RENEWAL (24 Del.C. §3311)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0.

9.0 CONTINUING EDUCATION (24 Del.C. §3311(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

9.2 Continuing Education Requirements for Reinstatement of Lapsed License

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be

completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

10.0 VOLUNTARY TREATMENT OPTION

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately

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

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

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

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

10.6.1 Entry of the regulated professional into a

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

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

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

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

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

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

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

issue.

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

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

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

DIVISION OF PROFESSIONAL REGULATION

BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300

Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 Del.C. 5306(1))

Order Adopting Rules and Regulations

AND NOW, this 6th day of December, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Massage and Bodywork of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del. C.* § 5306(1) and 5306(7), the Board proposed to revise its existing Rules and Regulations to clarify existing Rule 6.3.2, popularly known as the "25% Rule," a rule regarding the continuing education requirement for renewal of certificates and licenses. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated October 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on November 1, 2001 at 1:30 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on

the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the November 1, 2001 hearing, although members of the public were present, the Board received no public comment regarding the proposed changes.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to clarify Rule 6.3.2, and to assist licensees in understanding that the application of this continuing education rule results in a limitation of the total number of continuing education hours that are permissible in specified areas and methods during a licensure period.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 5306(1). The Board further concludes that it has statutory authority to establish by rule or regulation continuing education standards required for license and certificate renewal in accordance with 24 *Del. C.* § 5306(7).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 53.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

By Order Of The Board Massage And Bodywork (As Authenticated By A Quorum Of The Board)

Allan Angel, President, Public Member
Phyllis E. Mikell, Vice President, Professional Member
Daniel Stokes, Secretary, Professional Member
Carla Arcaro, Professional Member
Patricia A. Beetschen, Professional Member
Vivian L. Cebrick, Public Member

Katherine J. Marshall, Public Member

Board of Massage and Bodywork

- 1.0 Definitions
- 2.0 Filing of Application for Licensure as Massage/Bodywork Therapist
- 3.0 Examination
- 4.0 Application for Certification as Massage Technician.
- 5.0 Expired License or Certificate
- 6.0 Continuing Education
- 7.0 Scope of Practice
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Definitions and General Definitions

1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** § 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.2.1 The 100 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Rule 1.2. The entire 100 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

4 DE Reg. 1245 (2/1/01)

1.3 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

- Acupressure
- Chair Massage
- Craniosacral Therapy
- Deep Tissue Massage Therapy
- Healing Touch
- Joint Mobilization
- Lymph Drainage Therapy

- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy
- Orthobionomy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.4 The practice of the following modalities does not constitute the "practice of massage and bodywork":

- Alexander Technique
- Aroma therapy
- Feldenkrais
- Hellerwork
- Polarity Therapy
- Reiki
- Shamanic Techniques
- Therapeutic Touch

3 DE Reg. 1516 (5/1/00)

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application

is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

4 DE Reg. 1245 (2/1/01)

3.0 Examination

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5309(a)(2); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

3 DE Reg. 1516 (5/1/00)

4.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period.

4 DE Reg. 1245 (2/1/01)

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, and submission of documentation demonstrating compliance with the continuing education requirements.

6.0 Continuing Education

6.1 *Hours required.* For license or certification periods beginning September 1, 2000 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.1.1 Calculation of Hours. For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

4 DE Reg. 1245 (2/1/01)

6.1.2 If during a licensing period an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the continuing education requirement for that licensing period is as follows:

6.1.2.1 If the license is issued more than twelve (12) months prior to the next renewal date, the licensee shall complete twenty-four (24) hours of acceptable continuing education during the licensing period.

6.1.2.2 If the license is issued less than twelve (12) months prior to the next renewal date, the licensee shall complete twelve (12) hours of acceptable continuing education during the licensing period.

4 DE Reg. 1944 (6/1/01)

6.2 *Proration.* Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

6.3 *Content.*

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than twenty-five percent (25%) of the continuing education hours required in any licensing period may be earned in any combination of the ~~following~~ areas and methods described or listed in Rules 6.3.2.1 through 6.3.2.5. For example, a licensed massage therapist licensed for the entire licensing period may obtain no more than six (6) hours of the required twenty-four (24) hours in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

6.4 *Board approval.*

6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and

the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 *Self-directed activity:* The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6.3.2.

6.5 *Reporting.*

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 *Hardship.* A candidate for renewal may be granted an extension of time in which to complete continuing

education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

3 DE Reg. 1516 (5/1/00)

7.0 Scope of Practice

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary,

only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the

Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

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

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In

such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 211 (26 Del.C. §211)

IN THE MATTER OF THE
PROPOSED REVISION OF THE
RULES AND REGULATIONS
BY THE PUBLIC SERVICE
COMMISSION GOVERNING
MINIMUM STANDARDS FOR
SERVICE PROVIDED BY
PUBLIC WATER COMPANIES
(OPENED MAY 14, 1985;
REOPENED AUGUST 21, 2001)

PSC REGULATION
DOCKET NO. 13

Order No. 5847

AND NOW, to-wit, this 11th day of December, 2001, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having heard from all parties and the Commission Staff that there are no exceptions to said Findings and Recommendation;

AND WHEREAS, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the amendment to Section 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies*, as proposed by Commission Staff;

Now, therefore, IT IS ORDERED:

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."

2. That the Commission adopts the proposed amendment to Section 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies*, the exact text and citation of which are attached hereto as Exhibit "B."

3. That the Secretary shall transmit this Order, together with the exact text of Section 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies* to the Registrar of Regulations for publication on January 1, 2002.

4. That the effective date of this Order shall be the later

of January 10, 2002, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of Section 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies*.

5. 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:

Arnetta McRae, Chair
 Joshua M. Twilley, Vice Chair
 Jaymes B. Lester, Commissioner
 Joann T. Conaway, Commissioner

Attest:

Karen J. Nickerson, Secretary

Exhibit "A"

IN THE MATTER OF THE PROPOSED REVISION OF THE RULES AND REGULATIONS BY THE PUBLIC SERVICE COMMISSION GOVERNING MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WATER COMPANIES (OPENED MAY 14, 1985; REOPENED AUGUST 21, 2001)	 	PSC REGULATION DOCKET NO. 13
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Findings and Recommendations of the Hearing Examiner

Dated: November 14, 2001
William F. O'Brien, Hearing Examiner

IN THE MATTER OF THE PROPOSED REVISION OF THE RULES AND REGULATIONS BY THE PUBLIC SERVICE COMMISSION GOVERNING MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WATER COMPANIES (OPENED MAY 14, 1985; REOPENED AUGUST 21, 2001)	 	PSC REGULATION DOCKET NO. 13
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Findings and Recommendations of the 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. 5787, dated August 21,

2001, reports to the Commission as follows:

I. Appearances

On behalf of Commission Staff:
 Murphy, Spadaro & Landon
 By: Chase T. Brockstedt, Esquire

On behalf of the Division of the Public Advocate:
 G. Arthur Padmore, Public Advocate

II. Background

1. In PSC Order No. 2076 (May 27, 1980), Regulation Docket No. 13, the Commission originally adopted its *Minimum Standards Governing Service Provided by Public Water Companies* ("Minimum Standards").

2. On October 12, 2000, United Water Delaware, Inc. ("United") filed a request with the Commission for a waiver of the meter testing procedures under Section 4.2.4 of the *Minimum Standards*. Section 4.2.4 requires public water utilities to ensure the accuracy of its meters by conducting testing procedures on *all* meters in service on a specified frequency keyed to the size of the meter. United sought to test a statistical sampling of its 32,000 5/8" meters, rather than all of the meters.

3. Based on United's submission, and in light of improvements in the design and manufacturing of water meters, Commission Staff reviewed the *Minimum Standards* and proposed an amendment to Section 4.2.4. Under the proposed amendment, a public water utility shall ensure the accuracy of its meters by either: (1) conducting periodic tests on meters under the presently mandated schedule; *or* (2) conducting tests on a sampling of meters pursuant to a statistical meter sampling program submitted by the water utility and approved by the Commission.

4. On August 21, 2001, by PSC Order No. 5787, the Commission reopened Regulation Docket No. 13 to consider Staff's proposed amendment. The Commission directed publication of notice of the proposed amendment, set a deadline of October 31, 2001 for the filing of comments by interested parties, and scheduled a public hearing for November 7, 2001. United Water was the only company or organization to file comments.

5. In accordance with PSC Order No. 5787, a duly noticed¹ public hearing was conducted at the Commission's offices in Dover. Representatives of Staff and the Public Advocate appeared at the hearing. No member of the public appeared at or otherwise participated in the proceeding.

1. See, Exhibit 1, which consists of the affidavits of publication of notice.

6. At the conclusion of the hearing, I closed the evidentiary record, which consists of four exhibits and an 18-page *verbatim* transcript of the proceedings. Briefs were deemed unnecessary. 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.

II. The Proposed Amendment

7. The current Standard 4.2.4 requires periodic testing of all meters on prescribed time intervals, which vary with the size of the meter. The proposed Standard 4.2.4 requires a utility to develop a testing program that consists of either the existing testing schedule of all meters or:

[t]he periodic testing of a random sampling of particularly-grouped meters under a meter testing plan submitted by the utility and specifically approved by the Commission. Such a plan may apply to the testing of all sizes of meters or meters of a particular size. The sampling procedures in any such plan shall be sufficient to ensure confidence in the accuracy of the meters included in the group represented by the sample. With such plan, the utility shall submit sufficient information and data to establish the ability of the sampling procedure to establish the accuracy of the utility's meters. The results of testing under any such approved plan shall be available to the Commission.

Exhibit 2.

III. Summary of Evidence

8. Connie McDowell, PSC Chief of Technical Services, testified on behalf of Staff. Transcript, 7. Ms. McDowell asserted that the Commission had granted a waiver of the current testing requirement to United Water because the testing of all of their 5/8 inch meters was costly and because the sampling alternative United developed was reasonable. She stated that Staff believed that other water companies should have the same opportunity to test meters in accordance with a statistical sampling program if such meters did not require such stringent testing.

9. Ms. McDowell submitted a memorandum, written by Commission Engineer Malak Michael, dated August 17, 2001, in which Mr. Michael supported United's waiver request and recommended a rule change to Section 4.2.4. Exhibit 4. Mr. Michael asserted that, from an engineering standpoint, it was unnecessary to test 100% of United's 5/8 inch meters in accordance with the current schedule. In addition, he noted that a statistical meter sampling program would produce savings for United and for its customers.

10. Carla E. Hjelm, Corporate Attorney – Operations and Corporate Secretary, submitted written comments on

behalf of United Water, dated October 30, 2001. Exhibit 3. She supported the proposed amendment and asserted that "appropriate statistical sampling programs benefit the public interest and improve efficiency by determining which meters may not be functioning properly, thereby eliminating inaccurate meters from service, while at the same time avoiding unnecessary and costly testing on accurate meters."

11. The Public Advocate expressed concerns about the particulars of United Water's testing plan. Those concerns, however, were addressed outside of this proceeding because they relate to United's approved meter sampling program rather than to Staff's proposed amendment to Standard 4.2.4.

IV. Findings and Recommendations

12. The Commission has the authority and jurisdiction to promulgate and amend regulations under 26 Del. C. § 209(a) and 29 Del. C. § 10111 *et seq.* Pursuant to 26 Del. C. § 209(a), the Commission may fix "just and reasonable" regulations governing any public utility.

13. Staff has shown that by allowing water companies to propose statistical meter sampling programs as an alternative to the current testing requirements, such companies can reduce costs without unreasonably diminishing the effectiveness of their meter testing process. United Water and the Public Advocate -- the only other participants in this docket -- each supported the proposed amendment.

14. For these reasons, I recommend that the Commission adopt, as just and reasonable, Staff's proposed amendment to Section 4.2.4 of the *Minimum Standards* (Exhibit No. 2). A proposed form of Order implementing the above recommendation is appended, as Exhibit "A," for the Commission's convenience.

Respectfully submitted,
William F. O'Brien, Hearing Examiner

Exhibit "B"

~~4.2.4 Meter Testing. Each utility shall make periodic tests of meters to assure their accuracy. The periodic test interval shall not be longer than provided in the following schedule: Each utility shall have in place, and implement, a program for the testing of its meters to ensure their accuracy. Such program shall consist of either:~~

(a) The periodic testing of meters at intervals no longer than provided in the following schedule:

- (1) 5/8 inch and 3/4 inch:
Once every 15 years
- (2) 1 inch and 1-1/2 inch:
Once every 10 years
- (3) 2 inch, 3 inch, and 4 inch:
Once every 3 years

(4) 6 inches and larger: Once every year
or

(b) The periodic testing of a random sampling of particularly-grouped meters under a meter testing plan submitted by the utility and specifically approved by the Commission. Such a plan may apply to the testing of all sizes of meters or meters of a particular size. The sampling procedures in any such plan shall be sufficient to ensure confidence in the accuracy of the meters included in the group represented by the sample. With such plan, the utility shall submit sufficient information and data to establish the ability of the sampling procedure to establish the accuracy of the utility's meters. The results of testing under any such approved plan shall be available to the Commission.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

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

Order

Pursuant to 29 Del. C. §10118 and 29 Del. C. §4805(a), the Delaware Lottery Office hereby issues this Order promulgating proposed amendments to the Video Lottery Regulations. Following notice and a public hearing held on November 26, 2001 on the proposed Video Lottery Regulation amendment, the Lottery makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Lottery posted public notice of the proposed rule revisions in the November 1, 2001 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The proposal contained proposed revision to Video Lottery Regulation 5.1. The proposed Regulation change would delete the restriction that no single technology provider supply more than 65% of the total number of video lottery machines at any video lottery agent's premises.

2. The Lottery held a public hearing on November 26, 2001 and received no public comments. The Lottery received no written comments from the public during the month of November, 2001.

Findings of Fact and Conclusions

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by

testimony at the public hearing regarding the proposed rule amendments.

4. The Lottery finds that the proposed amendment to Video Lottery Regulation 5.1 is necessary for the agency to achieve its statutory duty under 29 Del. C. §4805(a) to maximize net revenues consonant with the dignity of the State and general welfare of the people of Delaware. The Lottery concludes that the proposed amendment to Video Lottery Regulation 5.1 was promulgated by the Lottery in accord with its statutory duties and authority as set forth in 29 Del. C. §4805(a). The Lottery concludes that the proposed Video Lottery Regulation should be adopted in the proposed form.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on January 1, 2001. A copy of the enacted Video Lottery Regulations is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 7th day of December, 2001.

Wayne Lemons, Director

5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such members and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents business plans as approved and amended by the Director. ~~No single technology provider shall supply more than 65% of the total number of video lottery machines at the premises of any agent.~~ No more than 1,000 video lottery machines shall be located within the confines of an agents premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

5.2.1 The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

5.2.2 The technology provider shall submit video

lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of Twenty Five Dollars (\$25) shall be permitted for wagering on a single play of any video game;

5.2.3 For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

5.2.4 Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the director with keys and locks subject to the Director's specifications for each approved video lottery machine;

5.2.5 The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

5.2.6 No video lottery machine shall be put into use prior to certification of its model by the Director;

5.3 All contracts with technology providers shall include without limitation, provisions to the following effect:

5.3.1 Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;

5.3.2 Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

5.3.3 Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

5.3.4 Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.4 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.5 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.6 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.7 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.8 The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.9 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.10 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery

machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.11 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.12 The following duties are required of all licensed technology providers, without limitation:

5.12.1 Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

5.12.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

5.12.3 Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware.

5.12.4 Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

5.12.5 Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

5.12.6 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

5.12.7 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

5.12.8 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

5.12.9 Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware,

or the employees of either, arising from the technology provider's participation in video lottery operations.

5.12.10 Maintain all required records.

5.12.11 Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

5.12.12 It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

5.12.13 It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

5.12.14 Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del.C. Ch. 48.

5.12.15 Supervise its employees and their activities to ensure compliance with these rules.

5.12.16 Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

5.12.17 Comply with such other requirements as shall be specified by the Director.

2 DE Reg. 115 (7/1/98)

2 DE Reg. 779 (11/1/98)

3 DE Reg. 1082 (2/1/00)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF LONG TERM CARE

Statutory Authority: 16 Delaware Code,
Sections 3001A-3006A (16 Del.C. §§3001A-
3006A)

**Regulations for Training and Qualifications for Nursing
Assistants and Certified Nursing Assistants**

Nature of the Proceedings:

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. On May 1, 2001, DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on May 31 and June 4.

The Department of Health and Social Services, Division of Long Term Care Residents Protection revised the proposed regulations in response to comments at the initial public hearings and republished the revised regulations in the October Register of Regulations. Public hearings were held on November 6 and November 8, 2001 at which additional written and verbal comments were received.

DLTCRP reviewed and evaluated all the comments. As a result of that evaluation, proposed regulations 69.111, 69.301E, 69.301F, 69.303D5g, 69.303D6, 69.502A5 and 69.600B are not being promulgated as final regulations, and will be the subject of a further public hearing. The evaluation of those comments not pertaining to the specific regulations cited above are in the accompanying Summary of Evidence.

Findings of Fact:

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy (with the regulations cited above deleted), should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants are promulgated effective January 10, 2002.

Vincent P. Meconi, Secretary
12.14.2001

Summary of Evidence:

Comments on the proposed regulations have been received and evaluated as follows:

One comment suggested that the composition of the CNA Training Curriculum committee be spelled out in regulation. Upon consideration, it was determined that the regulation as promulgated satisfactorily indicates the criteria to serve on the committee, and will enable the Division to assemble appropriate individuals, who may or may not wish to participate in a standing committee, when a curriculum is submitted for approval.

Comments were received expressing concern that the regulations require that the competency test for CNA certification be taken within 30 days of training program completion. Since the regulations do provide some flexibility and since candidates have a maximum of 90 days to achieve a passing score, it is important that the intent of this regulation to assure that the testing process begins promptly be retained. Candidates who do not achieve a passing score within 90 days of program completion cannot work as nursing assistants. The testing contractor is committed to providing the necessary testing sites and to meeting the time frame set out in these regulations.

One comment suggested that all candidates for reciprocity be tested and that only those candidates who had completed training equivalent to Delaware's new standard be accepted. Such requirements would defeat the purpose of reciprocity, particularly in view of the fact that Delaware will now have one of the most extensive training requirements in the nation.

A commenter questioned the deletion of a requirement that CNAs be trained to prioritize patient care. That requirement was deemed by earlier commenters to be the responsibility of professional staff, not CNAs. The same comment also questioned the deletion of a regulation pertaining to the scope of duties of a CNA. That regulation was deleted as duplicative.

A comment suggested that the Train-the-Trainer waiver provision has been loosened beyond its original intent. The provision has been loosened due to the few offerings of the Train-the-Trainer program, and the negative impact the lack of course availability has on potential instructors. The regulation now recognizes that actual teaching experience is much more valuable than the Train-the-Trainer program.

In another comment, it was suggested that augmentative communication devices be required equipment for training programs. However, the variety of such devices and the ongoing technological changes in devices make such a requirement impractical. It is preferable for CNAs to learn on the job to assist specific residents with specific devices.

Also related to equipment, one commenter urged that glass thermometers be deleted from the required equipment. This requirement is being retained because some CNAs will

work in home health care where the CNA may be using equipment belonging to the patient, including a glass thermometer.

A comment found the requirement for recertification due to lack of work experience to be confusing. Inasmuch as the wording tracks the federal regulations, it is being retained. The intent of the regulation is to permit recertification by passing the competency test; if the candidate can pass the test without retraining, he/she may do so or the candidate may opt to retrain and then test.

One comment urged specific reference to persons with acquired brain injury in the listing of populations being served in nursing homes. The listing as written is not intended to be all-inclusive; therefore, the reference to "other related disorders" recognizes that additional populations may be served in some facilities.

A comment made reference to the coding on the test form. However, that form is not related to these regulations.

In another comment, it was suggested that nursing assistants be counted toward staffing minimums depending upon the number of skills acquired rather than training hours completed. The requirements for counting staffing minimums in these regulations reflect the statute, and the regulation cannot alter the provisions of the law. Further, this provision of the statute applies to "facility-sponsored" training programs only.

Similarly, a comment questioned the requirement that a nursing assistant be under visual observation during orientation. The regulation reflects a statutory requirement.

One comment asked for a defined date for the availability of a competency test for Voluntary Senior Certified Nursing Assistant Certification. While such a provision would not be a part of these regulations, the Division is holding discussions on this issue.

A comment urged that definitions of "instructor(s), RN instructor(s), primary instructor(s), trainer(s), direct supervision and general supervision" be added to the regulations. Such definitions are unnecessary because the statute and these regulations require that all instructors be RNs with the exception of the training program for Voluntary Senior Certified Nursing Assistant Certification. In that instance, the provisions for other participants in the training are specified in these regulations. Similarly, "supervision" is defined in these regulations.

One commenter expressed uncertainty about the provision of the competency test. The test will continue to be provided by a testing contractor.

Similarly, uncertainty was expressed as to how an applicant who has not met the 64-hour work requirement would become certified or would be scheduled to test to become recertified. The same testing and certification process would apply to these applicants as would apply to others: the applicant must schedule and pass the competency test.

Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

~~57.606 NURSE AIDE/NURSE ASSISTANT REQUIREMENTS:~~

~~Each nurse aide/nurse assistant employed by any nursing home either as contract/agency or facility staff as of October 1, 1990 shall be required to meet the following:~~

~~A. Training/Testing~~

~~1. Nurse aide/nurse assistant shall complete a nurse aide training course approved by the Delaware State Board of Nursing and by the State Board of Health.~~

~~2. Nurse aide/nurse assistant is required to pass competency evaluation test approved by the State of Delaware.~~

~~3. Employees of Delaware nursing homes shall by duly certified within 4 months of employment.~~

~~4. Contract aides must be certified prior to placement in any nursing home.~~

~~B. A nurse aide/nurse assistant who has not performed nursing related services for pay for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training and competency evaluation (testing) program.~~

~~C. A nurse aide/nurse assistant who has not been employed in health care setting for three years will be required to meet the requirements in Section (A) above.~~

~~D. A nurse aide/nurse assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Board of Health requirements based on a case by case review and approval.~~

~~E. Employees hired as nurse aide/nurse assistant who are currently, enrolled in a nursing program and have satisfactorily completed the fundamentals of nursing course with a clinical component will be deemed to meet the training and testing requirements. These individuals will be approved with submittal of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.~~

~~57.607 NURSE AIDE TRAINING PROGRAM CURRICULUM~~

~~The following material identifies the minimum curriculum content for nurse aides/nursing assistants being prepared to work in nursing home facilities either as direct or contract staff.~~

~~The curriculum content for the nurse aide training program must include material which will provide a basic level of both knowledge and demonstratable skills for each individual completing the program. The program must be a~~

minimum of 75 hours in length, divided equally between skills training and classroom instruction. Additional hours may be in either of these areas or both.

Programs may expand the curriculum content to provide opportunities for nurse aides to be placed in settings where nurse aides/nursing assistants are employed to perform basic skills as delegated by a licensed nurse in support of a professional plan of care.

A. THE NURSE AIDE ROLE AND FUNCTION

Key Concepts:

Introduces the characteristics of an effective nurse aide: — personal attributes, onthejob conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nurse aide as a member of the patient care team. Legal aspects of patient care and patient rights are presented. Relevant Federal and State statutes are referenced.

Competencies:

A.1 Function as a nurse aide within the legal and ethical standards set forth by the profession of nursing:

A.1.1 Define the role and functions of the nurse aide and provide awareness of the legal limitations of being a nurse aide.

A.1.2 Recognize the responsibilities of the nurse aide as a member of the health care team.

A.1.3 Identify the "chain of command" in the organizational structure of the health care agency.

A.1.4 Maintain acceptable personal hygiene and exhibit appropriate dress practices.

A.1.5 Recognize the importance of punctuality and commitment on the job.

A.1.6 Differentiate between ethical and unethical behavior on the job.

A.2 Demonstrate behavior which maintains resident's and/or client's rights:

A.2.1 Provide privacy and maintenance of confidentiality.

A.2.2 Promote the resident's right to make personal choices to accommodate individual needs.

A.2.3 Give assistance in resolving grievances.

A.2.4 Provide needed assistance in giving to and participating in resident and family groups and other activities.

A.2.5 Maintain care and security of resident's personal possessions.

A.2.6 Provide care which maintains the residents free from abuse, mistreatment or neglect and report any instances of such poor care to appropriate facility staff.

A.2.7 Maintain the resident's environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

B. Environmental Needs of the Patient

Key Concepts: Introduces the nurse aide to the need to keep patients safe from injury and infection in the long term care setting. The nurse aide is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

B.1 Apply the basic principles of infection control:

B.1.1 Identify how diseases are transmitted.

B.1.2 Demonstrate handwashing technique.

B.1.3 Perform basic cleaning, disinfecting, and sterilizing tasks.

B.1.4 Demonstrate proper isolation and safety techniques in care of infectious resident.

B.2 Assist with basic emergency procedures:

B.2.1 Follow safety and emergency procedures.

B.2.2 Identify safety measures that prevent accidents to residents.

B.2.3 Recognize signs, when a resident is choking or may have an obstructed airway.

B.2.4 Assist with clearing obstructed airway.

B.2.5 Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

B.2.6 Follow disaster procedures.

B.2.7 Report emergencies accurately and immediately.

B.2.8 Identify potential fire hazards.

B.3 Provide a safe, clean environment.

B.3.1 Identify the resident's need for a clean and comfortable environment.

B.3.2 Report unsafe conditions.

B.3.3 Report pests.

B.3.4 Report nonfunctioning equipment.

B.3.5 Prepare soiled linen for laundry.

B.3.6 Clean and disinfect unit for admission or following discharge.

B.3.7 Arrange furniture and equipment for the resident's convenience.

C. PSYCHOSOCIAL NEEDS OF THE PATIENT

Key Concepts: Focus is placed on the social, emotional, recreational and religious needs of patients in a long term care setting. It describes some of the physical, mental, and emotional changes associated with aging and institutionalization, and presents ways in which the nurse aide may effectively communicate with patients and their families.

Competencies:

C.1 Demonstrates appropriate and effective communication skills.

C.1.1— Demonstrate effective verbal and nonverbal communications in keeping with the nurse aide's role with residents and their families.

C.1.2— Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the licensed nurse.

C.1.3— Document observations using appropriate terms.

C.1.4— Recognize the importance of maintaining the patient's record.

C.1.5— Communicate with residents according to their state of development.

C.2— Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease and related disorders.

C.2.1— Indicate the ways to meet the resident's basic human needs for life and mental well being.

C.2.2— Modify his/her own behavior in response to resident's behavior.

C.2.3— Identify developmental tasks associated with the aging process.

C.2.4— Provide training in, and the opportunity for, self care according to resident's capabilities.

C.2.5— Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

C.2.6— Demonstrate skills supporting age appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity.

C.2.7— Utilize resident's family as a source of emotional support.

C.2.8— Recognize how age, illness and disability affect sexuality.

D. PHYSICAL NEEDS OF THE PATIENT

Key Concepts Presents the basic skills which nurse use in the physical care of patients. nurse aide will learn basic facts about systems and what is needed to promote functioning. The nurse aide will learn provide physical care to patients safe to keep the patient clean, dry comfortable. The nurse aide will also learn to make observations regarding patients and to record and/or report observations. The nurse aide will learn to maintain range of motion while providing physical care to patient. Introduction of the basics of range of motion and its integration into routine personal care activities.

Competencies:

D.1— Apply the principles of basic nutrition in the preparation and serving of meals.

D.1.1— List general principles of basic nutrition.

D.1.2— Read the instructions for special diets.

D.1.3— Serve prepared foods as instructed.

D.1.4— Identify cultural variations in diet.

D.2— Recognize abnormal signs and symptoms of common diseases and conditions. Examples are:

D.2.1— Upper respiratory infection— Report coughing, sneezing, elevated temperatures, etc.

D.2.2— Diabetes— Report excessive thirst, frequent urination, change in urine output and drowsiness, excessive perspiration and headache.

D.2.3— Urinary tract infection— Report frequent urination, burning or pain on urination, change in color of urine, blood or sediment in urine and strong odors.

D.2.4— Cardiovascular conditions— Report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, etc.

D.2.5— Cerebral vascular conditions— Report dizziness, changes in vision such as seeing double, etc., change in blood pressure, numbness in any part of the body, or inability to move arm or leg, etc.

D. 2.6— Skin conditions— Report break in skin, discoloration such as redness, black and blue areas, rash, itching, etc.

D.2.7— Gastrointestinal conditions— Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, constipation. (Continue to list common diseases and conditions based on the population being served.)

D.3— Provide personal care and basic nursing skills as directed by the licensed nurse.

D.3.1— Provide for resident's privacy when providing personal care.

D.3.2— Assist the resident to dress and undress.

D.3.3— Assist the resident with bathing and personal grooming.

D.3.4— Observe and report condition of the skin.

D.3.5— Assist the resident with oral hygiene.

D.3.6— Administer oral hygiene for the unconscious resident.

D.3.7— Demonstrate measures to prevent decubitus, ulcers, i.e., positioning, turning, and applying heel and elbow protectors.

D.3.8— Assist the resident in using the bathroom.

D.3.9— Assist the resident in using a bedside commode, urinal and bedpan.

D.3.10— Demonstrate proper bed making procedures.

D.3.11— Feed residents oral table foods in an appropriate manner.

D.3.12— Distribute nourishment and water.

D.3.13— Accurately measure and record:

a. intake and output

b. height and weight

e. T,P,R

D.3.14— Assist the resident with shaving.

D.3.15— Shampoo and groom hair.

D.3.16 Provide basic care of toenails and fingernails if appropriate.

D.3.17 Assist with catheter care.

D.3.18 Assist the professional nurse with a physical examination.

D.3.19 Apply a nonsterile dressing.

D.3.20 Apply nonsterile compresses and soaks.

D.3.21 Apply cold and/or heat applications.

D.4 Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

D.4.1 Assist the resident in bowel and bladder training.

D.4.2 Assist the resident in activities of daily living and encourage self help activities.

D.4.3 Assist the resident with ambulation aids, i.e., cane, quad cane, walker, crutches, wheelchair and transfer aids, i.e., hydraulic lifts.

D.4.4 Perform range of motion exercise as instructed by the physical therapist or the professional nurse.

D.4.5 Assist in care and use of prosthetic devices.

D.4.6 Assist the resident in proper use of body mechanics.

D.4.7 Assist the resident with dangling, standing and walking.

D.4.8 Demonstrate proper turning and/or positioning both in bed and in a chair.

D.4.9 Demonstrate proper technique of transferring resident from bed to chair.

D.5 One man cardiopulmonary resuscitation (CPR) skills in the checking of conscious and unconscious victims.

D.6 Provide care to resident when death is imminent.

D.6.1 Discuss own feelings and attitude about death.

D.6.2 Explain how culture and religion influence a person's attitude toward death.

D.6.3 Discuss the stages of dying.

D.6.4 Recognize and report the common signs of approaching death.

D.6.5 Provide care (if appropriate) to the resident's body after death.

57.608 INSTRUCTORS

A. Primary instructor As an individual responsible for overall coordination and implementation of nurse aide training program.

QUALIFICATIONS:

1. RN licensure in the State of Delaware.

2. Two (2) years nursing experience in caring for the elderly and/or chronically ill of any age.

3. For instructors without prior teaching experience:

a. Successful completion of a "Train the Trainer"

program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies.

4. Waiver of the Train the Trainer requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer (s) is the individual (s) who provide assistance to primary instructors as resource personnel from the health field.

QUALIFICATIONS:

1. Trainers may include: registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical or occupational therapists, environmental health specialists, etc.

2. One (1) year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. Trainers are to be licensed, registered and/or certified in their field, where applicable.

57.609 TRAINING FOR PRIMARY INSTRUCTORS

The approved instructors will develop into competent trainers, possessing the necessary skills to train nursing assistants to meet the established certification criteria. The trainers will understand the roles and responsibilities associated with training. They will be able to design and implement a training program, assess its value, and modify it as needed. They will recognize the characteristics of adult learners and create a training environment conducive to effective learning.

A. Training course outline shall include:

I. Role of trainer.

II. Communication techniques.

III. Demonstration skills.

IV. Teaching a process.

V. Teaching techniques.

VI. Training techniques.

VII. Developing a formal training plan.

B. Course Management Information

I. Training time will consist of sixteen minimum hours.

II. The instructor must have formal educational preparation or experience with skills of adult learning.

SECTION 57.7 PERSONNEL/ADMINISTRATIVE

57.701 The administrator (s) shall be responsible for complying with the regulations herein contained. In the absence of the administrator, an employee shall be authorized, in writing, to be in charge.

57.702 All administrators of nursing homes must be

licensed by the Board of Examiners of Nursing Home Administrators. Such administrators must be full time (40 hours per week) employees.

57.703— A staff of persons sufficient in number and adequately trained to meet requirements for care shall be employed. In addition to the staff engaged in the direct care and treatment of patients, there must be sufficient personnel to provide basic services; such as: food service, laundry, housekeeping and plant maintenance.

57.704— No employee shall be less than sixteen (16) years of age, unless they have been issued proper working papers.

57.705— The institution shall have written personnel policies and procedures that adequately support sound patient care. Personnel records are to be kept current and available for each employee, and contain sufficient information to support placement in the positions to which assigned.

57.706— Minimum requirements for employee physical examination:

A. Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest xray showing no evidence of active tuberculosis shall satisfy this requirement.

B. A report of this test shall be on file at the facility of employment.

57.707— No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

SECTION 57.8 - SERVICES TO PATIENTS

57.801 - General Services:

A. The skilled care nursing facility shall provide to all patients the care deemed necessary for their comfort, safety, nutritional requirements and general wellbeing.

B. The skilled care nursing facility shall have in effect a written transfer agreement with one (1) or more hospitals which provides the basis for effective working arrangements under which inpatient hospital care, or other hospital services, are available promptly to the facility's patients, when needed.

C. The skilled care nursing facility shall have a written provision for promptly obtaining required laboratory, xray and other diagnostic services. These services may be obtained from other facilities that are approved by the State Board of Health.

57.802 - Medical Services:

A. All persons admitted to an institution (skilled care nursing home) shall be under the care of a licensed physician.

B. All nursing homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians must be posted at all nurse's stations.

C. All orders for medications, treatments, diets, diagnostic services, etc. shall be in writing and signed by the attending physician.

D. All orders shall be renewed and signed by the physician at least every thirty (30) days.

E. A progress note shall be written and signed by the physician on each visit.

SECTION 69.100 - DEFINITIONS

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

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

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

69.104 Department – the Department of Health and Social Services.

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

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

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

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

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

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

69.111 Personal Care Services – those health-related

~~services that include general supervision of, and direct assistance to, individuals in their activities of daily living.]~~

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

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

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

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

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

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

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

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

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

SECTION 69.200 – GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST

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

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

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

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a

passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

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

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware shall be deemed qualified to meet the Department’s requirements based on a current certificate from the jurisdiction where he/she presently practices, documentation of the equivalent of one year of full-time experience as a certified nursing assistant and verification that he/she is in good standing on that jurisdiction’s Registry.

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

69.207 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program **may** be considered as a member of such facility’s staff while undergoing the last 37.5 hours of clinical training at such facility.

SECTION 69.300 - CNA TRAINING PROGRAM REQUIREMENTS

69.301 General

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

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

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

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

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

student to instructor shall not exceed 8:1.

~~E. The RN instructor shall directly supervise students at all times during clinical instruction. Students shall remain in visual contact with the RN instructor in the clinical setting while performing any skills for which they have not yet demonstrated and the program has documented proficiency.~~

~~F. Programs must notify the State's recertification agency in writing when changes to the program or the program's personnel are made.~~

69.302 Equipment

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

- A. Audio/Visual (Overhead projector and/or TV with VCR)
- B. Teaching Mannequin, Adult, for catheter and perineal care
- C. Hospital Bed
- D. Bedpan/Urinal
- E. Bedside commode
- F. Wheelchair
- G. Scale
- H. Overbed Table
- I. Sphygmomanometer
- J. Stethoscope
- K. Resident Gowns
- L. Thermometers, Glass and Electronic
- M. Crutches
- N. Canes (Variety)
- O. Walker
- P. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors.
- Q. Foley Catheter Drainage Bag
- R. Hydraulic Lift
- S. Adaptive eating utensils/equipment

69.303 Curriculum Content

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

A. THE NURSING ASSISTANT ROLE AND FUNCTION

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

State statutes are also reviewed.

Competencies:

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

- a. Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.
- b. Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.
- c. Understand the role of Long Term Care advocates, investigators and surveyors.
- d. Identify the "chain of command" in the organizational structure of the health care agency.
- e. Maintain personal hygiene and exhibit dress practices which meet professional standards.
- f. Recognize the importance of punctuality and commitment to the job.
- g. Differentiate between ethical and unethical behavior on the job.
- h. Understand the role, responsibility and functional limitations of the nursing assistant.

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

- a. Provide privacy and maintenance of confidentiality.
- b. Promote the resident's right to make personal choices to accommodate individual needs.
- c. Give assistance in resolving grievances.
- d. Provide needed assistance in going to and participating in resident and family groups and other activities.
- e. Maintain care and security of resident's personal possessions as per the resident's desires.
- f. Provide care which ensures that the residents are free from abuse, mistreatment, neglect or financial exploitation and report any instances of such poor care to the Division of Long Term Care Residents Protection. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.
- g. Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the resident free from physical and chemical restraints.
- h. Discuss the potential negative outcomes of physical restraints, including side rails.

B. ENVIRONMENTAL NEEDS OF THE RESIDENT

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in

the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

(1) Apply the basic principles of infection control.

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

b. Demonstrate proper hand washing technique.

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

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

(2) Assist with basic emergency procedures.

a. Follow safety and emergency procedures.

b. Identify safety measures that prevent accidents to residents.

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

d. Assist with clearing obstructed airway.

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

f. Follow disaster procedures.

g. Report emergencies accurately and immediately.

h. Identify potential fire hazards.

(3) Provide a safe, clean environment.

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

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

c. Report evidence of pests to appropriate supervisory personnel.

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

e. Prepare soiled linen for laundry.

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

C. PSYCHOSOCIAL NEEDS OF THE RESIDENT

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

Competencies:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Demonstrate appropriate and effective communication skills.

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

b. Observe by using the senses of sight,

hearing, touch and smell to report resident behavior to the licensed nurse.

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

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

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

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

D. PHYSICAL NEEDS OF THE RESIDENT

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

Competencies:

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

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

b. Understand basic physiology of nutrition and hydration.

c. Understand basic physiology of malnutrition and dehydration.

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

- i. compromised skin integrity
- ii. underweight or overweight
- iii. therapeutic or mechanically

altered diet

- iv. poor dental status
- v. drug-nutrient interactions
- vi. acute/chronic disease
- vii. depression or confusion
- viii. decreased appetite

e. Recognize how the aging process affects digestion.

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

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

normal intake.

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

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

j. Incorporate food service principles into meal delivery including:

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

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

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

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

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

l. Demonstrate understanding of how to read menus.

m. Assist residents who are unable to feed themselves.

n. Demonstrate techniques for feeding someone who:

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

thrust

ix. will not open mouth

o. Demonstrate proper positioning of residents at mealtime.

p. Demonstrate skills for feeding residents who:

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

q. Demonstrate positioning techniques for residents who:

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

r. Demonstrate use of assistive devices.
 s. Identify signs and symptoms that require alerting a nurse, including:

i. difficulty swallowing or chewing
 ii. coughing when swallowing

liquids

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

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

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

v. Ensure residents are dressed appropriately.

w. Allow residents to eat at their own pace.

x. Encourage independence and assist as needed.

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

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

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

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

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

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

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

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

d. Cardiovascular conditions – Report shortness of breath, chest pain, blue color to lips, indigestion,

sweating, change in pulse, edema of the feet or legs.

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

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

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

h. Infectious diseases.

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

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

b. Assist the resident to dress and undress.

c. Assist the resident with bathing and personal grooming.

d. Observe and report condition of the skin.

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

f. Administer oral hygiene for the unconscious resident.

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

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

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

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

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

l. Distribute nourishment and water.

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

i. Blood pressure

ii. Height and weight

iii. Temperature, pulse, respiration

n. Assist the resident with shaving.

o. Shampoo and groom hair.

p. Provide basic care of toenails unless medically contraindicated.

q. Provide basic care of fingernails unless medically contraindicated.

r. Demonstrate proper catheter care.

s. Demonstrate proper perineal care.

t. Assist the licensed nurse with a physical examination.

u. Apply a non-sterile dressing properly.

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

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

x. Demonstrate how to properly apply elastic stockings.

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

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

a. Assist the resident in bowel and bladder training.

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

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

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

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

f. Assist in care and use of prosthetic devices.

~~g. Assist the resident in proper use of body mechanics.~~

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

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

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

~~[(6) Demonstrate safety and emergency procedures including proficiency in the Heimlich maneuver.]~~

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

a. Discuss own feelings and attitude about death.

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

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

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

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

SECTION 69.400 – MANDATORY ORIENTATION PERIOD

69.401 - SKILLED AND INTERMEDIATE CARE FACILITIES

A. GENERAL REQUIREMENTS

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

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

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

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

B. ORIENTATION PROGRAM REQUIREMENTS

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

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication (including the facility chain of command) and documentation requirements

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

f. Operation of facility equipment and supplies, including scales, lifts, special beds and tubs.

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

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

(a.) Role and function of the CNA/NA

(b.) Resident rights/abuse reporting

(c.) Safety and body mechanics:

transfer techniques

- (d.) Vital signs
- (e.) Psychosocial needs
- (f.) Facility policies and

procedures

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

- a. Taking and recording vital signs
- b. Measuring and recording height and weight
- c. Handwashing and infection control techniques
- d. Caring for the resident's environment
- e. Bathing and skin care, including foot and nail care
- f. Grooming and mouth care, including denture care
- g. Dressing
- h. Toileting, perineal and catheter care
- i. Assisting with eating and hydration
- j. Proper feeding techniques
- k. Positioning, turning and transfers
- l. Range of motion
- m. Bowel and bladder training
- n. Care and use of prosthetic and orthotic devices
- o. Assisting with ambulation
- p. Measuring intake and output
- q. Use of elastic stockings, heel and ankle protectors
- r. Bedmaking skills

69.402 - ASSISTED LIVING FACILITIES

A. GENERAL REQUIREMENTS

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

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

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

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

B. ORIENTATION

PROGRAM

REQUIREMENTS

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

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication and documentation requirements
- e. Process for reporting emergencies, change of condition and shift report
- f. Operation of facility equipment and supplies, including but not limited to scales, lifts, and wheelchairs.
- g. Review of the plan of care for each assigned resident including:
 - i. ADL/personal care needs
 - ii. Nutrition, hydration and feeding techniques and time schedules
 - iii. Bowel and bladder training programs
 - iv. Infection control procedures
 - v. Safety needs
- h. Role and function of the CNA/NA
- i. Resident rights/abuse reporting
- j. Safety and body mechanics: transfer techniques

- k. Vital signs
 - l. Psychosocial needs
 - m. Facility policies and procedures
- (2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:
- a. Taking and recording vital signs
 - b. Measuring and recording height and weight
 - c. Handwashing and infection control techniques
 - d. Caring for the resident's environment
 - e. Bathing and skin care
 - f. Grooming and mouth care, including denture care
 - g. Dressing
 - h. Toileting, perineal and catheter care
 - i. Assisting with eating and hydration
 - j. Proper feeding techniques
 - k. Positioning, turning and transfers
 - l. Range of motion
 - m. Bowel and bladder training
 - n. Care and use of prosthetic and orthotic devices
 - o. Assisting with ambulation
 - p. Measuring intake and output

q. Use of elastic stockings, heel and ankle protectors

r. Bedmaking skill

69.403 - TEMPORARY AGENCIES

A. GENERAL REQUIREMENTS

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

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

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

B. ORIENTATION PROGRAM REQUIREMENTS

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

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

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

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

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

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

SECTION 69.500 - VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION

69.501 - TRAINING REQUIREMENTS AND COMPETENCY TEST

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

A. Has been a Certified Nursing Assistant for

a minimum of three years, in good standing with no adverse findings entered on the Nurse Aide Registry;

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

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

69.502 - VOLUNTARY SENIOR CNA CURRICULUM

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

A. LEADERSHIP TRAINING AND MENTORING SKILLS

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

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

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

(2) Identify principles of adult learning.

(3) Recognize various learning styles and communication barriers.

(4) Assess learner knowledge.

~~(5) Supervise, evaluate and act as a preceptor for the Nursing Assistant and Certified Nursing Assistant during orientation.~~

(6) Demonstrate effective communication techniques.

(7) Recognize the importance of teamwork.

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

(9) Identify strategies for conflict management.

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

B. DEMENTIA TRAINING

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

Competencies: Demonstrate appropriate skills and

techniques necessary to provide care to residents exhibiting signs and symptoms of dementia.

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

(2) Identify types of dementias.

(3) Discuss methods for managing difficult behavior.

(4) Demonstrate effective communication techniques.

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

C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING

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

Competencies:

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

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

b. Describe signs and symptoms of common disorders.

c. Describe the pathophysiology of common disorders.

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

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

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

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

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

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

c. Identify ways to prevent contractures.

d. Effectively communicate with the Rehabilitation Department.

SECTION 69.600 – SENIOR CNA TRAINING

PROGRAM INSTRUCTORS

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

(1) RN licensure in the State of Delaware.

(2) Three (3) years nursing experience in caring for the elderly or chronically ill of any age.

(3) Instructors shall demonstrate:

a. Successful completion of "Train-the-Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies or:

b. Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.

(4) Waiver of the Train-the-Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

~~**{B. Program Trainer(s) may provide assistance to instructors as resource personnel from the health field. They may provide limited assistance and instruction in the senior certified nursing assistant program. Senior CNAs are excluded from conducting training. Program trainers shall meet the following qualifications:}**~~

(1) Trainers shall be registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.

(2) One (1) year of current experience in caring for the elderly or have equivalent experience.

(3) Trainers shall be licensed or certified in their field, where applicable.

SECTION 69.700 – TRAIN-THE-TRAINER PROGRAM REQUIREMENTS

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

69.701 TRAINING COURSE CONTENT

A. Role of Trainer

B. Communication techniques

C. Demonstration skills

D. Teaching a process

E. Teaching techniques

F. Training techniques

G. Developing a formal training plan

69.702 COURSE MANAGEMENT

INFORMATION

A. Training time shall consist of sixteen minimum hours.

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

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 9110 (16 Del.C. §9110)

**State Of Delaware Rules And Regulations Pertaining To
The Application And Operation Of Managed Care
Organizations (MCO).**

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the Application and Operation of Managed Care Organizations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 91, Section 9110.

On November 1, 2001 (Volume 5, Issue 5), 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 December 3, 2001, or be presented at public hearings on November 26, 2001 and November 29, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the November 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The Application and Operation of Managed Care Organizations (MCO) are

adopted and shall become effective January 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
12.18.2001

Summary Of Evidence**State Of Delaware Rules And Regulations Governing
The Application And Operation Of Managed Care
Organizations (MCO)**

Public hearings were held on November 26, 2001 at 10:00 a.m. in the third floor conference room, Jesse Cooper Building, Federal Street and Water Streets, Dover, Delaware 19903 and 10:00 a.m. on November 29, 2001 in the first floor conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720 before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing the Application and Operation of Managed Care Organizations (MCO). The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Mary Peterson from the Office of Health Facilities Licensing and Certification (OHFLC), Division of Public Health (DPH), made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and ten letters were received commenting on the proposed regulations during the comment period. Those letters were from:

- The State Council for Persons with Disabilities (SCPD)
- AmeriHealth
- ReedSmith on behalf of the Health Insurance Association of America (HIAA)
- Campbell Consulting, INC. on behalf of Coventry Health Care and Mamsi
- Christiana Care Health Plans
- Governor's Advisory Council for Exceptional Citizens
- Medical Society of Delaware Health
- Delaware's American College of Emergency Physicians
- MAMSI
- Sussex Emergency Associates

All public comments and the DHSS (Agency) responses are as follows:

- **Regulation 69.402C**In paragraph 4.b of this section there was a concern that the term "attending physician" needed to more accurately reflect physician making patient decisions in this paragraph. There

was also a concern that Level III trauma center was not reflected in this paragraph.

Agency Response: Language was changed to “treating physician” to be consistent with other statute language. Reflecting Level III trauma center in this paragraph was not deemed to be necessary due to medically necessary emergency health services being a minimal coverage under the definition of “Basic Health Services” (69.106).

- **Regulation 69.402C**In paragraph 5 of this section there was request that the regulation specify qualifications of the MCO approval person and that the person be a physician.

Agency Response: To require this would go beyond the intent of the Patient's Bill of Rights Act and add to the statutory language within that Act.

- **Regulation 69.402C**In paragraph 5 of this section concern was expressed about the requirement to seek approval from the MCO for poststabilization care and the short timeframe for the MCO response.

Agency Response: This paragraph cites the Patient's Bill of Rights Act statute and requirements. Therefore there is no regulatory authority to change it.

- **Regulation 69.107 & 69.404**Concern was expressed about the Department's authority to utilize the definition of “carrier” and regulate said entities in these regulations.

Agency Response: The Department has been advised by legal counsel that it has statutory authority to use such a definition and regulate said entities.

- **Regulation 69.110 (Clinical Trials)**Concern was expressed that parts D and E of this section are too attenuated from stricter standards in parts A, B and C, which require a direct link National Institutes of Health, Department of Veteran's Affairs or the Department of Defense.

Agency Response: This paragraph is in line with the Patient's Bill of Rights Act statute and requirements set therein. Therefore there is no regulatory authority to change it.

- **Regulation 69.141 (Standing Referral)** Concerned was expressed that the definition of standing referral was too broad and could be interpreted to require MCOs to allow standing referrals for any type of condition.

Agency Response: In addition to the definition offered in Section 69.141, the regulation cites additional rules in regards to standing referrals in Section 69.504 as specified by the Patient's Bill of Rights Act. To put limitations on or extend the conditions for standing referrals as set forth in the statute is beyond the regulatory authority.

- **Regulation 69.402**In A.2 of this section concern was expressed about the wording, “within a reasonable period of time” and who would determine that time, the member, the provider, the MCO, the Department or the courts.

Agency Response: In keeping with the intent of the Patient's Bill of Rights Act, identical language, “within a reasonable period of time” was used in paragraph 69.402A.2 of the regulations. Further definition of “within a reasonable period of time” can only be done on a case-by-case basis between requesting network provider and MCO.

- **Regulation 69.402**There was concern expressed about the statements in this section requiring MCOs to prohibit balance billing by nonparticipating or non-network providers.

Agency Response: Legal counsel has advised the Department that the requirements prohibiting balance billing as set forth in these regulations are in accordance with the Patient's Bill of Rights Act.

- **Regulation 69.402**There was a concern expressed about paragraph C.2, of this section that provides if an MCO and provider cannot agree upon an appropriate charge, the provider may appeal to the Insurance Commissioner for arbitration. A suggestion that the Department require payment and acceptance by non-network providers of emergency services of the UCR (usual, customary and reasonable) charge for these services.

Agency Response: Although this comment has merit, it is beyond the scope of this regulation to alter what is required by the Delaware Patient's Bill of Rights Act.

- **Regulation 69.402**In paragraph C.5. of this section, concern was expressed that the one-hour standard is neither reasonable nor in accordance with industry practice, and could have the inadvertent result of an increase of denials for continued coverage in the non-network facility.

Agency Response: This one-hour timeframe was established by the Delaware Patient's Bill of Rights Act. The regulatory authority cannot deviate from this

requirement in these regulations.

- **Regulation 69.106**In paragraph J.1 of this section, it was noted that "covered person" was not included as was included in the Patient's Bill of Rights Act.

Agency Response: The words "covered person" was inserted into paragraph 69.106J.1 as suggested.

- **Regulation 69.102A** recommendation was made to add the concept of denial of certification to the regulation definition of "Appeal" in this section.

Agency Response: The concept of "denial of certification" is not applicable to the definition of appeal as used in these regulations. However, it is applicable to the Department of Insurance as indicated in the Patient's Bill of Rights Act.

- **Regulation 69.107**The suggestion was made to include MCO under the definition of "carrier."

Agency Response: The definition of "carrier" as used in the regulations is very broad. By stating, "any entity that provides health insurance in this State," includes MCOs.

- **Regulation 69.110BA** concern was expressed that this sentence under the "Clinic Trials" definition in this section was omitted from the regulation: "This includes but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology program."

Agency Response: This sentence was inadvertently omitted from this section and will be added back in to be in line with the Patient's Bill of Rights Act.

- **Regulation 69.402A** suggestion was made to add the words, "of an enrollee" to first sentence of paragraph A.2., of this section.

Agency Response: This paragraph was a direct quote from the Patient's Bill of Rights, thus to add information to this paragraph is beyond the Department's regulatory authority.

- **Regulation 69.402**In paragraph B.3 of this section, a suggestion was made to add the words, "or within a reasonable time" to the first sentence.

Agency Response: These words were actually added in accordance with the Patient's Bill of Rights to paragraph 69.402A.2.

- **Regulation 69.504BA** comment was received alerting us that within this section which describes standing referrals, a sentence was omitted from the regulations that was in the Patient's Bill of Rights. "Such approval shall not be withheld absent a decision by a qualified physician that the treatment sought in the treatment plan is not reasonably related to the appropriate treatment of the insured's condition."

Agency Response: It was determined that this sentence was inadvertently omitted from the regulation, paragraph 69.504B and will be added back in to reflect wording in the Patient's Bill of Rights Act.

- **Regulation 69.107A** concern was expressed that the definition of "carrier" as used in the regulation be amended to clearly exclude health service corporations or Medicaid MCOs, such as Christiana Care's health plan, First State plan. In the event the definition cannot be amended, at a minimum, the internal and external review requirements of both the MCO regulations and the Department of Insurance Regulation 11 must be reconciled.

Agency Response: The definition of "carrier" used in this regulation is in accordance with the Patient's Bill of Rights. Any amendment to that definition is beyond the Department's regulatory authority. DHSS has worked closely and will continue to work closely on this dual regulatory process.

- **Regulation 69.404**In reference to paragraph I of this section, costs associated with an external IURO review are to be borne by the carrier. The questions asked were "What costs are included in the IURO review and do these costs include legal counsel for the covered person?"

Agency Response: The costs are the actual costs charged by the IURO to do an external review.

- **Regulation 69.404**In accordance with paragraph E.10., of this section, "the decision of the IURO is binding upon the carrier." Questions were asked to clarify this point and does this affect a carrier's right to appeal to the Delaware Superior Court in accordance with 16 Del.C., Section 9119(a)(3).

Agency Response: The decision is binding, meaning the carrier must take action on the IURO decision. This in no way impacts the right of the carrier to appeal to the Delaware Superior Court.

- **Regulation 69.106**In reference to paragraph J.3.b), of this section a suggestion was made to insert language in this paragraph to clarify that coverage for pharmacy services are also excluded when coverage is not medically necessary.

Agency Response: Language used in paragraph 69.106J.3.b) came directly from the Patient's Bill of Rights Act. It is beyond the regulatory authority to add to this paragraph.

- **Regulation 69.402A** suggestion was made to strike language in paragraph A.1.c) of this section, that refers to geographic distance or appointment times as it was not provided for in the Patient's Bill of Rights Act.

Agency Response: While the references to geographic distances and appointment times in this section were not part of the Patient's Bill of Rights, it was part of the original regulatory language of that paragraph. The original paragraph was re-structured to include provisions of the Patient's Bill of Rights.

- **Regulation 69.402A** suggestion was received that DHSS insert a clarifying statement in paragraph A.1.c) of this section that states, "the MCO shall cover nonparticipating providers for services covered under the terms and conditions of the policy . . ." This will make it clear that MCOs are not required to pay for nonparticipating providers for services that would not have been covered if performed by a network provider.

Agency Response: This is covered under the definition of "Covered Health Services," Section 69.112.

- **Regulation 69.402**In reference to paragraph C.5 of this section a suggestion was submitted to add to this section a statement clarifying that this process is only appropriate "if a network provider is not available to provide the post-stabilization services."

Agency Response: The language used in paragraph 69.402C.5 was directly quoted from the Patient's Bill of Rights Act. To alter that is beyond the Department's regulatory authority.

- **Regulation 69.402C**In reference to this section titled, Emergency and Urgent Care Services, a general suggestion was made to specifically define medical screening examination and specifically clarify what is to be covered.

Agency Response: To define medical screening in this regulation would be too limiting, and needs to remain flexible to accommodate the various illnesses, injuries, etc, that are presented in an emergency room. This is more appropriately determined by the treating physician.

- **Regulation 69.106**In reference to paragraph J.1., Pharmacy services, the question was asked, "What is the meaning of chronic or disabling condition?"

Agency Response: While the Patient's Bill of Rights Act provided details for this section of the regulation, it did not provide a definition for chronic or disabling condition. It would be limiting and inappropriate for the Department to attempt to define each chronic or disabling condition in this current regulation.

- **Regulation 69.404**In reference to prohibiting balance billing the following comment was received: **By taking away the ability for the physician to bill for the difference (balance bill), these regulations may actually limit access to care. Out of network physicians, who have already chosen not to contract with an insurance company, will now be forced into the time consuming negotiating process for each referral they receive from a company with which they have no contractual relationship. Inevitably, forcing delays in receiving necessary medical care. In addition, under the proposed regulations, insurance companies will offer discounted network fees to out of network physicians forcing many to turn referrals away, thus restricting the access to care that would otherwise make the comprehensive patient's right legislation.**

Agency Response: Legal counsel has advised the Department that the Patient's Bill of Rights Act provides authority to prohibit balance billing within these regulations. While it is assumed the provisions of this Act will help consumers, the Department acknowledges there may be some negative effects.

- **Regulation 69.106JA** comment was received that pointed out a conflict in this section titled, Pharmacy services between paragraphs 1.b) and 3.a). Paragraph 1.b) refers to, "1. Coverage for any outpatient drug prescribed to treat a covered chronic, disabling, or life threatening illness provided that the drug: b) is recognized for treatment of the indication for which the drug is prescribed in an approved prescription drug reference compendium approved by the Commissioner or a substantially accepted peer reviewed medical literature," and paragraph 3.a) refers to, "3. Coverage does not include: a) experi-

mental drugs not otherwise approved for the proposed use or indication by the Food and Drug Administration."

Agency Response: After careful review, it was determined that the language in the regulation is identical to the Patient's Bill of Rights Act. The Department acknowledges a potential conflict but has no authority to change the law.

- **Regulation 69.505A**In reference to Clinical Trials, paragraph 2. of this section, specifically states, "2. The trial must not be designed specifically to test toxicity or disease pathophysiology." The comment stated that this is in fact the typical intent of clinical trials. At the same time, paragraph 5 states, "5. The principal purpose of the trial is to test whether an intervention potentially improves the participant's health outcomes." This is in opposition to the fundamental purpose of a clinical trial. Patients enter into trials knowing that the main intent is not to treat them, but future patients with similar disorders.

Agency Response: After careful review of this section it was determined that the word "specifically" in paragraph 69.505A.2. should actually have been "exclusively" as reflected in the Patient's Bill of Rights Act.

- **A comment was received that recommended including the definition of "Health plan" as reflected in the Patient's Bill of Rights Act, in the final regulation. This will make it clear that those specialty types of insurance excluded from the definition of carrier by the Patient's Bill of Rights Act's reference to 18 Del.C. 3343 (a)(2) are also excluded in any cases where the definition of carrier is applicable.**

Agency Response: The Department acknowledges this omission and has included the definition of "Health plan" in the final regulations.

- **A general statement was received that asserted that the statute may not be effectuated and enforced until the regulations are finally adopted.**

Agency Response: This comment is outside of the rule-making procedure, which is intended to gather comment in the substance of the proposed regulations.

In addition to changes recommended in this Summary of Evidence, minor grammatical corrections were made to the draft regulations.

The public comment period was open from November 1, 2001 to December 3, 2001.

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.

PART ONE

SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services (DHSS) to the Director of the Division of Public Health (DPH).

SECTION 69.1 DEFINITIONS

69.101 **"Administrator/Chief Executive Officer"**: the individual employed to manage and direct the activities of the MCO.

69.102 **"Appeal"**: a request to reexamine or review an adverse determination made by an MCO that denies, reduces or terminates health care benefits.

69.103 **"Appellant"**: an enrollee (69.119) or other authorized representative (69.104) of the enrollee who may appeal an MCO decision.

69.104 **"Authorized Representative"**: an individual who the appellant willingly acknowledges to represent her/his interests during the appeal process. An MCO may require the appellant to submit written verification of her/his consent to be represented. If an enrollee has been determined by a physician to be incapable of assigning the right of representation, the appeal may be filed by a family member or a legal representative.

69.105 **"Balance Billing"**: a health care provider's demand that a patient pay a greater amount for a given service than the amount the individual's insurer, managed care organization, or health service corporation has paid or will pay for the service.

69.106 **"Basic Health Services"**: a range of services, including at least the following:

A. Physician services, including consultant and referral services, by a physician licensed by the State of Delaware.

B. At least three hundred sixty-five (365) days of inpatient hospital services.

C. Medically necessary emergency health services.

D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.

E. Diagnostic laboratory services.

F. Diagnostic and therapeutic radiological services.

G. Preventive health services including at least the provision of physical examinations, papanicolaou (PAP)

smears, immunizations, mammograms and childrens' eye examinations (through age 17) conducted to determine the need for vision correction and performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services, including education in the appropriate use of health services, and education in the contribution each enrollee can make to the maintenance of the enrollee's own health. This information shall be understandable and not misleading.

I. Emergency out-of-area and out-of-network coverage.

J. Pharmacy services:

1. Coverage for any outpatient drug prescribed to treat a [covered person for a] covered chronic, disabling, or life-threatening illness provided that the drug:

a) has been approved by the Food and Drug Administration (FDA) for at least one indication; and,

b) is recognized for treatment of the indication for which the drug is prescribed in an approved prescription drug reference compendium approved by the Commissioner or a substantially accepted peer reviewed medical literature.

2. Coverage of a drug shall include coverage of medically necessary services associated with the administration of the drug.

3. Coverage does not include:

a) experimental drugs not otherwise approved for the proposed use or indication by the Food and Drug Administration, or

b) any disease, condition, service, or treatment that is excluded from coverage under the policy.

69.107 "Carrier": any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation

69.106 108 "Certificate of Authority": the authorization by the Department of Health and Social Services to operate the MCO. This certificate shall be deemed to be a license to operate such an Organization.

69.107 109 "Certified Managed Care Organization": a managed care organization which has been issued a Certificate of Authority under 16 Del. C. and either a Certificate of Authority from the Department of Insurance (DOI) under the relevant provisions of Title 18 or a statement from the DOI that the DOI Certificate of Authority is not required.

69.110 "Clinical Trials": clinical trials that are approved or funded by use of the following entities:

A. One of the National Institutes of Health (NIH);

B. An NIH Cooperative group ~~for~~[or] center

which is a formal network of facilities that collaborate ~~for~~[on] research projects and have an established NIH approval peer review program operating within the group]. This includes, but is not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology program.];

C. The federal Departments of Veterans' Affairs or Defense;

D. An institutional review board of an institution in this State that has a multiple project assurance contract approval by the office of protection for the Research Risks of the NIH; and

E. A qualified research entity that meets the criteria for NIH Center Support grant eligibility.

69.108 111 "Commissioner": the Insurance Commissioner of Delaware.

69.109 112 "Covered Health Services": services that are included in the enrollee's health care contract with the insurer.

69.110 113 "Covered Person": see "Enrollee".

69.111 114 "Department": the Delaware Department of Health and Social Services.

69.112 115 "Department of Insurance Certificate of Authority": the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.

69.113 116 "Disputable Need": an appeal classification for adverse determinations that were made based upon identification of treatment as cosmetic or experimental.

69.114 117 "Emergency Care": health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.115 118 "Emergency Medical Condition": a medical or behavioral condition, the onset of which is sudden, that manifest s ing itself by acute symptoms of sufficient severity (including, but not limited to, severe pain,) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

A. Placing the health of the individual afflicted with such condition (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, or in the case of a behavioral condition, placing the health of such person or others in serious jeopardy;

B. Serious impairment to bodily functions; or

C. Serious impairment or dysfunction of any bodily organ or part; or-

D. Serious disfigurement of such person.

69.116 119 "Enrollee": an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility

to provide to such person(s) coverage for basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.117 ~~120~~ **“Geographical area”**: the stated primary geographical area served by an MCO. The primary area served shall be a radius of not more than twenty (20) miles or more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.118 ~~121~~ **“Health Care Contract”**: any agreement between an MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.119 ~~122~~ **“Health Care Professional”**: individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.120 ~~123~~ **“Health Care Services”**: any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

[69.124 **“Health plan” shall have the same meaning as ‘health benefit plan’ as defined in 18 Del.C. §3343(a)(2).**]

69.121 ~~[124 125]~~ **“Independent Health Care Appeals Program”**: a program within the Department of Health and Social Services which establishes a final step in the appeal process and provides for a review by an Independent Utilization Review Organization (69.126).

69.122 ~~[125 126]~~ **“Independent Practice Association” (IPA)**: an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.123 ~~[126 127]~~ **“Independent Utilization Review Organization (IURO)”**: an entity that conducts independent external reviews of an MCO’s determinations resulting in a denial, termination, or other limitation of covered health care services.

69.124 ~~[127 128]~~ **“Insurance Department”**: the Delaware Department of Insurance.

69.125 ~~[128 129]~~ **“Intermediary”**: a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.126 ~~[129 130]~~ **“Level 1 Trauma Center”**: a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.127 ~~[130 131]~~ **“Level 2 Trauma Center”**: a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases

which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.128 ~~[131 132]~~ **“Managed Care Organization (MCO)”**: a public or private organization, organized under the laws of any state, which:

A. Provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.106;

B. Is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis; and

C. Provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

69.129 ~~[132 133]~~ **“Medical Necessity”**: providing of covered health services (69.112) or products that a prudent physician would provide to a patient for the purpose of diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is:

A. In accordance with generally accepted standards of medical practice;

B. Consistent with the symptoms or treatment of the condition; and

C. Not solely for anyone’s convenience.

69.130 ~~[133 134]~~ **“Network”**: the participating providers delivering services to enrollees in a managed care plan.

69.131 ~~[134 135]~~ **“Office”**: any facility where enrollees receive primary care or other health services.

69.132 ~~[135 136]~~ **“Out of Area Coverage”**: health care services provided outside the organization’s geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.133 ~~[136 137]~~ **“Participating Provider”**: a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.134 ~~[137 138]~~ **“Premium”**: payment(s) called for in the health care contract which must be:

A. Paid or arranged for by, or on behalf of, the enrollee before health care services are rendered by the MCO;

B. Paid on a periodic basis without regard to the date on which health services are rendered; and

C. With respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.135 ~~[138 139]~~ **“Primary Care Physician (PCP)”**: a

participating health care physician chosen by the enrollee and designated by the MCO to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the MCO to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.136 [139 140] **“Provider”**: a health care professional or facility.

69.137 [140 141] **“Staff Model MCO”**: an MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.141 [142] **“Standing Referral”**: a treatment period during which a health care specialist shall be permitted to treat an enrollee without further referral from the enrollee’s primary care physician and during which this specialist may authorize further referrals, procedures, tests, and other medical services which the enrollee’s primary care physician would otherwise be permitted to provide or authorize.

69.138 [142 143] **“Supplemental Payment”**: any payment not incorporated in the premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.139 [143 144] **“Supplementary Health Services”**: any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

- A. Long term care;
- B. Vision care not included in basic health services;
- C. Dental services;
- D. Behavioral health services;
- E. Long term physical medicine or rehabilitative services;
- F. Additional pharmacy services;
- G. Infertility services; and
- H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.140 [144 145] **“Tertiary Services”**: health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants, etc.).

69.141 [145 146] **“Utilization Review”**: a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, efficacy, and/or efficiency of, health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

PART TWO

SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate an MCO in the State of Delaware or enter this State for purposes of enrolling persons in an MCO without obtaining a “Certificate of Authority” under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a Certificate of Authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (~~Appendix A~~) and shall set forth or be accompanied by the following:

A. Organizational Information

1. Brief history and description of current status of applicant, including an organization chart;
2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, or other appropriate documents and amendments thereto;
3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant. Include all members of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association; and
4. A list of positions and names for all management personnel.

B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:
 - a) a listing of basic health services (69.106) and supplementary health services (69.143) with utilization projections; and
 - b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); and all special policies or provisions designed to improve accessibility of services.
2. A sample of the contract, agreement or arrangement between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. Any contract, agreement or arrangement which deviates substantially from the sample

must be submitted to the OHFLC as executed. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals must be submitted;

3. A list of participating physicians by specialty and by geographic area as well as a list of other health care personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and materials;

6. The arrangements for assuring continuity of care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the applicant for measuring or assessing the satisfaction of enrollees; and,

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

- a) appointment scheduling guidelines;
- b) standards for office wait times; and
- c) standards for provider response to

urgent and emergent issues during and after business hours.

C. Enrollment and Marketing

1. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;

2. Identification of all information to be released to enrollees or prospective enrollees;

3. A description of the proposed marketing

techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;

4. Enrollee handbooks proposed for use. A finalized enrollee handbook shall also be submitted upon completion; and,

5. Procedures for notifying enrollees of plan changes.

D. Financial

1. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4).

69.203 Within sixty (60) days after receipt of a complete application for issuance of Certificate of Authority, the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. Demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. Made arrangements for an ongoing health care quality assurance program;

C. The capability to comply with all applicable rules and regulations promulgated by the Department;

D. The capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and,

E. For staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a Certificate of Authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant, in writing, of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No Certificate of Authority shall be issued without a Certificate of Authority from the DOI under the relevant provisions of Title 18 or a statement from the DOI that the DOI Certificate of Authority is not required.

If a deposit is required, it shall be continuously maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give notice thereof to the Department and the Department shall revoke its Certificate of Authority to the MCO.

PART THREE

SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual concerning: enrollee ~~services~~ rights and responsibilities; policies and procedures relating to health plan coverage; complaint and appeal criteria; and, any other manual upon request. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include any changes in the information originally submitted or required under 69.2, 69.404I, 69.405B and 69.705. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4)

69.303 Contract Provisions

A. Every contract between an MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of an MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer

medically necessary."

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between an MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

69.304 Amendments or Revisions of Contracts

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of an MCO.

69.305 The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six (6) weeks prior to the termination or withdrawal from the MCO's provider network of an enrollee's primary care physician except in cases where termination was due to unsafe health care practice; and,

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

69.306 The Medical Director and physicians designated to act on his behalf shall be Delaware licensed physicians.

69.307 Prohibited Practices

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of her/his health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of her/his health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons other than an enrollee's health including without limitation, nonpayment of premiums or fraud by the enrollee.

C. An MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health care providers from giving patients information regarding

diagnoses, prognoses and treatment options.

D. An MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such plan or, if earlier, the first day of the waiting period for such enrollment.

E. An MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. An MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. An MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between an MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

69.308 An MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

69.309 An MCO shall notify participating providers of the providers' responsibilities with respect to the MCO's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

69.310 The rights and responsibilities under a contract between an MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

69.311 An MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

69.312 An MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance,

co-payments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

69.313 An MCO shall establish procedures for resolution of administrative, payment or other disputes between providers and the MCO.

69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department in writing, on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

69.315 Changes in Ownership Interests

Certificates of Authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any Certificate of Authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any Certificate of Authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the Certificate of Authority at issue.

69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO, but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the course of such examinations, the Department may administer oaths to and examine the officers and agents of the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and,

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

69.317 Violations/Penalties

A. The Department may revoke or suspend a

Certificate of Authority issued to an MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure an MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its Certificate of Authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or,

4. The continued operation of the MCO would be detrimental to the health or well being of its enrollees needing services.

B. The Department may issue an order directing a health carrier or a representative of a health carrier to cease and desist from engaging in any act or practice in violation of the provisions of this act. If the Secretary elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order, the Secretary may institute a proceeding to obtain injunctive relief.

1. Within twenty (20) calendar days after service of the cease and desist order, the health carrier may request a hearing on the question of whether acts or practices in violation of this act have occurred. This appeal shall not stay the cease and desist order.

C. Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

D. Suspension of a Certificate of Authority pursuant to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

E. In the event that the Department decides to revoke the Certificate of Authority of an MCO the decision

so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any case, after the Department has issued a decision revoking a Certificate of Authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

F. The Department may require a corrective action plan from an MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

G. Civil Monetary Penalty (CMP)

1. A carrier that violates any provision of this act shall be liable to a civil penalty of not less than two hundred fifty dollars (\$250.00) and not greater than ten thousand dollars (\$10,000.00) for each day that the carrier is in violation of the act.

2. The Department shall give ten (10) calendar days written notice to the health carrier of its intent to levy such a penalty.

3. The health carrier may, within such 10-day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

69.318 Fees

Every MCO shall pay ~~the following fees in accordance with 16 Del. C., Ch. 91, Sec. 9111.~~ :

~~A. For filing an application for a Certificate of Authority — three hundred and seventy five dollars (\$375.00).~~

~~B. For filing an annual report — two hundred and fifty dollars (\$250.00).~~

69.319 Confidentiality of Health Information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or

information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department, in writing, by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

PART FOUR

SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS

69.401 Health Care Professional Credentialing

A. General Responsibilities, an MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health

care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and,

6. Keep confidential all information obtained in the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require an MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401 A. and 69.401 D. Selection criteria shall not be established in a manner:

1. That would allow an MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or,

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics-gynecology or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, an MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) current license, certification, or registration to render health care in Delaware and history of same;

b) current level of professional liability coverage, if applicable;

c) status of hospital privileges, if applicable;

d) specialty board certification status, if applicable; and,

e) current Drug Enforcement Agency (DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) the health care professional's record from the National Practitioner Data Bank; and,

b) the health care professional's malpractice history.

3. Not less than every three (3) years obtain primary verification of a participating health care professional's:

a) current license or certification to render health care in Delaware;

b) current level of professional liability coverage, if applicable;

c) status of hospital privileges, if applicable;

d) current DEA registration certificate, if applicable; and,

e) specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

F. Health Care Professionals Right to Review Credentialing Verification Information

1. An MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) an MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) a health care professional shall have the right to correct any erroneous information. The MCO

shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health care professional's credentialing verification application if the health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

69.402 Provider Network Adequacy

A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) a sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven (7) days a week, twenty-four (24) hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) a sufficient number of licensed medical specialists available to MCO enrollees to provide medically necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and,

c) a sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. ~~The MCO shall cover nonparticipating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee.~~ If a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee, the MCO shall cover nonparticipating providers, and shall prohibit balance billing.

2. The MCO shall allow referral to a non-network provider, upon the request of a network provider, when medically necessary covered services are not available through network providers, or the network providers are not available within a reasonable period of time. The MCO shall make acceptable service arrangements with the provider and enrollee, and shall prohibit balance billing.

B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The

network of providers shall include:

a) at least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

b) surgical facilities including hospitals licensed ambulatory surgical facilities, and/or physicians surgical practices. Such services shall be available in each service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

c) the MCO shall have a policy assuring access to the following specialized services, as determined to be medically necessary:

- (1) at least one hospital providing regional perinatal services;
- (2) a hospital offering pediatric intensive care services;
- (3) a hospital offering neonatal intensive care services;
- (4) therapeutic radiation provider;
- (5) magnetic resonance imaging center;
- (6) diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;
- (7) emergency mental health service;
- (8) diagnostic cardiac catheterization services in a hospital;
- (9) specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;
- (10) clinical Laboratory certified under CLIA; and,
- (11) certified renal dialysis provider.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

2. If offered by the plan, the MCO shall have a policy assuring access to the following specialized services, as determined to be medically necessary:

- a) a licensed long term care facility with skilled nursing beds;
- b) residential substance abuse treatment center;
- c) inpatient psychiatric services for adults and children;
- d) short term care facility for involuntary psychiatric admissions;
- e) outpatient therapy providers for mental health and substance abuse conditions;
- f) home health agency licensed by the Department;

g) hospice program licensed by the Department; and,

h) pharmacy services.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

3. The MCO shall make acceptable service arrangements with the provider and enrollee, ~~at no extra cost to the enrollee~~ and shall prohibit balance billing, if the appropriate level of service is not available within the geographical service area. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a layperson.

2. When emergency care services are performed by non-network providers, the MCO shall make acceptable service arrangements with the provider and enrollee, and shall prohibit balance billing. In those cases where the MCO and the provider cannot agree upon the appropriate charge, the provider may appeal to the Commissioner for arbitration.

3. Enrollees shall have access to emergency care (69.117) twenty-four (24) hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition (69.118) existed.

4. Emergency and urgent care services shall include but are not limited to:

a) medical and psychiatric care, which shall be available twenty-four (24) hours a day, seven (7) days a week;

b) trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable, no longer requires critical care, and can be safely transferred to another facility, in the judgment of the ~~attending~~**[treating]** physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;

c) out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;

d) hospital services for emergency care; and,

e) upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

5. When an enrollee has received emergency care from a non-network provider and is stabilized, the enrollee or the provider must request approval from the MCO for continued post-stabilization care by a non-network provider. The MCO is required to approve or disapprove coverage of post-stabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of services and the condition of the enrollee, but in no case to exceed one hour from the time of the request.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request. Updates due to provider changes must be provided at least quarterly.

69.403 Utilization Management

A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

- a) scope of utilization management activities;
- b) procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;
- c) mechanisms to detect under utilization;
- d) clinical review criteria and protocols used in decision-making;
- e) mechanisms to ensure consistent application of review criteria and uniform decisions;
- f) system for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and,
- g) a mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds for utilization management, be readily available, upon request, to affected

providers and enrollees. All materials including internal or proprietary materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for an MCO shall not contain incentives, direct or indirect, for these persons to make inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

B. Utilization Management Staff Availability

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five (5) day, forty (40) hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five (5) day, forty (40) hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or her/his authorized on call back up provider is unavailable.

C. Utilization Management Determinations

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. An MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

69.404 Appeal Procedure

A. Scope of Appeal

The following appeal procedure shall be

utilized when the subject of the appeal is based upon medical necessity (69.132) or disputable need (69.116). For all other appeals, the MCO carrier shall develop and implement written policies and procedures that require a review process and a written response to the appellant.

B. Appeal Procedure

1. Information Disclosure

An MCO carrier shall provide enrollees with a written explanation of the appeal process upon enrollment, annually, upon request and each time the appeal process is substantially changed. An MCO carrier shall also provide participating providers with a written explanation of the appeal process, upon initial participation with the MCO's carrier network, upon request and each time the appeal process is substantially changed.

2. Stages of Appeal Process

a) an MCO carrier shall establish an appeal process for appellants for review of coverage determinations based on medical necessity (69.132) or disputable need (69.116). The appeal process shall consist of the following stages: an internal review by the MCO carrier ("Stage 1 Appeal"), a second subsequent internal review by the MCO carrier ("Stage 2 Appeal") and an external review ("Stage 3 Appeal").

b) each stage of the appeal process shall provide for expedited review that shall not exceed seventy-two (72) hours.

(1) in the event that the subject of the appeal concerns an imminent, emergent, or serious threat to the appellant each stage (1, 2, and 3) of the appeal process may take seventy-two (72) hours each.

(2) in the event that the subject of the appeal concerns an emergency medical condition (69.118), both stages of internal review (stage 1 and 2) must be concluded within a total of seventy-two (72) hours. Stage 3 must be completed within an additional seventy-two (72) hours.

3. Petition for External Review form

All MCOs carriers shall complete a DHSS approved form and forward it to the Department to initiate the Independent Health Care Appeals Program.

4. Waiver of Internal Review Process

In the event that the MCO carrier fails to comply with any of the deadlines for completion of the Stage 1 or 2 appeals, or in the event that the MCO carrier for any reason ~~expressly~~ waives its rights to an internal review of any appeal, then the appellant shall be relieved of her/his obligation to complete the MCO carrier internal review process, and at the appellant's option, may proceed directly to the Stage 3 appeal process.

5. Appellant Rights.

a) an MCO carrier shall not disenroll, terminate or in any way penalize an enrollee who exercises the right to appeal solely on the basis of filing the appeal.

b) MCO Carrier Assistance

(1) i. upon the initiation of an appeal, an MCO carrier shall notify an appellant of the right to have a staff member appointed to assist her/him with understanding the appeal process. Such assistance shall be available during the appeal process.

(2) ii. an appellant may request such assistance at any stage of the appeal process.

(3) iii. upon such request, an MCO carrier shall appoint a member of its staff who has had no prior direct involvement in the case to assist the appellant.

c) after an adverse determination, an appellant shall have the right to discuss a coverage determination with the medical director, or physician designee, of the MCO carrier who made the coverage determination.

6. MCO Carrier Records

An MCO carrier shall maintain written or electronic records to document all appeals received. For each appeal an MCO carrier shall maintain, at a minimum, the following information:

- a) a general description of the reason for the appeal;
- b) date received;
- c) date of each review;
- d) resolution at each stage of appeal;
- e) date of resolution at each stage; and,
- f) name and plan identification number of the appellant for whom the appeal was filed.

7. Reporting

An MCO carrier shall submit the following information to the Department within thirty (30) days after the close of each calendar quarter:

- a) the total number appeals (69.102) filed.
- b) the number of Stage 1 appeals. This shall include only those appeals based upon medical necessity (69.132) and/or disputable need (69.116).
- c) the number of Stage 1 appeals upheld.
- d) the number of Stage 1 appeals overturned.
- e) the number of Stage 2 appeals. This shall include only those appeals based upon medical necessity (69.132) and/or disputable need (69.116).
- f) the number of Stage 2 appeals upheld.
- g) the number of Stage 2 appeals overturned.
- h) the number of petitions made to the Independent Health Care Appeals Program.

C. Stage 1 Appeal Procedure

1. Procedure

An MCO carrier shall establish and maintain an internal appeal procedure in which an appellant, who is dissatisfied with a coverage determination by the MCO carrier, that is based on medical necessity or

disputable need, shall have the opportunity to appeal the determination. This appeal is made to the MCO carrier who will then assign the medical director and/or a physician designee, who has had no prior direct involvement with the appellant's case, to conduct the review.

2. Timeframes

A Stage 1 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than five (5) business days after receipt of the appeal. In no event shall appeals that involve an imminent, emergent, or serious threat to the health of the appellant exceed seventy-two (72) hours.

3. Notice of Determination

An MCO carrier shall provide notice of the Stage 1 appeal determination to the appellant within five business days of receipt of the appeal. If such notice is provided verbally to the appellant, the MCO carrier shall provide written notice of the determination to the appellant within five (5) business days of the verbal notice. In the event that the adverse determination is upheld, the written notice shall include the reason for the determination, an explanation of the appellant's right to proceed to a Stage 2 appeal and a review of the entire appeals process. This information shall include specific contact information (address and phone number) that is appropriate for each appeal stage.

D. Stage 2 Appeal Procedure

1. An MCO carrier shall establish and maintain an internal appeal procedure in which an appellant who is dissatisfied with a Stage 1 appeal determination by an MCO carrier shall have the opportunity to appeal the determination to the MCO carrier. A panel, selected by the MCO carrier, shall consist of at least two (2) physicians and/or other health care professionals having no direct involvement with the appellant's case prior to this review, one of who should be in the same or similar specialty that typically manages the care under review. If the same or similar physician/health care professional is not a member of the panel, such physician/health care professional must consult on the health care service at issue and report such consultation in writing to the panel for consideration.

2. Written Notice of Meeting

An MCO carrier shall acknowledge receipt of all Stage 2 appeals in writing to the appellant. This acknowledgement shall include the place, date and time of the Stage 2 appeal meeting and shall give the appellant at least fifteen (15) calendar days notice of the appeal meeting. The appellant may request a change in the meeting schedule to facilitate attendance.

3. Appeal Meeting

The MCO carrier shall hold the Stage 2 appeal meeting during regular business hours at a location reasonably accessible to the appellant. If a face-to-face meeting is not practical for geographic reasons, the MCO

carrier shall offer the appellant the opportunity to communicate with the review panel, at the MCO's carrier's expense, by conference call, video-conferencing, or other appropriate technology. The MCO carrier shall not unreasonably deny a request for postponement of the meeting made by an appellant. The appellant's right to a fair review shall not be conditional on the appellant's appearance at the Stage 2 appeal meeting.

4. Appellant Rights

An appellant has the right to:

- a) attend the Stage 2 appeal;
- b) present his or her case to the review panel;
- c) submit supporting material both before and at the appeal meeting;
- d) ask questions of any representative of the MCO carrier participating on the panel;
- e) be accompanied and supported by a person of her/his choice in addition to her/his representative; and,
- f) review all relevant information that is not confidential, proprietary or privileged.

5. Timeframes

A Stage 2 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than thirty (30) calendar days after receipt of the request for the Stage 2 appeal. In no event shall a Stage 2 appeal involving an imminent, emergent or serious threat to the health of the appellant exceed seventy-two (72) hours.

6. Extensions

The MCO carrier may extend the Stage 2 appeal for up to an additional thirty (30) calendar days for reasonable cause by submitting a written explanation for the delay to the Department within the original thirty (30) calendar day review period. An MCO carrier honoring an appellant's request for extension for necessity or convenience shall be deemed a reasonable cause. In no event may an MCO carrier extend the review period for an expedited appeal.

7. Written Notice of Determination

An MCO carrier shall provide written notice of the Stage 2 appeal determination to the appellant within five (5) business days of such determination. In the event of an adverse determination, such notice shall include:

- a) the qualifications of the members of the Stage 2 appeal panel;
- b) a statement of the panel's understanding of the nature of the appeal and all pertinent facts;
- c) the rationale for the review panel's determination;
- d) reference to evidence or documentation considered by the panel in making that

determination;

e) instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and,

f) the appellant's right to proceed to a Stage 3 appeal.

E. Independent Health Care Appeals Program (External Appeal Process/Stage 3)

1. Upon receipt of an adverse determination at Stage 2, any appellant who is dissatisfied with the results, shall have the opportunity to pursue her/his appeal before an independent utilization review organization.

2. The appellant must file the request for appeal with the MCO carrier within sixty (60) calendar days of receipt of the adverse determination from the internal review process.

3. Upon receipt of a request for external review, the MCO carrier shall fax the Petition for External Review form as soon as possible but within no more than three (3) business days to the Department and shall send a hard copy of the request to the Department by mail.

4. The Department shall assign an approved IURO (69.126) to conduct the external review and shall notify the MCO carrier.

5. The assigned IURO shall, within five (5) calendar days of assignment, notify the appellant in writing by certified or registered mail, that the appeal has been accepted for external review. The notice shall include a provision stating that the appellant may submit additional written information and supporting documentation that the IURO shall consider when conducting the external review. Appellant shall submit such written documentation to the IURO within seven (7) calendar days following the date of receipt of the notice.

a) upon receipt of any information submitted by the appellant, the assigned IURO shall as soon as possible but within no greater than two (2) business days, forward the information to the MCO carrier.

b) the IURO must accept additional documentation submitted by the MCO carrier in response to additional written information and supporting documentation from the appellant.

6. Within seven (7) business days after the receipt of the notification required in 69.404.E.4, the MCO carrier shall provide to the assigned IURO, the documents and any information considered in making the internal appeal determination.

a) if the MCO carrier fails to submit documentation and information or fails to participate within the time specified, the assigned IURO may terminate the external review and make a decision, with the approval of the Department, to reverse the internal appeal determination.

7. The external review may be terminated if the MCO carrier decides to reverse its adverse determination

and provide coverage or payment for the health care service that is the subject of the appeal.

a) immediately upon making the decision to reverse its adverse determination, the MCO carrier shall notify the appellant, the assigned IURO, and the Department in writing of its decision.

b) the assigned IURO shall terminate the external review upon receipt of the written notice from the MCO carrier.

8. Within forty-five (45) calendar days after the receipt of the request for external review, the assigned IURO shall provide written notice of its decision to uphold or reverse the adverse determination to:

- a) the appellant;
- b) the MCO carrier; and,
- c) the Department.

9. The IURO shall include the following information in the notice sent pursuant to 69.404.E.8:

- a) the qualifications of the members of the review panel;
- b) a general description of the reason for the request for external review;
- c) the date the IURO received the assignment from the Department to conduct the external review;
- d) the date(s) the external review was conducted;
- e) the date of its decision;
- f) the principal reason(s) for its decision;
- and,
- g) references to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.

10. The decision of the IURO is binding upon the MCO carrier.

F. Expedited External Utilization Appeal Process

1. An appellant may request an expedited external review with the MCO carrier at the time the enrollee receives a final adverse determination if the enrollee suffers from a condition that poses an imminent, emergent or serious threat or has an emergency medical condition.

2. At the time the MCO carrier receives a request for an expedited external review, the MCO carrier shall immediately fax the Petition for External Review form to the Department and shall send a hard copy to the Department by mail.

3. If the Department determines that the review meets the criteria for expedited review, the Department shall assign an approved IURO to conduct the external review and shall notify the MCO carrier.

4. At the time the MCO carrier receives the notification of the assigned IURO, the MCO carrier shall provide or transmit all necessary documents and information considered in making the final adverse determination to the

assigned IURO electronically, by telephone, by facsimile or any other available expeditious method.

5. As expeditiously as the enrollee's medical condition permits or circumstances require, but in no event more than seventy-two (72) hours after the date of the receipt of the request for an expedited external review, the IURO shall:

a) make a decision to uphold or reverse the final adverse determination; and

b) immediately notify the appellant, the MCO carrier, and the Department of the decision.

6. Within two (2) calendar days of the immediate notification, the assigned IURO shall provide written confirmation of the decision to the appellant, the MCO carrier, and the Department

7. The decision of the IURO is binding upon the MCO carrier.

G. Petition to DHSS

1. If an MCO carrier receives an appellant's request for access to the IHCAP whose subject is a benefit that is a written exclusion from the enrollee's benefit package, the MCO carrier may make a written request to have the appeal reviewed for appropriate inclusion in the IHCAP by the Department. The request must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. The Department shall review the petition and may, in its discretion:

a) dismiss the appeal and notify the appellant in writing that the appeal is inappropriate for the IHCAP; or,

b) appoint an IURO to conduct a preliminary review; or,

c) appoint an IURO to conduct a full external review.

H. Preliminary External Review

1. If an MCO carrier receives an appellant's request for access to the IHCAP for an appeal that it believes is not appropriate for inclusion in the IHCAP, the MCO carrier may file a motion to dismiss. The motion must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. Upon the written request of an MCO carrier, the Department shall review the petition and:

a) appoint an IURO to review the details of the motion to determine if the appeal is appropriate for inclusion in the IHCAP.

(+) i. appeals that are inappropriate for inclusion are dismissed.

(-) ii. appeals that are appropriate for inclusion are subject to a full external review.

b) appoint an IURO to conduct a

full external review.

I. All costs for external IURO review shall be borne by the MCO carrier. The MCO carrier shall reimburse the Department for the cost of the review within ninety (90) calendar days of the receipt of the decision by the IURO.

J. The Department shall approve IUROs eligible to be assigned to conduct external reviews.

1. Any IURO wishing to be approved to conduct external reviews shall submit an application form (as developed by the Department) and include with the form, all documentation and information necessary for the Department to determine if the IURO satisfies minimum qualifications

2. The Department shall maintain a current list of approved IUROs.

69.405 Quality Assessment and Improvement

A. Continuous Quality Improvement

1. Under the direction of the Medical Director or her/his designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

a) the scope and purpose of the program;

b) the organizational structure of quality improvement activities;

c) duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;

d) contractual arrangements, where appropriate, for delegation of quality improvement activities;

e) confidentiality policies and procedures;

f) specification of standards of care, criteria and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;

g) a system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;

h) a system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;

i) a system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;

j) a system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider available from the Delaware Board of Medical

Practice or any other state licensing board applicable to the provider;

k) the procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and,

l) a system for evaluation of the effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

a) a mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;

b) a mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;

c) a mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;

d) a mechanism for evaluating all providers of care that is supplemental to each provider's quality improvement system;

e) a mechanism for monitoring network adequacy and accessibility to assure the network services the needs of their diverse enrolled population; and,

f) a system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be

limited to the following:

a) indicator data collected by MCOs from chart reviews and administrative databases;

b) enrollee satisfaction surveys;

c) provider surveys;

d) annual reports submitted by MCOs to the Department; and,

e) computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

a) minutes of quality improvement committee meetings; and,

b) records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted or of acceptable accreditation status. External quality audits must be completed no less frequently than once every three (3) years. Such audit shall be performed by a nationally known accreditation organization or an independent quality review organization acceptable to the Department.

a) MCOs must submit the following information to the Department in order to receive approval for the nationally known accreditation organization or independent quality review organization that will conduct the triennial reviews or perform accreditation for the MCO:

(+) i. evidence that the nationally known accreditation organization or independent quality review organization has experience performing external quality audits or accreditation of MCOs; and,

(-) ii. the current standards for independent quality reviews or accreditations of MCOs as established and maintained by the accrediting entity.

2. The report must describe in detail the MCO's conformance to performance standards and the rules within these regulations. The report shall also describe in detail any corrective actions proposed and/or undertaken by the MCO.

3. In lieu of the external quality audit, the

Department may accept evidence that each MCO has received and has maintained the appropriate accreditation from a nationally known accreditation organization or independent quality review organization.

C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. An MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

a) include a summary of its quality assessment and quality improvement programs in marketing materials;

b) include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and,

c) make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

PART FIVE

SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of nonpayment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician from the MCO network. This choice may be more flexible, depending on the type of health plan purchased by the enrollee. When MCOs maintain a list of health care professionals within the plan, this list shall be

updated as health care professionals are added or removed and shall include:

A. A sufficient number of primary care physicians who are accepting new enrollees; and,

B. A sufficient number of primary care physicians that reflects a diversity that is adequate to meet the diverse needs of the enrolled populations' varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall establish and implement a procedure, for those plans which do not allow direct access to a health care specialist, by which enrollees can obtain a standing referral (69.141) to a health care specialist. This procedure:

A. Shall provide for a standing referral to a specialist if the enrollee's network provider determines that the enrollee needs continuing care from a specialist;

B. May require the MCO's approval of an initial treatment plan designed by the specialist which may limit the number of visits to the specialist, limit the duration of the standing referral, or require updates on the enrollee's condition]. Such approval shall not be withheld absent a decision by a qualified physician that the treatment sought in the treatment plan is not reasonably related to the appropriate treatment of the insured's condition];

C. May require that referrals, procedures, tests, and other medical services be provided by network providers unless such services are not available through network providers or are not available within a reasonable period of time. The MCO shall make acceptable service arrangements with non-network providers and the enrollee, and shall prohibit balance billing.

69.505 The MCO shall provide coverage of routine patient care costs (those normally covered under an enrollee's health plan) for enrollees engaging in clinical trials for treatment of life-threatening diseases.

A. Clinical trials must meet the following requirements:

1. The subject or purpose of the trial must be the evaluation of an item or service that falls within the covered benefits of the enrollee health plan and is not specifically excluded from coverage;

2. The trial must not be designed ~~specifically~~[~~exclusively~~] to test toxicity or disease pathophysiology;

3. The trial must have therapeutic intent;

4. Trials of therapeutic interventions must enroll patients with diagnosed disease;

5. The principal purpose of the trial is to test whether the intervention potentially improves the participant's health outcomes;

6. The trial is well-supported by available scientific and medical information or it is intended to clarify or establish the health outcomes of interventions already in common clinical use;

7. The trial does not unjustifiably duplicate existing studies; and.

8. The trial is in compliance with Federal regulations relating to the protection of human subjects.

B. Routine patient care costs include all items and services that are otherwise generally available to a qualified individual that are provided in the clinical trial with the exception of:

1. The investigational items or service itself;

2. Items and services provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the enrollees; and.

3. Items and services customarily provided by the research sponsors free of charge for any enrollee in the trial.

~~69.504~~ 506 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and appeal procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

A. To available and accessible services when medically necessary, including availability of care twenty-four (24) hours a day, seven (7) days a week for urgent or emergency conditions;

B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;

C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, appeal procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of her/his complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to her/his next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and,

J. To file a complaint with the Department or the Commissioner.

~~69.505~~ 507 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

~~69.506~~ 508 The MCO shall disclose to each new enrollee, and any enrollee upon request, in a format and language understandable to a layperson, the following minimum information:

A. Benefits covered and limitations;

B. Out of pocket costs to the enrollee;

C. Lists of participating providers;

D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;

E. Written explanation of the appeals process;

F. A description of and findings from the quality assurance and improvement programs;

G. The patterns of utilization of services; and,

H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

~~69.507~~ 509 The MCO shall provide culturally competent services to the greatest extent possible.

PART SIX

SECTION 69.6 REQUIREMENTS FOR STAFF MODEL MCOs

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

1. State Plumbing Code.

2. Waste Disposal Regulations.

3. Public Water Supply Regulations.

4. Food Service Requirements.

5. Radiation Control Regulations.

6. Hazardous Waste Regulations.

7. Air and Water Pollution Regulations.

8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and conveniently located.

9. Toilet facilities shall meet appropriate State and local regulations.

10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

E. Housekeeping

1. A housekeeping procedures manual shall be written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.

2. All premises shall be kept neat, clean, and free of litter and rubbish.

3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.

4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.

5. Suitable equipment and supplies shall be provided for cleaning all surfaces.

6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and can be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed

to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Nonprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent (F.T.E.) physician available on contract. There shall be at least one (1) F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees.

69.605 Equipment

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

69.606 Specialized Services

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one (1) qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, ~~when provided by the MCO,~~ must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be

provided on the premises of the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

69.607 Central Sterilizing and Supply

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

PART SEVEN

SECTION 69.7 ADMINISTRATIVE REQUIREMENTS

69.701 Administration

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

69.702 Qualifications

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry out the functions of their job descriptions.

69.703 Medical Privileges

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians must be licensed in Delaware.

69.704 Medical Records

The MCO must maintain or provide for the

maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405.A.6; and,
2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.
2. Hospital admissions per year and per 1,000 enrollees per year.
3. Hospital days per year and per 1,000 enrollees per year.
4. Average length of stay per hospital confinement.
5. Outside consultations per year and per 1,000 enrollees per year.
6. Emergency Room visits per year and per 1,000 enrollees per year.
7. Laboratory procedures per year and per 1,000 enrollees per year.
8. X-ray procedures per year and per 1,000 enrollees per year.
9. Total number of enrollees at the end of the year.
10. Total number of enrollees enrolled during the year.
11. Total number of enrollees terminated during the year.
12. Cost of operation.
13. Current provider directory including PCPs, specialists, facilities and ancillary health care services.
14. A statistical summary evaluating the network adequacy and accessibility to the enrolled

population.

15. Annual appeal report of medical necessity and disputable need to include:

a) Number of appeals at each level of appeal;

b) A compilation of causes underlying the appeals;

c) Resolution of the appeals; and,

d) Number of appeals terminated during the external review as described by 69.404E7.

16. Annual appeal report of all other appeals (not medical necessity or disputable need) to include:

a) Number of appeals at each level of appeal;

b) A compilation of causes underlying the appeals; and,

c) Resolution of the appeals.

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

**DIVISION OF PUBLIC HEALTH
HEALTH SYSTEMS PROTECTION SECTION**

Statutory Authority 16 Delaware Code,
Section 4711(1) (16 Del.C. 4711(1))

Nature of the Proceedings:

The Department of Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Uniform Controlled Substances Act Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 47, Section 4731.

On October 1, 2001 (Volume 5, Issue 4), DHSS published in the Delaware Register of Regulations its notice of proposed amendments to the 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 November 1, 2001, or be presented at a public hearing on October 31, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

No verbal comments were received during the public hearing. One written comment was received during the

official public comment period and is discussed in the attached Summary of Evidence.

Findings of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware proposed Uniform Controlled Substances Act Regulations are adopted and shall become effective January 11, 2002, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
12.14.2001

Summary of Evidence

**State of Delaware Uniform Controlled Substances Act
Regulations**

A public hearing was held on October 31, 2001, at 10:00 AM, in the 3rd Floor Conference Room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss proposed amendments to the Department of Health and Social Services (DHSS), Uniform Controlled Substances Act Regulations. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. David W. Dryden, Drug Control Administrator of the Office of Narcotics and Dangerous Drugs (ONDD), Health Systems Protection Section, Division of Public Health, made the agency's presentation. There were no attendees at the public hearing. A written comment was received during the official public comment period (October 1, 2001 through November 1, 2001). The written comment and the DHSS (Agency) response is as follows:

- An individual submitted a letter telling of a negative personal experience with a prescribed medication and wanted his personal experience (letter) to be part of the official record.

Agency Response: Although this comment is not directly related to the amendment proposed, due to the desire of the individual this letter is attached to the Hearing Officer's record. No changes were made to the proposed regulations as a result of this comment.

The public comment period was open from October 1, 2001 to November 1, 2001.

Verifying documents are attached to the Hearing

Officer's record. This regulation has been approved by the Delaware Attorney General's office.

**Uniform Controlled Substances Act
Regulations**

(Adopted by the Secretary of Health and Social Services pursuant to 16 Del. C. § 4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)

1. Adoption of Federal Regulations

To the extent consistent with 16 Del. C. Ch. 47, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations.

Readopted October 30, 1975.

2. Requirements

a. Requirements

Registration shall be on a biennial basis upon forms supplied by the Secretary for that purpose. The registration fee for prescribers, dispensers, researchers and laboratories will be \$40. The registration fee for manufacturers or distributors will be \$100. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis.

b. Revocation and Suspension

1) Revocation of registration by the Federal Government will result in automatic revocation of the State registration.

2) Proceedings for denying, suspending or revoking a Legislation shall be informal in nature. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation. Such proceedings shall be tape recorded.

3) Whenever a registration is denied, suspended, or revoked, the Secretary or his designee will reduce in writing his findings and rulings, and the reasons therefore, and forward them to the persons complained against within 15 days. This provision shall in no way stay any such denial, suspension, or revocation.

3. Records and Inventory

a. Requirements

1) Practitioners authorized to prescribe or dispense controlled substance shall maintain a record with the following information:

(a) Name and address of patient

(b) Date prescribed

(c) Name, strength and amount of medication.

2) Other records required by 21 CFR 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log at least 8 by 11 inches in dimension. Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.

3) Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:

(a) Amount received or distributed.

(b) Names, addresses and dates regarding these transactions.

(c) Other records required by 21 CFR 1300 to the end of 1316.

b. Accountability Audits

1) Pharmacies - Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 CFR 1300 to the end of 1316.

2) Medical, dental and veterinary - Accountability audits of medical, dental and veterinary practitioners will be accomplished through a review of records to be kept by paragraph (a) of this section.

3) Manufacturers and distributors - Accountability audits of manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 CFR 1300 to the end of 1316.

c. Final inventory

1) Pharmacies

Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 Del. C., Ch. 47 will be taken by the present and prospective pharmacist-in-charge. A copy of such inventory will be sent to the Office of Narcotics and Dangerous Drugs and another copy retained on the premises. For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of pharmacy and who is responsible for the prescription department of the registrant.

2) Medical, dental and veterinary

Medical, dental and veterinary practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of Narcotics and Dangerous Drugs promptly of such fact, and shall provide the Office with an inventory of controlled substance on hand.

d. Retention of Records

All records required by this Regulation must be

retained for a period of at least two (2) years.

4. Prescriptions

a. Definitions

As used in this section:

1) The term "Act" means the Controlled Substance Act, 16 Del. C., Ch. 47.

2) The term "individual practitioner" means physician, dentist, veterinarian, or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to dispense a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

3) The term "pharmacist" means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to dispense controlled substances under the supervision of a pharmacist licensed by this State.

4) The term "prescription" means 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.)

5) The terms "register" and "registered" refer to registration required by 16 Del. C., §4732.

b. Persons Entitled to Issue Prescriptions

1) A Prescription for a controlled substance may be issued only by an individual practitioner who is:

(a) Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

(b) Either registered or exempt from registration pursuant to 16 Del. C. § 4732.

2) A verbal prescription for a controlled substance may only be communicated to a pharmacist by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are not valid.

3) Written prescriptions for controlled substances may be transmitted via facsimile by a practitioner or by the practitioner's authorized agent to a pharmacy only when the transmission complies with 21 CFR 1306.11, 1306.21 and 1306.31.

c. Purposes of Issue of Prescription

1) A prescription for a controlled substance to be effective, must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not

issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.

2) A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.

3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.

d. Manner of Issuance of Prescriptions

1) All prescriptions for controlled substances shall be dated and signed on the day when issued and shall bear the full name and address of the patient, and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.

e. Persons Entitled to fill Prescriptions

A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or by a registered institutional practitioner.

f. Dispensing Narcotic Drugs for Maintenance Purposes

No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.

g. Emergency Dispensing of Schedule II Substances

In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that the procedures comply with Federal law and regulation.

h. Expiration of Prescription

Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or if the original prescriber authorizes the prescription past the seven (7) days period. Such prescriptions cannot be written nor dispensed for more than 100 dosage units ~~nor can more than 100 dosage units be dispensed~~ or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 C.F.R. Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

i. Mail Order Prescription

Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.

j. Pursuant to authority granted by 16 Del. C. §4732 the Secretary finds that waiver of the registration requirements contained in that section as to non-resident physicians or dentists is consistent with the public health and safety subject to the conditions contained in this regulation. Pharmacists may dispense controlled substances pursuant to a prescription written by a non-resident physician or dentist (who is not registered under 16 Del. C., Ch. 47) provided that:

1) The pharmacist must establish that the non-resident physician or dentist is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident physician or dentist, his Federal registration number, and the name and address of the source of the registration data.

2) The pharmacist must verify the identification of the bearer of the prescription by reference to a driver's license or some other identification which contains the bearer's photograph, and must keep a record of such person.

3) The pharmacist must establish that the name of

the non-resident physician or dentist does not appear on the list kept by the Office of Narcotics and Dangerous Drugs of the Division of Public Health of those non-resident physicians and dentists to whom the waiver granted by this regulation does not apply.

The waiver of the registration requirement provided by the registration shall not apply to non-resident physicians and dentists determined by the Office of Narcotics and Dangerous Drugs of the Division of Public Health to have acted in a manner inconsistent with the Public Health and Safety, and Safety, and the Office of Narcotics and Dangerous Drugs shall maintain a list of those non-resident physicians and dentists found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident physicians and dentists whose names appear on that list unless such non-resident physicians and dentists have registered pursuant to the provisions of 16 Del. C. § 4732.

k. Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation may be dispensed without the written or oral prescription of a practitioner - effective date January 1, 1974.

l. The pharmacist or an employee under his/her supervision must verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. A driver's license or a similar document containing a photograph and the name and address of the person is an acceptable document. The name and address of the person should be recorded on either the prescription or patient's profile. The pharmacist or employee is not required to follow this procedure for each transaction if the identify of the person is clearly established by visual recognition. In those cases, the information shall be recorded at least once.

5. Security and Disposal

a. Security

1) Schedule II Substances Storage

(a) Pharmacies and medical, dental and veterinary practitioners must store Schedule II controlled substances in a burglar resistant type safe or GSA Class 5 grade steel cabinet or their equivalent. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681). The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an

outside audible device that shall comply with U.L. Standard 4.64. A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities. The Secretary may require additional security requirements if he deems it necessary as a result of excessive diversion of controlled substances. DEFINITIONS: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.

(b) Safes, cabinets or drawers containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.

(c) Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.

(d) Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy containing dispersed, controlled drugs must be secured in a manner approved by the Office of Narcotics and Dangerous Drugs which will prevent entry by unauthorized persons. The keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.

2) Pharmacies

Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in safes, cabinets or drawers of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist. Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked

enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.

3) Report of Loss or Theft

Registrants shall notify the Office of Narcotics and Dangerous Drugs, Division of Public Health, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of Narcotics and Dangerous Drugs.

4) Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 Del. C., Ch. 47 to dispense such items.

b. Disposal

1) Controlled Substances

Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of Narcotics and Dangerous Drugs of the Division of Public Health for proper instructions regarding disposal.

2) Hypodermic Syringe or Needle

Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

6. Procedures for Adoption of Regulations

a. Notice

Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary will give at least twenty (20) days notice of the intended action. The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, and the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Narcotics and Dangerous Drugs for advance notice of such rule-making proceedings and shall be published in a newspaper of general circulation in this State.

b. Hearing

The Secretary will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing. He may appoint subordinates to preside over such hearings.

c. Emergency Regulations

If the Secretary finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his reasons for that finding, he may proceed without prior notice or hearing or upon any abbreviated notice and hearing he finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not

precluded.

d. Finding and Availability

The Secretary will file any adoption, amendment or repeal of these regulations with the Secretary of State. Regulations will become effective upon such filing. In addition, copies of these regulations will be available for public inspection at the Office of Narcotics and Dangerous Drugs of the Division of Public Health, Jesse S. Cooper Building, Dover, Delaware, 19901.

7. Severability

If any provision of these regulations is held invalid the invalidity does not effect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable. Pursuant to 16 Del. C. §4718 (f) and 16 Del. C. §4720 (c) the Secretary finds that the compounds, mixtures or preparations listed in 21 CFR 1301.21, 21 CFR 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore: The Secretary, as authorized by 16 Del. C. §4718 (f) and 16 Del. C. §4720 (c), does hereby except by rule the substances listed in 21 CFR 130.21, CFR 1308.24 and 21 CFR 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 Del. C., Chapter 47.

DIVISION OF SOCIAL SERVICES

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

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the above-referenced section of the Division of Social Services Manual. Changes are being made in the Food Stamp Program Policies as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCAA), the

Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

Summary of Changes

- Includes cooling costs in the heating standard utility allowance that creates a heating and cooling allowance.
- Requires a household to have two, non-heat or cooling, utility expenses to use the low utility standard.
- Allows a household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs to receive the LUA (limited utility allowance) provided the household has another utility like a phone or gas cooking.
- Allows a household to claim the shelter costs of the home if not occupied by the household because of training away from home.

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 November, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

One comment was received relating to this proposed rule.

Summary of Information Submitted:

The State Council for Persons with Disabilities (SCPD) provided the following comment on the proposed regulation: "SCPD endorses the latest version and has the following observations. First, they expand the authorization for deduction of air conditioning expenses (Section 9060F.3). This affects persons with asthma, allergies, and pulmonary function deficits. Second, they authorize continued deduction of shelter costs of a home if the resident is away due to participation in training (Section 9060F.4). This may help support Ticket to Work legislation. An SSI or SSDI recipient could attend non-local training without losing this deduction."

Findings of Fact:

The Department finds that the proposed changes as set

forth in the November, 2001 Register of Regulations should be adopted, as herein revised.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Food Stamp Program are adopted, as herein revised, and shall be final effective January 10, 2002.

Vincent P. Meconi, Secretary, DHSS
12.14.2001

DSSM 9060 Income Deductions

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan that uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) The costs of:

- fuel for heating or air conditioning costs for cooling;
- electricity or fuel used for purposes other than heating or cooling;
- water;
- sewerage;
- well installation and maintenance;
- septic tank system installation and maintenance;
- garbage and trash collection;
- all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and
- fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.

4) There are two standard utility allowances. The standard heating allowance will be available only to households which incur heating costs separately and apart from their rent or mortgage including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. The standard heat allowance is available to households receiving indirect energy assistance payments.

~~A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess utility costs is not permitted to use either standard allowance. Such households may claim the actual verified utility expenses, which it does pay separately. Households should be advised of this option at each (re) certification.~~

The two annualized utility allowances are offered available:

The limited utility basic allowance (LUA) is available to households that do not pay for heat or air conditioning cooling, but incur costs that include electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. To get the LUA, the household must incur expenses for at least two utilities, like phone and electric, phone and water, gas cooking and non-heat or cooling electric, or water and trash collection. A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs can receive the LUA provided the household has another utility like a phone or gas cooking.

The heating and cooling utility allowance (HCSUA) is available to households with heating or air conditioning cooling costs separate from their rent or mortgage. Other households eligible for the HCSUA

include:

- Residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- Households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- Households receiving direct or indirect energy assistance payments, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the certification period.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

(Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.)

Households may choose between a standard or verified actual utility costs at initial certification, recertification, or when a household moves.

~~Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification.~~ Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

If the household is billed separately for only telephone, water, sewer, or garbage collection fees (any one or more of these), the household is not entitled to claim either standard utility allowance. ~~If one of these households is billed for a telephone, The standard telephone allowance will be used (for these households billed only for a telephone, and regardless of their actual cost). In addition, these households may claim the actual utility expenses (water, sewer, or garbage) for which they are billed separately from rent or mortgage payments.~~ (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone allowance.)

If a household is billed only for one utility, not heating/cooling or telephone, the household is allowed the actual cost for that utility.

Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food

stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

4) The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home that was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

DIVISION OF SOCIAL SERVICES

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

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies to implement changes to the Division of Social Services Manual (DSSM), Section 11004.7, clarifying when the child care fee will be waived. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October, 2001 Delaware Register of Regulations, requiring written materials and suggestions

from the public concerning the proposed regulations to be produced by October 31, 2001 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

Provides for situations where parent fees can be waived when paying the parent fee would create an excessive financial burden for certain families. The revised policy would define excessive financial burden as situations where the family's disposable income after deductions result in the family having income below 75% of the Federal Poverty Level. Deductions are limited to:

- Rent, mortgage, lot rent;
- Any mandatory expense required by the landlord or mortgage holder
- (e.g., homeowner's insurance, property taxes, school taxes);
- Actual utility expenses (e.g., electric, gas, water, sewer).

Summary of Comments Received

Two comments were received relating to this proposed rule.

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) provided the following similar comments and recommendations:

The new regulations delete an authorization to waive fees if "a family has extensive medical expenses for which there are no payments through Medicaid or other insurance carriers". DSS authorizes four (4) grounds/conditions for waiving fees. The third ground/condition is based on low income and allows deductions for certain expenses exclusive of high unreimbursed medical costs. The fourth ground/condition is a "catch-all" waiver justification for families where the need for services is based on the special needs of the child or caretaker.

Both Councils have the same two recommendations:

First, under the third ground/condition, it would be preferable to authorize a deduction for unreimbursed medical costs.

DSS Response: DSS will consider unremimbursed medical costs as part of the deductions to determine excessive financial burden. However, before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP), must first apply for either Medicaid or DHCP. Any unreimbursed medical costs not covered by Medicaid or HCP will be considered as a deduction to help determine the family's income for excessive financial

burden.

Second, it would be preferable to clarify in the fourth ground/condition that "special needs" includes, but is not limited to, the disability of the child or caretaker. For example, the sentence could be amended to read "...the special needs, including, but not limited to disability, of the child or caretaker" or "...the special needs (e.g. disability) of the child or caretaker".

DSS Response: Special needs child and special needs adult are defined in section DSSM 11002.9.

Findings of Fact:

The Department finds that the proposed changes as set forth in the October, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed Division of Social Services regulation related to the child care fee waiver policy is adopted and shall be final effective January 10, 2002.

Vincent P. Meconi, Secretary, DHSS
12.14.2001

11004.7 Determination Of The Child Care Fee & Fee Waiving

Under regulations, families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a child care fee. DSS, however, provides child care services to certain families at no cost. Part of the process, therefore, of determining fees includes not only the decision of how much parent/caretakers should pay for the cost of care, but also which families should receive services at no cost.

~~Parent/caretakers who have a need for service or who receive child care services in Categories 11 and 12 receive service at no cost. In addition, Caretakers in Category 31, who have a need for services and who are the caretakers of children who receive ABC or GA assistance, will receive service at no cost. Also, parent/caretakers in Category 31 who are in need of protective services will receive service at no cost, unless the Division of Family Services specifically requests that a parent/caretaker pay a fee.~~

~~NOTE: the CCMIS is designed so that if Category 11 or 12 is entered as the child care category, the child care fee is waived automatically.~~

~~Parent/Caretakers in Categories 13, 21, and 31 are to pay a child care fee, unless the fee is waived.~~

~~In categories other than 13 where parent/caretakers are to pay a child care fee, the fee may be still be waived under the following circumstances:~~

~~A. a family has extensive medical expenses for which there are no payments through Medicaid or other insurance~~

carriers;

~~B. a family's shelter costs exceed 30 percent of household expenses;~~

~~C. a family's utility costs, exclusive of telephone, exceed 15 percent of household income;~~

~~D. a family has additional food expenses resulting from diets prescribed by a physician;~~

~~E. a family has additional transportation costs due to lack of public transportation in rural areas;~~

~~F. a family is homeless;~~

~~G. a family has a special need and this need poses a financial hardship; or~~

~~H. other situations of hardship exist (multiple children in care, household crisis, etc.).~~

Document the decision to waive the fee as well as obtain supervisory approval before doing so. The CCMIS User Manual contains the appropriate waiver codes for waiving fees in the CCMIS.

All child care fees will be waived if the family meets one of the four (4) conditions below.

1. For all families in Category 31 active with the Division of Family Services (DFS) including foster care families.

2. For all families in Delaware's A Better Chance Welfare Reform Program (DABC) in Categories 11 and 12, General Assistance (GA) families, and caretakers in Category 31 caring for children who receive DABC or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

3. When paying the fee creates an excessive financial burden (as defined below). Excessive financial burden is defined as situations where the family's disposable income, after deductions listed below, result in the family having income below 75% of the federal poverty level. Deductions are limited to:

- rent, mortgage, lot rent;
- any mandatory expense required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);
- actual utility expenses (e.g., electric, gas, water, sewer);

[unreimbursed medical costs; Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP), must first apply for either Medicaid or the DHCP. Any unreimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.]

4. Families where the need for service is based on the special needs of the child or the caretaker.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor. Requests to waive the fee for Division of Social Service (DSS) employees (seasonal, merit system) or temporary employees working for DSS must be approved by the Operations Administrator, as well as the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

DIVISION OF SOCIAL SERVICES

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

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to amend policies to implement a policy change to Section 20620.1 of the Division of Social Services Manual. Effective October 1, 2001, this change, approved and funded by the State Legislature, increased the amount of funds that can be protected in a personal needs account for individuals residing in nursing facilities from \$42 per month to \$44 per month. 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 November, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the November, 2001 Register of Regulations should

be adopted, as herein revised.

THEREFORE, IT IS ORDERED, that the proposed regulation of the Medicaid/Medical Assistance Program regarding Personal Needs Allowance is adopted, as herein revised, and shall be final effective January 10, 2002.

Vincent P. Meconi, Secretary, DHSS
12.14.2001

20620.1 Personal Needs

~~\$42.00~~ \$44.00 per month of available income is to be protected for the recipients direct personal needs.

If the recipient receives a reduced VA Improved Pension (not to exceed \$90) the personal needs amount will be \$90 or the amount of personal needs allowance in the state plan, whichever is greater.

If the recipient regularly attends a rehab/educational program off the grounds of his nursing facility, including employment for the purpose of rehabilitation in a sheltered workshop off the grounds of the facility, \$50.00 per month (rather than ~~\$42~~ \$44) will be protected.

For nursing home residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

- Mandatory payroll deductions that are a condition of employment including, but not limited to:
 - Federal, State and Local Taxes
 - FICA
 - Union Dues
 - Insurance premiums
 - Pension contributions
 - Transportation costs as paid to & from work
 - Clothing and personal needs allowance of \$75/

month.

If earnings average more than \$700 a month in a calendar year, this is considered SGA and DSS can allow a personal needs allowance of up to the AFC rate. If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the ~~\$42~~ \$44 or \$50 personal needs allowance. If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 312, 1113(h)(18 Del. C. §§ 312, 1113(h))

Order

A public hearing was held on November 27, 2001, to receive comments on proposed Regulation 85 relating to select mortality factors and rules for their use, rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits, and rules concerning a minimum standard for the valuation of plans with secondary guarantees. By my order of October 3, 2001, F.L. Peter Stone, Esquire, was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearing and publication of Proposed Regulation 85 in the Register of Regulations was in conformity with Delaware law.

Summary Of The Evidence And The Information Submitted

The summary of the evidence and the information submitted as set forth in the FINDINGS, CONCLUSIONS AND RECOMMENDED DECISION of the hearing officer is incorporated into this Order.

Public comment supportive of the proposed regulation, in both written and oral form, was received from the American Council of Life Insurers and from Michael J. Rich, Deputy Attorney General, on behalf of the Delaware Insurance Department. There was no opposition to the proposed regulation. Upon recommendation of Mr. Rich, two non-substantive changes to the proposed regulation were recommended: (1) 18 *Del. C.* § 1113 is being substituted in Section 2 for the reference to 18 *Del. C.* Chapter 11 as authority for the regulation, and (2) Section 8 is being changed to reflect an effective date of January 15, 2002.

Findings Of Fact With Respect To The Evidence And Information

1. I find that the hearing officer's recommendation to modify Section 2 with respect to the authority for the regulation and Section 8 with respect to the effective date to be technical changes which does not substantively change the regulation or enlarge the class of entities subject to the provisions thereof.

2. I adopt the findings of fact and recommendations of F.L. Peter Stone, the hearing officer and incorporate them by reference.

Decision And Effective Date

I hereby adopt Regulation 85 as modified by the

changes herein to be effective on January 15, 2001.

Text And Citation

The text of Regulation 85 appears in the Register of Regulations Vol. 5, Issue 5, pages 1049-1056, November 1, 2001 subject to the modifications approved hereby.

Donna Lee H. Williams, Insurance Commissioner
Dated: December 4, 2001

Regulation 85 **Valuation of Life Insurance Policies**

Sections

1. Purpose
2. Authority
3. Applicability
4. Definitions
5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves
6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other Than Universal Life Policies)
7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy Owner to Keep a Policy in Force Over a Secondary Guarantee Period
8. Effective Date

Appendix.

Section 1. Purpose

A. The purpose of this regulation is to provide:

- (1) Tables of select mortality factors and rules for their use;
- (2) Rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits; and
- (3) Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

B. The method for calculating basic reserves defined in this regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable.

Section 2. Authority

This regulation is issued under the authority of ~~18 Del. C. §312, 18 Del. C. Chapter 11~~[18 Del.C. §§312, 1113] and 29 Del. C. Chapter 101.

Section 3. Applicability

This regulation shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2002, subject to the following exceptions and conditions.

A. Exceptions

(1) This regulation shall not apply to any individual life insurance policy issued on or after January 1, 2002 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2002, that guarantees the premium rates of the new policy. This regulation also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(2) This regulation shall not apply to any universal life policy that meets all the following requirements:

(a) Secondary guarantee period, if any, is five (5) years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Section 4F and the applicable valuation interest rate; and

(c) The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.

(3) This regulation shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(4) This regulation shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(5) This regulation shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

B. Conditions

(1) Calculation of the minimum valuation standard for policies with guaranteed non-level gross premiums or guaranteed non-level benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section 6.

(2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

Section 4. Definitions

For purposes of this regulation:

A. **"Basic reserves"** means reserves calculated in accordance with 18 Del. C. 1113(c).

B. **"Contract segmentation method"** means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in Subsection F of this section, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after the effective date of this regulation and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 5B of this regulation.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

x = original issue age;

k = the number of years from the date of issue to the beginning of the segment;

t = 1, 2,; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ = Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{qx_{k+t}}{qx_{k+t-1}}. \text{ However, } R_t \text{ may be increased or decreased by one percent in any policy year, at the company's option, but } R_t \text{ shall not be less than one;}$$

where:

x , k and t are as defined above, and

qx_{k+t-1} = valuation mortality rate for deficiency reserves in policy year $k+t$ but using the mortality

of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

C. **"Deficiency reserves"** means the excess, if greater than zero, of

(1) Minimum reserves calculated in accordance with 18 Del. C. 1113(g) over

(2) Basic reserves.

D. **"Guaranteed gross premiums"** means the premiums under a policy of life insurance that are guaranteed and determined at issue.

E. **"Maximum valuation interest rates"** means the interest rates defined in 18 Del. C. 1113(b)(3) (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

F. **"1980 CSO valuation tables"** means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

G. **"Scheduled gross premium"** means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Section 7A(3), if any, or else the minimum premium described in Section 7A(4).

H.(1) **"Segmented reserves"** means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(a) The present value of the death benefits within the segment, plus

(b) The present value of any unusual guaranteed cash value (see Section 6D) occurring at the end of the segment, less

(c) Any unusual guaranteed cash value occurring at the start of the segment, plus

(d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by

the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(2) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

I. **"Tabular cost of insurance"** means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

J. **"Ten-year select factors"** means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

K. (1) **"Unitary reserves"** means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(2) The interest rates used in the present value calculations for any policy may not exceed the maximum

valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

L. **"Universal life insurance policy"** means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

Section 5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for this purpose). If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors in the Appendix; or

(3) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner). If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors in the Appendix of this regulation;

(3) For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:

(a) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(b) X shall not be less than twenty percent (20%);

(c) X shall not decrease in any successive policy years;

(d) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii);

(i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(e) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;

(f) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Subsection B(3);

(g) The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of Subsection B(3); and

(h) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.

(i) If X is less than 100 percent at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 18 Del. C. §1111(c); and

(ii) The appointed actuary shall annually opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating deficiency reserves.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may

be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

E. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (1) reserves calculated ignoring the guarantee, (2) reserves assuming the guarantee was made at issue, and (3) reserves assuming that the policy was issued on the date of the guarantee.

F. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this regulation. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 18 Del. C. §1111(c).

Section 6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other than Universal Life Policies)

A. Basic Reserves

Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in Paragraph (1) or (2) below may be made:

(1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a

pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

B. Deficiency Reserves

(1) The deficiency reserve at any duration shall be calculated:

(a) On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;

(b) On a segmented basis if the corresponding basic reserve determined by Subsection A is segmented; or

(c) On the segmented basis if the corresponding basic reserve determined by Subsection A is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Section 5B) and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Section 5B.

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

C. Minimum Value

Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policy owner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

D. Unusual Pattern of Guaranteed Cash Surrender Values

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value

shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where

(a) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) The mandatory expiration date of the policy; and

(b) The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and

(c) The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:

(i) The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.

(ii) The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.

(3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(a) One hundred ten percent (110%) of the scheduled gross premium for that year;

(b) One hundred ten percent (110%) of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(c) Five percent (5%) of the first policy year surrender charge, if any.

E. Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

F. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection 6C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(a) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(b) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(a) The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(b) The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(c) After the initial period of coverage, the policy meets the conditions of Paragraph (5) above.

(7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this regulation.

G. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and

(3) There are no cash surrender values in any policy year.

H. Exemption from Unitary Reserves for Certain Juvenile Policies

Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(1) At issue, the insured is age twenty-four (24) or younger;

(2) Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25),

the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

Section 7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy owner to Keep a Policy in Force Over a Secondary Guarantee Period

A. General

(1) Policies with a secondary guarantee include:

(a) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) A policy in which the minimum premium at any duration is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose; or

(c) A policy with any combination of Subparagraph (a) and (b).

(2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections B and C below shall be recalculated from issue to reflect these changes.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Section 5B(2), (3), and (4) may not be used to calculate the one-year valuation premiums.

(6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

B. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Section 4B.

C. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Section 6B with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

D. The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or regulations governing universal life plans.

Section 8. Effective Date

This regulation shall become ~~effective ten days after publication in the Register of Regulations.~~[on January 15, 2002]

* PLEASE NOTE: DUE TO SPACE CONSTRAINTS THE TABLES IN APPENDIX A ARE NOT BEING REPRODUCED HERE. THEY ARE AVAILABLE UPON REQUEST FROM THE REGISTRAR'S OFFICE.

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

Air Quality Management Section

Statutory Authority: 7 Delaware Code,
Chapters 60, (7 Del.C. Ch. 60)

Secretary's Order No.: 2001-A-0048

RE: Regulation 24 Proposals:

Amendment to Section 2 – Definitions

Amendment to Section 26 – Stage I Vapor Recovery

Amendment to Section 36 – Stage II Vapor Recovery

Date of Issuance: November 30, 2001

Effective Date of the Amendment: January 11, 2002

I. Background

On Monday, September 24, 2001, a public hearing was held in the Richardson and Robbins Building Auditorium of DNREC in Dover to receive comment on the proposed adoption of the following sections of Regulation 24 (Control of Volatile Organic Compounds Emissions): Section 2 – Definitions; Section 26 – Stage I vapor Recovery; and Section 36 – Stage II Vapor Recovery. The Department is proposing these regulations to aid Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA).

No one from the public attended this public hearing, however, there were written comments received by the Department prior to the close of the public record from Frederick M. Anderson, Issues Advisor at ExxonMobil Refining and Supply, regarding the proposed adoption of Regulation 24 – Section 36. The Department provided a formal response document to the Hearing Officer with respect to Mr. Anderson's written comments in this matter. No other comments were received by the Department with respect to the proposed amendments to either Section 2 or Section 26 of Regulation No. 24. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated November 27, 2001, and that report is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 24, Sections 2, 26 and 36, and has given careful and serious consideration to the written comments provided by ExxonMobil with respect to this issue.

III. Order

It is hereby ordered that the proposed adoption of Regulation No. 24, Sections 2, 26, and 36, be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

The adoption of Regulation 24, Sections 2, 26, and 36, will aid the State of Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

**REGULATION 24
CONTROL OF VOLATILE ORGANIC COMPOUND
EMISSIONS**

Section 2 - Definitions.

~~xxx/xx/01~~[1/11/02]

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

- a. **“Actual emissions”** means the quantity VOCs emitted from a source during a particular time period.
- b. **“As applied”** means including any dilution solvents added before application of the coating.
- c. **“Basecoat”** means a pigmented topcoat that is the first coat applied as part of a multistage topcoat system.
- d. **“Bulk gasoline plant”** means a gasoline storage and distribution facility with an average daily throughput of 76,000 liters (L) (20,000 gallons [gal]) of gasoline or less on a monthly average.
- e. **“Bulk gasoline terminal”** means a gasoline storage facility that receives gasoline from refineries, delivers gasoline to bulk gasoline plants or to commercial or retail accounts, and has a daily throughput of more than 76,000 L (20,000 gal) of gasoline on a monthly average.
- f. **“Capture efficiency”** means the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC, expressed as a

percentage.

g. **“Capture system”** means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

h. **“Carbon absorber”** means an add-on control device that uses activated carbon to absorb VOCs from a gas stream.

i. **“Carbon adsorption system”** means a carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

j. **“Clearcoat”** means a topcoat that contains no pigments or only transparent pigments and that is the final coat applied as part of a multistage topcoat system.

k. **“Coating”** means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, inks, maskants, and temporary protective coatings.

l. **“Coating unit”** means a series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

m. **“Continuous vapor control system”** means a vapor control system that treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.

n. **“Control device”** means equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

o. **“Control system”** means a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

p. **“Day”** means a period of 24 consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.

q. **“Destruction or removal efficiency”** means the amount of VOC destroyed or removed by a control device expressed as a percent of the total amount of VOC entering the device.

r. **“Double block-and-bleed system”** means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

s. **“Exempt compounds,”** means any of the compounds listed in Regulation 1, Section 2 - Definitions, "Volatile Organic Compounds," which have been determined to have negligible photochemical reactivity.

For determining compliance with emission limits, VOCs will be measured according to the procedures in Methods 25 and 25A of Appendix A of 40 CFR, Part 60, and

the procedures and equations in '60.755. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly-reactive compounds when determining compliance with an emission standard. However, the Department may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the sources emissions.

In addition to the procedures for requesting a satisfactory compliance determination, where the Department proposes to allow the use of a test method for excluding negligibly-reactive compounds that is different or not specified in the approved SIP, such change shall be submitted to the U.S. EPA for approval as part of a SIP revision.

t. **“External floating roof”** means a cover over an open-top storage tank consisting of a double deck or pontoon single deck that rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

u. **“Facility”** means all of the pollutant-emitting activities, excluding pollutant-emitting activities from mobile sources, that are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or person under common control).

v. **“First attempt at repair”** means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

w. **“Flashoff area”** means the space between the coating application area and the oven.

x. **“Gasoline tank truck”** means a delivery tank truck used at bulk gasoline plants, bulk gasoline terminals, or gasoline dispensing facilities that is loading or unloading gasoline or that has loaded or unloaded gasoline on the immediately previous load.

y. **“Gloss flattener”** means a low-gloss coating that is formulated to eliminate glare on the interior surfaces of a vehicle for safety purposes, as specified under the U.S. Department of Transportation Motor Vehicle Safety Standards.

z. **“Heavy-duty truck”** means any motor vehicle rated at greater than 3,864 kg (8,500 lb) gross weight designed primarily to transport property.

aa. **“Incinerator”** means a combustion apparatus in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

bb. **“Intermittent vapor control system”** means a vapor control system that employs an intermediate vapor holder to accumulate vapors displaced from tanks during

filling. The control device treats the accumulated vapors only during automatically controlled cycles.

cc. **“Internal Floating Roof”** means a cover or roof in a fixed-roof tank that rests upon or is floated upon, the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and the tank shell.

dd. **“Knife coating”** means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

ee. **“Leak”** means a VOC emission indicated by an instrument calibrated according to Method 21 of 40 CFR, Part 60, Appendix A, using zero air (less than 10 parts per million [ppm] of hydrocarbon in air) and a mixture of methane or n-hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane.

ff. **“Lease custody transfer”** means the transfer of produced crude oil or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

gg. **“Liquid-mounted seal”** means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

hh. **“Loading rack”** means an aggregation or combination of gasoline loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

ii. **“Lower explosive limit”** (LEL) means the concentration of a compound in air below which a flame will not propagate if the mixture is ignited.

jj. **“Maximum theoretical emissions”** means the quantity of VOC that theoretically could be emitted by a source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. The design capacity or maximum production capacity includes use of coatings and inks with the highest VOC content used in practice by the source for the 2 preceding years.

kk. **“Maximum true vapor pressure”** means the equilibrium partial pressure exerted by a stored liquid at the temperature equal to:

1. for liquids stored above or below the ambient temperature, the highest calendar-month average of the liquid storage temperature, or,

2. for liquids stored at the ambient temperature, the local maximum monthly average temperature as reported by the National Weather Service. This pressure shall be determined by one of the following:

i. In accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From External Floating Roof Tanks."

ii. By using standard reference texts.

iii. By ASTM D2879-83.

iv. By any other method approved by the Department as part of the State Implementation Plan (SIP) Revision.

ll. **“Multicomponent coating”** means a coating which is packaged in two or more parts, which parts are combined before application, and where a coreactant from one part of the coating chemically reacts, at ambient conditions, with a coreactant from another part of the coating.

mm. **“Open-ended valve or line”** means any valve, except safety relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

nn. **“Organic compound”** means any carbon-containing chemical compound excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

oo. **“Oven”** means a chamber which is used to bake, cure, polymerize, and/or dry a coating.

pp. **“Overall emission reduction efficiency”** means the weight per unit time of VOC removed or destroyed by a control device divided by the weight per unit time of VOC generated by a source, expressed as a percentage. The overall emission reduction efficiency can also be calculated as the product of the capture efficiency and the control device destruction or removal efficiency.

qq. **“Owner or Operator”** means any person who owns, leases, controls, operates or supervises a facility, a source, or air pollution control or monitoring equipment.

rr. **“Person”** means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

ss. **“Petroleum”** means the crude oil removed from the earth and the oils derived from tar sands, shale and coal.

tt. **“Petroleum Liquid”** means petroleum condensate, and any finished or intermediate products manufactured in a petroleum refinery.

uu. **“Plastisol”** means a coating made of a mixture of finely divided resin and a plasticizer. Plastisol is applied as a thick gel that solidifies when heated.

vv. **“Press-Ready Ink”** means the ink, as applied to the substrate, after all solvents and diluents have been added.

ww. **“Pressure release”** means the emission of materials resulting from system pressure being greater than set pressure of the pressure relief device.

xx. **“Primer”** means any coating applied prior to the application of a topcoat or color coat for the purposes of surface preparation, corrosion resistance, adhesion, and color uniformity.

yy. **“Process unit shutdown”** means a work practice or operational procedure that stops production from a

process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

zz. **“Reid vapor pressure”** means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323-82.

aaa. **“Repaired”** means that equipment is adjusted, or otherwise altered, in order to eliminate a leak as indicated by one of the following: an instrument reading of 10,000 ppm or greater, indication of liquids dripping, or indication by a sensor that a seal or barrier fluid system has failed.

bbb. **“Roll coating”** means the application of a coating material to a moving substrate by means of hard rubber, elastomeric, or metal rolls.

ccc. **“Rotogravure coating”** means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is recessed relative to the non-image area, and the coating material is picked up in these recessed areas and is transferred to the substrate.

ddd. **“Shutdown”** means the cessation of operation of a facility or of its emission control or emission monitoring equipment.

eee. **“Source”** means any building, structure, equipment (excluding mobile equipment temporarily in place), or installation that directly or indirectly releases or discharges, or has the potential to release or discharge, VOCs into the atmosphere.

fff. **“Stage I Vapor Recovery System”** means the control of gasoline vapor from any delivery vessel into any stationary storage vessel, where the vapor displaced by the liquid gasoline is returned to the delivery vessel and transported to the refinery.

ggg. **“Stage II Vapor Recovery System”** means ~~the a system that controls the emissions~~ of gasoline vapor at the vehicle fill-pipe, where the vapor is captured and returned to a vapor-tight storage tank, or is destroyed; which achieves an overall control efficiency of at least 95% ~~by incineration~~.

hhh. **“Standard conditions”** means a temperature of 20 C (68 F) and pressure of 760 mm Hg (29.92 in. Hg).

iii. **“Startup”** means the setting in operation of a source or of its emission control or emission monitoring equipment.

jjj. **“Storage Vessel”** means each tank, reservoir or container used for the storage of Volatile Organic Liquids, but does not include:

1. Frames, housing, auxiliary supports or other components that are not directly involved in the containment of liquids or vapors; or

2. Subsurface caverns or porous rock reservoirs.

kkk. **“Submerged fill”** means the method of filling a delivery vessel or storage vessel where product enters within 150 millimeters (mm) (5.9 inches [in.]) of the bottom of the delivery or storage vessel. Bottom filling of delivery and storage vessels is included in this definition.

lll. **“Substrate”** means the surface onto which a coating is applied or into which a coating is impregnated.

mmm. **“Throughput”** means the amount of gasoline dispensed at a gasoline dispensing facility during a calendar month after November 15, 1990.

~~nnn. nnn.~~ **“Transfer efficiency”** means the ratio of the amount of coating solids adhering to the object being coated to the total amount of coating solids used in the application process, expressed as a percentage.

~~ooo. ooo.~~ **“Vapor collection system”** means all piping, seals, hoses, connections, pressure-vacuum vents, and other equipment between the gasoline tank truck and the vapor processing unit and/or the storage tanks and vapor holder.

~~ppp. ppp.~~ **“Vapor control system”** means a system that limits or prevents release to the atmosphere of organic compounds in the vapors displaced from a tank during the transfer of gasoline.

~~qqq. qqq.~~ **“Vapor-mounted seal”** means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface and the floating roof.

~~rrr. rrr.~~ **“Vapor recovery system”** means a vapor-gathering system capable of collecting VOC vapors and gases emitted during the operation of any transfer, storage, or process equipment.

~~sss. sss.~~ **“Vapor-tight”** means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the LEL when measured with a combustible gas detector, calibrated with propane, at a distance of 2.54 centimeters (cm) (1 in.) from the source.

~~ttt. ttt.~~ **“Vapor-tight gasoline tank truck”** means a gasoline tank truck that has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 75 mm (3.0 in.) of water within 5 minutes (min) after it is pressurized to 450 mm (18 in.) of water; or when evacuated to 150 mm (5.9 in.) of water, the same tank will sustain a pressure change of not more than 75 mm (3.0 in.) of water within 5 min. This capability is to be demonstrated using the test procedures specified in Method 27 of Appendix A of 40 CFR, Part 60 (July 1, 1992).

~~uuu. uuu.~~ **“Volatile Organic Liquid”** (VOL) means any organic liquid which can emit any Volatile Organic Compound into the atmosphere (see definition of "Volatile

Organic Compound").

~~uuu.~~ vvv. "Volatile Organic Compound" (VOC) means any carbon-containing compound excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compounds other than those defined as "Exempt Compounds", which have been determined to have negligible photochemical reactivity (see definition of "Exempt Compounds"). In addition to the procedures for requesting a satisfactory compliance demonstration, where the Department proposes to allow the use of a test method for excluding negligibly reactive compounds that is different from or not specified in the approved SIP, such change shall be submitted to the Environmental Protection Agency (U.S. EPA) for approval as part of a SIP Revision.

~~www.~~ www. "Web coating line" means all of the coating applicator(s), drying area(s), or oven(s), located between an unwind station and a rewind station, that are used to apply coating onto a continuous strip of substrate (the web). A web coating line need not have a drying oven.

Section 26 - Gasoline Dispensing Facility

Stage I Vapor Recovery

1/11/93

~~[xx/xx/01]~~[1/11/02]

a. Applicability.

1. This Section applies to the control of gasoline vapors at a gasoline dispensing facility from any delivery vessel into any stationary storage vessel, where the vapors displaced by the liquid gasoline are retrieved to the delivery vessel and transported back to the refinery. This will include all three (3) counties.

2. The following are subject only to paragraph (c)(1)(i) of this Section:

i. Any transfer made to a gasoline dispensing facility storage tank that is equipped with a floating roof or its equivalent that has been approved by the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

ii. Any stationary gasoline storage tank with a capacity that is less than 2,080 liters (L) (550 gallons [gal]) that is used exclusively for the fueling of implements of husbandry.

iii. Any stationary gasoline storage tank with a capacity of less than 7,600 L (2,000 gal) that was constructed prior to January 1, 1979.

iv. Any stationary gasoline storage tank with a capacity of less than 950 L (250 gal) that was constructed after December 31, 1978.

3. Any gasoline dispensing facility having a monthly throughput of less than 38,000 L (10,000 gallons) is subject only to the provisions of paragraphs (c)(1)(i) and (d) of this

Section. Any gasoline dispensing facility that ever exceeds this applicability threshold for any calendar month shall be subject to all of the provisions of this Section, and shall remain subject to these provisions even if its throughput later falls below the threshold.

b. Compliance Schedule.

1. Facilities for which construction begins after November 15, 1990 shall be in compliance no later than May 15, 1993.

2. Facilities installed before November 15, 1990 and having a monthly throughput of at least 100,000 gallons in any calendar month shall be in compliance no later than November 15, 1993.

3. Facilities installed before November 15, 1990 and having a monthly throughput of greater than 10,000 gallons but less than 100,000 gallons in any calendar month shall be in compliance no later than November 15, 1994.

e. Standards.

1. The owner or operator of each gasoline dispensing facility subject to this Section shall comply with the following requirements:

i. All gasoline storage tanks at gasoline dispensing facilities shall be loaded by submerged fill.

ii. All gasoline vapor lines on the storage tank shall be equipped with closures that seal upon disconnect.

iii. A vapor balance system shall be installed with a vapor-tight line from the gasoline storage tank to the gasoline tank truck. The system shall be designed such that the gauge pressure in the gasoline tank truck does not exceed 450 millimeters (mm) (18 inches [in.]) of water pressure or 150 mm (5.9 in.) of water vacuum during product transfer.

iv. If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends to within 150 mm (5.9 in.) of the gasoline storage vessel bottom of the tank.

v. Liquid fill connections for all systems shall be equipped with vapor tight caps.

2. The owner or operator of a gasoline tank truck shall not unload gasoline to a gasoline storage tank at a gasoline dispensing facility subject to this Section unless the following conditions are met:

i. All hoses in the vapor balance system are properly connected.

ii. The adapters or couplers that attach to the vapor line on the underground storage vessel have closures that seal upon disconnect.

iii. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight.

iv. All tank truck vapor return equipment is compatible with the vapor balance equipment installed on the gasoline dispensing facility storage tank.

v. All hatches on the gasoline tank truck are

closed and securely fastened.

vi. ~~The filling of storage tanks at gasoline dispensing facilities is limited to unloading by vapor-tight gasoline tank trucks. Documentation that the gasoline tank truck has met the specifications of Method 27 of 40 CFR, Part 60, Appendix A (July 1, 1992), shall be carried on the tank truck. This documentation shall include all of the information required under 40 CFR 60.505 (July 1, 1992). In addition, test results shall be included for both the pressure and vacuum tests.~~

d. ~~Recordkeeping. The owner or operator of each gasoline dispensing facility subject to this Section shall maintain daily records showing the quantity of all gasoline delivered to the site. These records shall be retained for at least 5 years in a readily accessible location and shall be made available to the Department immediately upon verbal or written request.~~

e. ~~Reporting. The owner or operator of any facility containing sources subject to this Section shall comply with the requirements in Section 5 of this regulation.~~

a. Applicability.

1. This Section applies to any stationary gasoline storage tank located at any gasoline dispensing facility in the State of Delaware, except:

i. The following storage tanks shall be subject only to the requirements of paragraph (c)(1)(i) of this Section:

A. Any stationary gasoline storage tank that is equipped with a floating roof or its equivalent that has been approved by the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

B. Any stationary gasoline storage tank with a capacity of less than 550 gallons [gal] used exclusively for the fueling of farm equipment.

C. Any stationary gasoline storage tank with a capacity of less than 2,000 gal that was constructed prior to January 1, 1979.

D. Any stationary gasoline storage tank with a capacity of less than 250 gal that was constructed after December 31, 1978.

ii. The storage tank(s) at any gasoline dispensing facility, which never has a throughput of greater than 10,000 gallons of gasoline, shall be subject only to the requirements of paragraphs (c)(1)(i) and (d) of this Section. The storage tank(s) at any gasoline dispensing facility that ever exceeds this applicability threshold shall be subject to all of the requirements of this Section, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

2. The requirements of this Section are in addition to all

other State and Federal requirements, to include the permitting requirements of Regulation No. 2 of the State of Delaware "Regulations Governing the Control of Air Pollution". Any gasoline dispensing facility that is currently subject to any state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

3. Compliance Schedule

Any stationary gasoline storage tank subject to the requirements of this Section shall be in compliance as follows:

i. Storage tanks located at any facility that first commences operations:

A. Before November 15, 1990 and having any throughput of at least 100,000 gallons: no later than November 15, 1993.

B. Before November 15, 1990 and having any throughput of greater than 10,000 gallons but less than 100,000 gallons: no later than November 15, 1994.

C. On or after November 15, 1990 and before May 15, 1993: no later than May 15, 1993.

D. On or after May 15, 1993: upon commencement of operations.

ii. The requirements of paragraph(c)(1)(ii)(E) are effective on and after May 1, 2003.

b. Reserved.

c. Standards.

1. The owner and/or operator of any stationary storage tank that is subject to the requirements of this Section shall:

i. Load the stationary gasoline storage tank(s) by submerged fill using a drop tube that extends to within 150 mm (5.9 in.) from the bottom of the tank.

ii. Design, install, operate, and maintain a Stage I Vapor Recovery System that operates such that the vapors displaced by the liquid gasoline are returned to the delivery vessel and transported back to the bulk plant or terminal.

A. All hoses in the Stage I Vapor Recovery system shall be properly connected.

B. All vapor lines, couplers, and adapters used in the gasoline delivery shall be vapor-tight.

C. All adapters and couplers that attach to any vapor line on the storage vessel shall have closures that seal upon disconnect.

D. Reserved.

E. All Stage I systems shall utilize dual point vapor connections to return vapors from the storage tank to the delivery truck.

2. The filling of storage tanks subject to the requirements of this Section shall be limited to unloading by vapor-tight gasoline tank trucks or delivery trucks which:

i. meet all of the requirements of Section 27 of this regulation; and

ii. are equipped with vapor return equipment that is compatible with the Stage I Vapor Recovery System installed on the storage tank.

d. Recordkeeping. The owner and/or operator of any stationary gasoline storage tank exempted from the requirements of this Section pursuant to paragraph (a)(1)(ii) of this section shall keep on the facility premises and in a form acceptable to the Department, records showing monthly throughput. These records shall be retained for at least 5 years from the date of record, and shall be made immediately available to the Department upon request.

e. Reporting. The owner and/or operator of any facility containing sources subject to this Section shall comply with the requirements of Section 5 of this regulation.

Section 36 - Stage II Vapor Recovery.

1/11/93

[~~xx/xx/01~~][1/11/02]

a. Applicability. This section applies to the control of gasoline vapors at the vehicle fill pipe during refueling operations, and at a gasoline dispensing facility. The vapors are captured and returned to a vapor-tight underground storage tank, or destroyed. These systems must be installed at affected facilities in all three Delaware counties: New Castle, Kent, and Sussex. Refer to the compliance schedule in part d. for county-specific schedules. All applicable facilities shall comply with the operation, maintenance and testing requirements of this Section, and with **Appendix "J"** and its subparts.

b. Definitions

"Stage II Vapor Recovery System" means the control of gasoline vapor at the vehicle fill pipe, where the vapors are captured and returned to a vapor-tight underground storage tank, or destroyed.

"Throughput" means the amount of gasoline dispensed at a gasoline dispensing facility during a calendar month after November 15, 1990.

"Certified STAGE II Vapor Recovery System" means any **system** certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95%, and approved by the Department.

"Defective Equipment" means any absence, disconnection, or malfunctioning of a Stage II vapor recovery system component which is required by this rule including, but not limited to, the following:

1. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out.

2. A nozzle bellows that has any hole large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length.

3. A nozzle faceplate or cone that is torn or missing over 25% of its surface.

4. A nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism.

5. An inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this rule.

6. Failure to meet the requirements of **Appendix "J"**.

e. Stage II Requirements

No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

1. The transfer is made using a Certified Stage II vapor recovery system that is designed, operated, and maintained such that the vapor recovery system removes, destroys, or prevents the discharge into the atmosphere of at least 95% by weight of Volatile Organic Compound (VOC) emissions.

2. All installed Stage II vapor recovery systems must be certified by the California Air Resource Board (CARB).

d. Compliance Schedule

Affected gasoline facilities shall be in compliance with the following schedule:

1. Facilities for which construction began after November 15, 1990: by May 15, 1993 for facilities located in New Castle and Kent Counties, and by May 15, 1995 for facilities located in Sussex County.

2. Facilities installed before November 15, 1990 and having any single monthly throughput of at least 100,000 gallons per month: by November 15, 1993 for facilities located in New Castle and Kent Counties, and by November 15, 1995 for facilities located in Sussex County.

3. Facilities installed before November 15, 1990 and having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons: by November 15, 1994 for facilities located in New Castle and Kent Counties, and by November 15, 1996 for facilities located in Sussex.

4. Stage II vapor recovery systems installed prior to November 15, 1992, which are designed for dual vapor recovery hoses (not coaxial) shall be retrofitted with coaxial hoses no later than January 1, 1994, or upon any vapor system modification, whichever is first. In addition, remote vapor check valves in balance type systems installed prior to November 15, 1992, shall be retrofitted with check valves located in the nozzle no later than January 1, 1994, or upon any vapor system modification, whichever is first.

5. New systems installed after November 15, 1992 will not be permitted to have dual vapor recovery hoses or remote check valves for balance type systems.

6. Any gasoline dispensing facility that ever exceeds the exemption throughput specified in Section e of this subpart shall be subject to all of the provisions of this Section, and shall remain subject to these provisions even if its throughput later falls below the exemption throughput.

a. Exemptions

The burden of proof of eligibility for exemption from this rule is on the applicant. Persons seeking such an exemption shall maintain adequate records of monthly throughput, and furnish these records to the Department upon request. These records shall be maintained on file for three years. The provisions of Section 36e shall not apply to the following facilities:

1. Gasoline facilities, which never dispense greater than 10,000 gallons of gasoline in any, single calendar month.
2. Gasoline dispensing facilities that are used exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles.

b. Requirements

1. All applicable gasoline dispensing facilities subject to the provisions of this Section and Section 26 of this Regulation shall perform the following tests in accordance with the test methods and procedures in **Appendix "J"** or as otherwise approved by the Department in accordance with **Appendix "J"**, subsection b.1., and within the context of the provisions of subsection e. The tests shall be carried out at the completion of the installation, and as per the schedule listed below:

- i. A Pressure Decay/Leak Test every five (5) years.
- ii. A Dynamic Backpressure (Dry) Test annually. A Department representative shall be present at least once every three (3) years.
- iii. A Vapor Space Tie Test shall be performed only at the time of the time of installation; this test verifies proper installation of the underground piping (See **Appendix "J2"**, step d.10.).
- iv. A Liquid Blockage (Wet) Test, only after installation.
- v. Test to ensue proper functioning of nozzle automatic shut-off mechanisms and flow prohibiting mechanisms, where applicable.

2. The Department may require that all of the above tests shall be required if there are any modifications or repairs.

3. The Department reserves the right to perform compliance inspections and testing at any time.

e. Performance Testing Notification

1. The Department shall receive written notification 10 working days prior to any test operation, unless

permission is granted to the contrary.

2. The owner and operator and the test contractor shall report all test failures to the Department within twenty-four (24) hours of the failure.

d. Operating Instructions/Postings

The owner and/or operator of the facility shall conspicuously post operating instructions for the vapor recovery system on the front of each gasoline dispenser to include the following:

1. A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.
2. A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.
3. A telephone number to report problems experienced with the vapor recovery system to the Department. This number may be posted in the store so long as it is conspicuously displayed.

e. Other General Requirements

1. Conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until said system has been repaired in accordance with **Appendix "J"**.

2. Provide adequate training and written instructions to the operator of the affected facility to assure proper operation of the vapor recovery system in accordance with **Appendix "J"**.

3. The owner and/or operator of the facility shall perform routine maintenance inspections of the Stage II Vapor Recovery System on a daily basis, in accordance with **Appendix "J"**.

f. Recordkeeping and Reporting

Stage II system owners and operators shall maintain various types of compliance and testing records as listed in Section f. of **Appendices "J", "J2" and "J3"**.

a. Applicability.

1. This Section applies to any gasoline dispensing facility located in the State of Delaware, except:

i. Any gasoline dispensing facility, which never has a throughput of greater than 10,000 gallons of gasoline, shall be subject only to the requirements of paragraph (e)(2) of this Section. Any gasoline dispensing facility that ever exceeds this throughput shall be subject to all of the requirements of this Section, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

ii. Any gasoline dispensing facility that is used exclusively for refueling marine vehicles, aircraft, farm equipment, and/or emergency vehicles.

2. On and after May 1, 2003, the requirements of paragraph (f) of this Section apply to any owner and/or operator of any company that performs compliance testing of Stage II Systems within the State of Delaware.

3. The requirements of this Section are in addition to all other State and Federal requirements, to include the permitting requirements of Regulation No. 2 of the State of Delaware "Regulations Governing the Control of Air Pollution." Any gasoline dispensing facility that is currently subject to any state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

4. Compliance Schedule

Any gasoline dispensing facility subject to the requirements of this Section shall be in compliance as follows: Any facility that first commences operations:

i. Before November 15, 1990 and that has any throughput of greater than 10,000 gallons but less than 100,000 gallons: by November 15, 1994 for facilities located in New Castle and Kent Counties, and by November 15, 1996 for facilities located in Sussex.

ii. Before November 15, 1990 and that has any throughput of at least 100,000 gallons: by November 15, 1993 for facilities located in New Castle and Kent Counties, and by November 15, 1995 for facilities located in Sussex County.

iii. On or after November 15, 1990 and before January 11, 1993: by May 15, 1993 for facilities located in New Castle and Kent Counties, and by May 15, 1995 for facilities located in Sussex County.

iv. On or after January 11, 1993: upon commencement of operations.

5. Any Stage II vapor recovery system installed prior to November 15, 1992, and using dual vapor recovery hoses (not coaxial) shall be retrofitted with coaxial hoses no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with coaxial hoses.

6. Remote vapor check valves in balance type systems installed prior to November 15, 1992, shall be retrofitted with check valves located in the nozzle no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with remote check valves located in the nozzle.

b. Definitions

"Assist System" means a system that creates a vacuum to assist the movement of vapors back into the storage tank.

"Balance System" means a system where pressure develops in the vehicle tank during fueling operations, and vacuum in the storage tank created when the fuel is removed, forces displaced vapors out the vehicle tank and back into the storage tank.

c. Standards

1. The owner and/or operator of any gasoline dispensing facility subject to the requirements of this Section shall:

i. Design, install, operate, and maintain one of the Stage II Vapor Recovery Systems identified in paragraph (g) of this section.

ii. For systems with manifolded vapor lines, the liquid shall return into the lowest octane tank. For non-manifolded systems with separate vapor lines, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor lines.

iii. On and after May 1, 2003, install and maintain a vapor shear valve that functions similarly to the product shear valve.

iv. Conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

A. A clear description of how to correctly dispense gasoline.

B. A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.

C. A toll-free telephone number to report problems experienced with the vapor recovery system to the Department.

2. At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation and/or installed on their facility premises. Acceptable forms of training include equipment manufacturer's seminars, classes or workshops, or any other training approved by the Department.

i. Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three (3) months of the installation of the Stage II system. The certificate shall display the name of the person who completed the training program.

ii. The representative that completed the training program is then responsible for informing all facility employees about conducting routine maintenance pursuant to paragraph (c)(3) of this section and about the operation and maintenance of the Stage II system. The representative shall maintain proof of training for all employees who will be conducting daily inspections. If such representative leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three (3) months.

iii. Training shall include, but not be limited to, the following subjects:

A. Purposes and effects of the Stage II Vapor Control Program.

B. Equipment operation and function specific to their facility's equipment.

C. Maintenance schedules and requirements for the facility's equipment.

D. Equipment warranties.

E. Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

3. Each day personnel trained pursuant to paragraph (c)(2) of this Section shall perform routine maintenance inspections and record the inspection results.

i. Such inspections shall consist of, but not limited to, inspection of the Stage II system for the following defects:

A. A faceplate or face cone of a balance or assist system nozzle that does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or face cone is over 25% of its' surface.

B. A vapor assist system nozzle fitted with an efficiency compliance device that is damaged over 25% of its' surface.

C. A nozzle bellows with a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring one inch or more in length.

D. A nozzle bellows or efficiency compliance device that is loosely attached to the nozzle body, not attached by a manufacturer approved method, or a vapor check valve frozen in the open position.

E. A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

F. A nozzle with a vapor check valve that is defective, or a hose with a disconnected or damaged breakaway.

G. A vapor assist system nozzle spout that is damaged and the vapor collection holes are obstructed.

H. A dispenser mounted vacuum pump that is not functioning.

I. A vacuum assist system with a central vacuum unit or vapor processing unit that is inoperative.

J. A hose retractor that does not fully retract.

K. Any other component required by the Department for use in the system that is missing, disconnected, or malfunctioning.

ii. The owner and/or operator shall post "Out of Order" signs and "Bag-out" the nozzle associated with any part of the defective vapor recovery system until said system has been repaired or replaced.

d. Testing Requirements

1. Any gasoline dispensing facility subject to the

requirements of paragraph (c)(1)(i) of this Section shall perform and pass the following tests in accordance with the test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. **[Where any of the following test methods and procedures, in the opinion of the Department, conflict and/or are redundant with those specified in any CARB Executive Order adopted by reference in paragraph (g) of this Section, the following test methods and procedures shall apply.]**

i. The following tests shall be performed and passed within ten (10) days of installation of the Stage II vapor recovery system:

A. A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

B. A Dynamic Backpressure and Liquid Blockage Test, conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 8. This test procedure is hereby incorporated by reference.

C. For assist systems, an Air to Liquid Volume Ratio Test conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 9. This test procedure is hereby incorporated by reference.

D. A Vapor Tie Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

ii. The following tests shall be performed and passed annually for each Stage II vapor recovery system according to the test procedures stated in paragraph (d)(1)(i) of this Section:

A. A Pressure Decay/Leak Test.

B. For Balance Systems, A Dynamic Backpressure and Liquid Blockage Test.

C. For Assist Systems, An Air to Liquid Volume Ratio Test.

iii. Any additional testing(s) required by the Department or the manufacturer shall be carried out according to the schedule stated in any permit issued pursuant to Regulation No. 2.

2. The Department may require the performance of any of the tests identified in paragraph (d)(1) of this Section at anytime at the owner's expense.

3. Written notification shall be submitted to the Department not less than ten (10) working days prior to the performance of any compliance test, unless approval by the Department is granted to the contrary.

4. The owner and/or operator and test contractor shall

report all test failures to the Department within twenty-four (24) hours of the failure.

5. The owner and/or operator shall submit the following to the Department within thirty (30) days of the test date:

- i. the actual test date; and
- ii. the installing and/or testing companies' name(s), address (es), and phone number(s); and
- iii. if any corrective action was performed pursuant to paragraph (f)(4)(ii) then submit all information specified in (f)(4).

e. Recordkeeping and Reporting

1. The owner and/or operator of a gasoline dispensing facility subject to the requirements of this Section shall keep on the facility premises and in a form acceptable to the Department, all of the following information. This information shall be retained for at least three (3) years from the date of record and shall be made immediately available to the Department upon request.

i. Permits and Applications. Copies of the Stage I and Stage II System permit applications and the current Construction/Operation Permits shall be permanently maintained.

ii. Installation and Testing Results. The test results shall be dated, and shall note the installing and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage II system.

iii. Maintenance Records. Any maintenance conducted on any part of the Stage II vapor recovery system shall be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution.

iv. Inspection Records. A file shall be maintained of all daily inspection reports including records of daily self-inspections, and any third party inspection records.

v. Compliance Records. A file shall be maintained of all compliance records. This record shall include:

A. Any warning letters and notices of violations issued by the Department to the facility.

B. Proof of attendance and completion of a training program for each person trained in accordance with paragraph (c)(2)(ii). This does not apply to the records of an employee who is no longer in service for at least one (1) year.

2. Any gasoline dispensing facility exempted from the requirements of this Section pursuant to paragraph (a)(1)(i) of this Section shall maintain records of monthly throughput, and shall furnish these records to the Department upon request. These records shall be maintained on file for a minimum of three years from the date of record.

3. The owner and/or operator of any facility containing sources subject to this Section shall comply with the requirements of Section 5 of this regulation.

f. Compliance Testing Company Requirements

1. Any owner and/or operator of any company that performs Stage II compliance testing within the State of Delaware shall submit all of the following information to the Department, prior to performing any Stage II compliance testing within the State of Delaware:

i. The name and business mailing address of the Stage II compliance testing company owner and/or operator;

ii. The address and telephone number of the facility (ies) from which the daily compliance testing activities of the compliance testing company originate;

iii. A written description of the employee training systems in place at the compliance testing company to ensure required compliance tests are performed in accordance with applicable protocols and procedures.

iv. Certification by an individual who is a responsible and trained representative of the compliance testing company containing the following language verbatim:

A. I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

B. Employee training systems are in place at the company to ensure Stage II compliance tests are performed in accordance with all applicable protocols and procedures; and

C. I am fully authorized to make this attestation on behalf of this Stage II Compliance Testing Company.

2. Any company subject to the requirements of paragraph (f) of this section shall notify the Department in writing of any change to any information submitted to the Department within 14 days of the effective date of such change.

3. No person subject to the requirements of paragraph (f) of this Section shall perform any Stage II compliance test unless said person has first been trained in accordance to applicable compliance test protocols and procedures.

4. Any person subject to paragraph (f) of this Section shall certify to the owner and/or operator of the gasoline dispensing facility that each compliance test performed to meet the requirements of this section was performed in accordance with paragraph (d) of this Section. Certification shall include:

i. The date each compliance test was first

performed and the test results; and

ii. An itemized list of all corrective action performed on the Stage II system. This list shall include, but not be limited to, component re-installation, tightening, repair or replacement, as necessary, for the system to pass the applicable test(s); and

iii. The date each compliance test was performed and passed; and

iv. Certification by a responsible and trained representative(s) of the compliance testing company containing the following language verbatim:

A. I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

B. I am fully authorized to make this attestation on behalf of this Stage II Compliance Testing Company.

g. Approved Stage II Vapor Recovery Systems

The following California Air Resources Board (CARB) executive orders are hereby adopted by reference.

Number & Date	Description
G-70-7-AD (03/22/93)	Certification of the Hasstech Model VCP-2 and VCP 2A Phase II Vapor Recovery System.
G-70-14-AA (02/08/83)	Recertification of Red Jacket Aspirator Assist Phase II Vapor Recovery System.
G-70-17-AD (05/06/93)	Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System.
G-70-18-C (08/28/79)	Modification of Certification of the Shell Model 75B1 and 75B1-R3 Service Station Phase II Vapor Recovery System.
G-70-23-AC (04/29/96)	Recertification of the Exxon Balance Phase II Vapor Recovery System.
G-70-25-AA (02/08/83)	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System.
G-70-33-AB (03/09/84)	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System.
G-70-36-AD (09/18/92)	Modification of Certification of the OPW Balance Phase II Vapor Recovery System.
G-70-37-B (01/22/80)	Modification of the Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service.
G-70-38-AB (12/19/90)	Recertification of the Texaco Balance Phase II Vapor Recovery System.
G-70-48-AA (02/08/83)	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System.
G-70-49-AA (02/08/83)	Recertification of the Union Balance Phase II Vapor Recovery System.
G-70-52-AM (10/04/91)	Certification of Components for Red Jacket, Hirt and Balance Phase II Vapor Recovery System.
G-70-53-AA (02/08/83)	Recertification of the Chevron Balance Phase II Vapor Recovery System.
G-70-70-AC (06/23/92)	Certification of the Healy Phase II Vapor Recovery System of Service Stations.

G-70-77 (09/15/82)	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System.
Number & Date	Description
G-70-78 (05/20/83)	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-101-B (11/15/85)	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11VC and 11 VE Vapor Recovery Nozzles.
G-70-107 (05/15/86)	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-110 (01/20/87)	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities.
G-70-118-AB (03/31/95)	Certification of Amoco V-1 Vapor Recovery System.
G-70-125-AA (03/16/93)	Modification of the Certification of the Husky Model V Phase II Balance Vapor Recovery Nozzle.
G-70-127 (08/16/90)	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle.
G-70-134 (12/21/90)	Certification of the EZ Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery System.
G-70-139 (03/17/92)	Addition to the Certification of the Hirt Model VCS-200 Phase II Vapor Recovery System.
G-70-150-AE (07/12/00)	Modification of the Certification of the Gilbarco VaporVac Phase II Vapor Recovery System.
G-70-153-AD (04/03/00)	Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System.
G-70-154-AA (06/10/97)	Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System.
G-70-159-AB (07/17/95)	Modification of the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System.
G-70-163-AA (09/04/96)	Certification of the OPW VaporEZ Phase II Vapor Recovery System.
G-70-164-AA (12/10/96)	Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System.
G-70-165 (04/20/95)	Healy Vacuum Assist Phase II Vapor Recovery System.
G-70-169-AA (08/11/97)	Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System.
G-70-170 (02/22/96)	Certification of the EZ-flo Rebuilt 5005 and 5015 for use with the Balance Phase II Vapor Recovery System.
G-70-177-AA (06/22/00)	Certification of the VCS400-7 Vacuum Assist Phase II Vapor Recovery System.
G-70-179 (07/02/97)	Certification of the Catlow ICVN-V1 Vacuum Assist Phase II Vapor Recovery System.
G-70-180 (04/17/97)	Order Revoking Certification of the Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Systems.
G-70-183 (03/04/98)	Certification of the Healy/Franklin Vacuum Assist Phase II Vapor Recovery System.
G-70-186 (10/26/98)	Certification of the Healy Model 400 ORVR Vapor Recovery System.
G-70-188 (05/18/99)	Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System.
G-70-191 (08/08/99)	Healy/Franklin VP-1000 Vapor Pump Phase II Vapor Recovery System (Healy ORVR Phase II Vapor Recovery System).
G-70-196 (12/30/00)	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System.

APPENDIX "J"

**Procedures for Implementation of Regulations Covering
Stage II Vapor Recovery Systems for
Gasoline Dispensing Facilities**

a. PURPOSE.

The purpose of this document is to prescribe the procedures for training, systems approval, maintenance, operation, testing, inspection, recordkeeping, and reporting for Gasoline Dispensing Facilities required to be equipped with Stage II vapor recovery systems.

b. BACKGROUND.

1. The implementation procedures outlined in this document are based on those specified in the U.S. Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards and Office of Air and Radiation Guideline Series documents. In cases where the definitions, standards, and other provisions of the EPA guideline documents differ from this document or Regulation No. 24, "**Control of Volatile Organic Compound Emissions**" [hereinafter called "the regulation"], this document and the regulation shall take precedence. The use of test methods and procedures not specified in this document is acceptable if approved by the Department within the context of the provisions of subsection e., below.

2. In order for the State of Delaware to fulfill its obligations under the Federal Clean Air Act, state regulations are required to be approved by the EPA.

3. Where state regulations specify that procedures or methods shall be approved by, acceptable to or determined by the Department, or specifically provide for decisions to be made by the Department, or other similar phrasing, it may be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by EPA in order to make them federally enforceable.

4. It has been determined, in accordance with EPA regulations and policy, that this document is to be submitted to EPA and, upon approval, become part of the State Implementation Plan. Accordingly, any amendments to this document shall be approved through the same administrative process.

e. GENERAL REFERENCES.

1. Regulation No. 24, "**Control of Volatile Organic Compound Emissions**".

2. "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", EPA-450/3-91-022a and b, November, 1991.

3. "Enforcement Guidance for Stage II Vehicle

Refueling Control Programs", U.S. Environmental Protection Agency, Office of Air and Radiation, October, 1991.

4. "Gasoline Facilities Phase I and II Technical Manual", Appendix D, CARB Compliance Division, Revised April, 1992.

d. LOCATION OF REFERENCED DOCUMENTS. The documents referenced above and any others that may be referenced throughout this document are available from the Department. A nominal fee is required.

e. RECISION. This document supersedes any previously issued documents relative to this matter, except for regulations.

f. INSTRUCTIONS.

1. Applicability. This document contains procedures to be used to comply with the regulations requiring Stage II vapor recovery system operator training, equipment approval, testing, inspection, maintenance, and all associated recordkeeping and reporting. The owner of the Stage II vapor recovery system (hereinafter called a "Stage II system"), installed at a gasoline dispensing facility (hereinafter called a "facility"), as required by Regulation No. 24 and Regulation No. 2, has the ultimate responsibility for compliance with the requirements of subsection f.2., below. Stage II systems must be installed at applicable facilities in all three counties in the State of Delaware: New Castle, Kent and Sussex.

2. Procedures.

i. Stage II System Operation and Maintenance Training.

A. At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation on their facility premises. Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three (3) months of the installation of the Stage II system. The representative that completed the training is then responsible for informing all facility employees about the operation and maintenance of the Stage II system. If the representative who received the initial training/certificate leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three (3) months.

B. Training shall include, but need not be limited to, the following subjects:

1. Purposes and effects of the Stage II vapor control program.

2. Equipment operation and function specific to their facility's equipment.

3. Maintenance schedules and requirements for the facility's equipment.

4. Equipment warranties.

5. Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

C. Acceptable forms of training can include equipment manufacturer's seminars, classes or workshops offered by accredited institutions, or any other training approved by the Department. Facility owners are encouraged to request and solicit by contract training from the manufacturer or the contractor who will install the Stage II system at their facility.

ii. Facility Permitting and Stage II System Approval.

A. Owners of Stage II vapor recovery systems shall submit to the Department, no later than 60 days prior to installation, a Stage II Permit application, in accordance with Regulation No. 2. Only those system configurations as approved in accordance with the provisions of **Appendix "J1"**, will be approved. The Permit shall be placed in the facility file and kept on the premises of the facility at all times.

B. Other Requirements: Applicable facilities shall be in compliance with any other regulations, guidelines, or requirements, which affect the regulated facility's operations, including Stage I requirements.

iii. Stage II Requirements for Installation and Testing

A. Owners of Stage II vapor recovery systems shall verify proper installation and function of the entire Stage II vapor recovery system when it is fully installed and ready for operation, by performing the tests listed below:

1. Pressure Decay/Leak Test, with a Vapor Space Tie Test, where applicable (see **Appendices "J2" and "J3"**).

2. Dynamic Backpressure (Dry) Test/Liquid Blockage (Wet) Test (see **Appendix "J3"**).

3. Testing to ensure proper functioning of nozzle automatic shut off mechanisms and flow prohibiting mechanisms, where applicable.

4. Other applicable tests specific to a Stage II system, when approved by the Department.

The Stage II system shall be tested and verified as functioning properly before it is made available to the public or to facility personnel for use. The owner of the Stage II system shall notify the Department at least ten (10) days prior to the testing of the Stage II system unless permission is granted to the contrary. It is recommended, for the protection of the facility owner, that appropriate testing be performed to verify proper installation of the underground piping before the aboveground equipment is installed.

B. The owner of the Stage II system shall

submit a copy of all Stage II system test failures, as required in subsection A, above, to the Department no later than ten (10) days after the tests have been performed. The test results shall be dated and shall note the installing and test companies' names, addresses, and phone numbers.

C. The owner of a Stage II system shall perform once every five (5) years a Pressure Decay/Leak Test and a Dynamic Backpressure (Dry) Test annually on the entire Vapor Recovery System (according to the procedures in **Appendices "J2" and "J3"**). Any or all test(s) may be required after a major system replacement or modification, or upon request of the Department after a malfunction of the Stage II system has been identified. The owner of the Stage II system shall notify the Department at least ten (10) days prior to the testing of the Stage II system unless permission is granted to the contrary. Test failures shall be reported to the Department within twenty-four (24) hours.

iv. Replacement Parts for Stage II Systems. Only those rebuilt or aftermarket parts as listed in **Appendix "J1"** (except for remote check valves and dual vapor recovery hoses) shall be used as replacement parts on Stage II vapor recovery systems, such that the system's original efficiency or durability is not degraded.

v. Maintenance Inspections of Stage II Systems.

A. The Stage II system owner and operator shall perform routine maintenance inspections of the Stage II system on a daily basis, and record the inspection results. Daily inspections shall consist of, but not be limited to, inspection of the Stage II system for the equipment defects as listed below. The presence of any equipment defect and the corrective action taken shall also be recorded in the maintenance record as specified below in subsection f.2.vii. of this document.

1. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out.

2. A nozzle bellows that has any hole large enough to allow a ¼ inch diameter cylindrical rod to pass through it, or any slit one inch or more in length.

3. A nozzle faceplate or facecone that is torn or missing over 25% of its surface.

4. A nozzle with no automatic overfill control mechanism, or an inoperable overfill control mechanism.

5. An inoperable or malfunctioning vapor processing unit. Defects of the process unit include, but are not limited to, leaking return lines, intermittent process interruptions, and low return pressure.

B. The Stage II system owner and operator shall conspicuously post an "Out of Order" sign on any nozzle associated with any aboveground part of the Stage II system which is found to be defective. The defective equipment shall be taken out of service until it has been repaired or replaced.

vi. Operating Instructions for Users of Stage II Systems

A. The facility owner and operator shall conspicuously post operating instructions for the vapor recovery system in the gasoline dispensing area, which include the following:

1. A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.

2. A warning that repeated attempts to continue dispensing gasoline after the system has indicated that the vehicle fuel tank is full (by automatically shutting off) may result in spillage or recirculation of gasoline.

3. A telephone number to report problems experienced with the vapor recovery system to the Department. This number may be posted in the store so long as it is conspicuously displayed.

B. The format and content of the instructions shall be approved by the Department. The Department also reserves the right to supply instructional signs, at a nominal cost to the facility owner, for placement in the gasoline dispensing areas at each facility.

vii. Verification of Facility Compliance Through Recordkeeping. Stage II system owners and operators shall maintain various types of compliance records as listed below in subsections A through F. Records shall be kept in a form and manner acceptable to the Department, unless forms are supplied by the Department for a specific purpose. The records shall be kept updated and maintained on the facility premises in an easily accessible location for review by the Department. The Stage II system owner has the ultimate responsibility to ensure that the appropriate records are accurately maintained.

A. Station Permitting/Stage II System Approval. A copy of the Stage II System application form and permit shall be maintained permanently on the facility premises in the facility file.

B. Stage II System Installation and Testing Results. The Stage II system shall meet or exceed the requirements of the tests discussed in subsection f.2.iii., above. The test results shall be dated, and shall note the installing and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage II system.

C. Stage II System Maintenance Records. Any maintenance conducted on any part of a regulated facility's system shall be required to be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution. These records shall be kept on file for at least three (3) years.

D. Inspection Records. A file shall be maintained of all inspection reports issued by the Department, records of daily self-inspections, and records of

monthly self-inspections. The inspection records shall be kept on file for at least three (3) years, and be organized chronologically.

E. Compliance Records. A file shall be maintained of all compliance records including warning, notices of violations, and other compliance records issued by the Department to the facility. The compliance file shall be maintained separate from the inspection file. The compliance records shall be kept on file for at least three (3) years, and be organized chronologically.

F. Training Certification. Proof of attendance and completion of a training program as specified in subsection f.2.i.A. of this document shall be maintained and filed in the compliance records file specified in subsection f.2.vii.E. This does not apply to the records of an employee who is no longer in service for at least one (1) year.

SUB-APPENDICES

J1 Certified Stage II Vapor Recovery Systems

J2 Pressure Decay/Leak Test Procedure

J3 Dynamic Backpressure (Dry) Test/Liquid Blockage (Wet) Test Procedure.

APPENDIX "J1"

Certified Stage II Vapor Recovery Systems

A Stage II system will be an approved system if it is certified by the California Air Resources Board (CARB) and utilizes coaxial hoses (instead of dual vapor recovery hoses) and check valves in the nozzle for balance type systems (instead of remote check valves). If a Stage II system is certified by CARB, an Executive Order is written for that system. The order specifies the conditions, which must be met by any Stage II system installed under that certification. The specifications may include the plumbing system, an equipment list, the vapor hose configuration, and the maximum allowable pressure drop through the system.

The list of CARB certified Stage II systems and replacement parts is continually being updated; therefore, facilities are directed to may obtain the most recent copy of the list from the Department before purchasing Stage II vapor recovery equipment. A nominal fee shall be required.

APPENDIX "J2"

Pressure Decay/Leak Test Procedure for Verification of Proper Functioning of Stage I & Stage II Vapor Recovery Equipment

a. INTRODUCTION. This procedure is applicable to facilities that are required to recover vapors emitted during the transfer of gasoline by installing and operating Stage I

and Stage II vapor recovery equipment. It is used to determine compliance with Stage I and Stage II of the Regulations for the Control of Volatile Organic Compound Emissions. Section 26 requires vapor recovery during the truck delivery of fuel to stationary storage tanks (Stage I vapor control). Air aspirated into the fuel during Stage I deliveries prevents compliance with Section 26 of the regulations. Vapor leakage from adjacent tanks with a vapor manifold to the tank receiving fuel also precludes compliance. This will not happen if the system is leak tight. Section 26 requires that Stage II vapor recovery systems are at least 95% effective in recovering gasoline vapors, and requires the vapor recovery nozzle backpressure shut-off mechanisms not malfunction in any way. This procedure is used to check for the proper functioning of the Stage II system and shut-off mechanisms, and is also used to identify equipment defects which are listed in **Appendix "J"**.

b. PREREQUISITES TO TESTING. The following requirements must be met before a valid test may be performed:

1. **The Department Must Be Notified** — The appropriate office of the Department must be contacted at least two working days prior to the testing of the stage II vapor recovery system. Tests may or may not be witnessed by a Department personnel, however, if the Department is not notified of this test or any of the other required tests, then this test or any other required test may be declared invalid, in which case a retest will be required.

2. **Minimum Tank Ullage** — The ullage (vapor space) in each tank being tested must be at least 10% of the tank's capacity, but in no case less than 300 gallons per tank. If the tanks are manifolded, each tank must meet the minimum ullage requirements described above.

3. **Maximum Tank Ullage** — There is no maximum tank ullage requirement. However, since the required test duration is directly proportional to the amount of tank ullage, it is recommended that the total tank ullage be kept as close as possible to the minimum tank ullage requirements to preclude excessively long tests.

4. **Condition of the Vapor Recovery System** — The complete vapor recovery system must be installed and intact during the test. If the installation includes a Stage II vapor recovery system, all hoses, nozzles, fittings, valves, and other system components must be installed as if the system were to be placed into service. All system components must be free of all visible defects such as torn or punctured bellows, loose or torn faceplates, or defective check valves. Plugging the vapor return plumbing where a leaking vapor recovery nozzle or remote check valve has been discovered is not allowed.

5. **Restrictions On Gasoline Transfer Operations** — Transfers of gasoline into the storage tanks within one (1) hour prior to the test are prohibited. In addition, dispensing

of gasoline is not allowed during the test.

e. EQUIPMENT. The following equipment will be needed to perform this test. (Refer to the schematic presented in **Figure 1** for a typical set-up):

1. A bottle of compressed gaseous nitrogen and pressure regulators capable of regulating final downstream pressure to 1.0 pound per square inch gauge (psig) is required. Use assorted valves, fittings, and pressure tubing as necessary. A means of providing a grounding path from the bottle of compressed nitrogen is required. The bottle shall be grounded for safety. It is recommended that the tubing be flexible metal tubing or non-metal tubing that incorporates a grounding path throughout its length. A pressure relief device must also be installed prior to testing. The pressure relief device must be adjusted to vent at one pound per square inch gauge (27.7 inches water column gauge).

WARNINGS:

i. Attempting the pressure decay test without a pressure relief device may result in over-pressurizing the system, which may create a hazardous condition and may cause damage to the underground storage tanks, associated piping, and other system components.

ii. The nitrogen bottle must be securely fastened to a large, stationary object at all times. A compressed gas cylinder which falls and is damaged can easily become a lethal projectile.

2. An accurate device for measuring pressure, such as a water manometer (preferable) or a Magnehelic gauge (or equivalent) is required to measure the system pressure. This device must be graduated in increments of one-tenth (0.1) of an inch of water column pressure.

3. A stopwatch accurate to within 1 second.

d. TEST PROCEDURE

1. Determine the ullage of the underground storage tank (or tanks, if manifolded). Measure the gasoline gallonage in the underground storage tank(s). Calculate the ullage space for the storage tank(s) by subtracting the gasoline gallonage present from the tank capacity(ies). Note the ullage and actual tank ullage must meet the minimum tank ullage criteria specified above in Section b.2.

2. Calculate the required test duration by multiplying the total ullage (in thousand gallons) by 5.0. Record the resulting required test time (in minutes) on a data form acceptable to the Department.

3. Install the pressure relief device, grounding wire, fittings, tubing, and equipment needed to pressurize and to monitor the system vapor space (see **Figure 1**). Nitrogen can be introduced into the system through the storage tank vent pipe or through the vapor return piping.

4. For manifolded systems, install the pressure relief safety valve, set at one psig (27.7 inches of water), over the

opening of the storage tank vents and cap the remaining storage tank vents. (Manifolding the vent line is prohibited since this interferes with the check of underground vapor manifolds). For non-manifolded systems, test each product vapor recovery system separately with the pressure relief safety valve installed on the vent of the storage tank being tested. (Alternative setups may be used as long as they do not interfere with the objectives of the test and have prior Department approval.)

5. Remove the Stage I adapter cap(s) on the vapor return drybreak valve(s) of the underground storage tank(s). The system must pass the Pressure Decay/Leak Test with the drybreak cap(s) removed. It is permissible for the tank fill cap(s) to be in place on the fill adapter(s) during the test.

6. With no dispensing taking place, begin pressurizing the vapor system (or subsystem for individual vapor return line systems) to 11 inches water column gauge (inches weq). Let the system sit for fifteen minutes to allow vapor pressure stabilization in the tank(s). Check the vent cap assembly(ies), nitrogen connector assembly, nozzles, vapor return adapter(s), and all accessible vapor connections using leak detecting solution to verify that the test equipment is leak tight. If after fifteen minutes the ullage pressure is still about 10 inches weq, reduce the system pressure to 10.0 inches weq. If the ullage pressure is below 10 inches weq, then again pressurize the vapor system to 10.0 inches weq.

7. With the system pressurized to 10.0 inches weq, begin the test. Start the stopwatch and record the time the test began on a data form acceptable to the Department.

8. Intermediate readings may be taken to monitor the performance of the system, but the final system pressure reading must be taken at the end of the required test duration calculated above in Step d.2., and recorded on a data form acceptable to the Department. Refer to the test standards specified below in Section e. to determine the acceptability of the final system pressure result.

9. While the system is still pressurized, check the integrity of the automatic backpressure relief device on each nozzle connected to the vapor recovery system being tested by pulling on the nozzle's trigger. The backpressure relief device is acceptable if there is not resistance when the nozzle's trigger is pulled. Nozzles with defective backpressure relief devices shall be replaced.

10. At the time of installation, following the Pressure Decay/Leak Test and with the tank(s) still pressurized, complete the following Vapor Space Tie Test:

i. For systems with vapor manifolded tanks, depress the Stage I drybreak valve of each tank to see if gases are released under pressure. (A tank where gases are not released under pressure is not manifolded to the Stage II vapor piping as required by Department regulations).

ii. For non-manifolded systems, depress the drybreak valve of each tank to see if the product in the storage tank matches the product dispensed by the nozzles

where checks were made of the backpressure shut-off mechanisms. This is a check to see if the underground vapor piping is crossed and goes to the wrong storage tanks. If crossed piping is indicated, verify by sending five (5) gallons of liquid down the Stage II piping while a second person listens for splashing at the tank with the drybreak open (see Liquid Blockage (Wet) Test Procedure which follows this procedure).

iii. Remove the caps of the fill risers of the storage tanks. If it appears that any gasket is damaged or missing, it must be replaced and the fill adapter tightened.

11. If the system failed to meet the criteria for passage set forth below in Section e., repressurize the system and check all accessible vapor connections using leak detecting solution. If vapor leaks in the system are encountered, repair or replace the defective component(s) and repeat the Pressure Decay/Leak Test (Steps d.6. through d.8.).

12. Depressurize the system by carefully removing the vent cap assembly(ies). Allow any remaining pressure to be relieved through the vent pipes(s).

13. If the vapor recovery system utilizes individual vapor return lines for each gasoline product or each underground storage tank, repeat the entire Pressure Decay/Leak Test for each vapor return system (Steps d.1. through d.12.).

e. TEST STANDARDS. The minimum allowable pressure decay time from 10.0 to 9.0 inches weq shall be 5.0 minutes per 1000 gallons ullage. This means that from an initial pressure of 10.0 inches weq, if the system pressure reading at the end of the required test duration (as calculated using the methodology specified in Section d.2.) is less than 9.0 inches weq, the system fails.

f. REPORTING REQUIREMENTS. The test results of the Pressure Decay/Leak Test procedure must be submitted to the appropriate office of the Department within ten (10) days of the day the tests were performed. It is the ultimate responsibility of the owner of the facility to make sure that the necessary documentation is submitted to the Department; however, the Department will accept test documentation directly from the contractor performing the tests. It is also the owner's responsibility to see that the test results are maintained in a file at the gasoline dispensing facility.

APPENDIX "J3"

Dynamic Backpressure (Dry) Test and Liquid Blockage (Wet) Test Procedure for Verification of Proper Functioning of Stage II Vapor Balance Recovery Systems

a. INTRODUCTION. This procedure is used to determine compliance with the emission standard in Section 36 of the Regulations for the Control of Volatile Organic Compound

Emissions. Backpressures due to flow resistances in the vapor return nozzles, hoses, dispensers, and piping are often found to be the primary cause of vapor losses from the balance vapor recovery systems. All the applicable California Air Resources Board (CARB) Executive Orders specify specific flow resistance limitations that are included in this procedure. Failure of a Stage II system to meet the flow resistance limitations is a violation of Section 36 of the regulations which requires that only certified systems be installed. Furthermore, this procedure is used to detect prohibited equipment defects listed in **Appendix "J"** entitled, "Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities", and determine if the underground vapor piping configuration complies with the applicable CARB Executive Orders as required by Section 36 and as referenced in **Appendix "J"**. The Liquid Blockage (Wet) Test described in this test procedure is also applicable for aspirator-assist Stage II vapor recovery systems.

This procedure consists of two separate tests, which must be conducted, sequentially in the order indicated below:

1. **Dynamic Backpressure (Dry) Test:** This test is used to determine the pressure drop (flow resistance) through balance Stage II vapor recovery systems (including nozzles, vapor hose, swivels, dispenser piping, and underground piping) at prescribed flow rates. The test method consists of flowing gaseous nitrogen through a calibrated test panel into the vapor recovery system at various flow rates to simulate the backpressure created during vehicle refueling. The resulting backpressures are measured near the nozzle faceplate using a pressure gauge and compared with CARB certification criteria.

2. **Liquid Blockage (Wet) Test:** This test is used to determine if the piping configuration is correct and to detect low points in the piping where the accumulation of liquid condensate may cause blockages which restrict the flow of vapors and thus decrease the system's vapor collection efficiency. The test method consists of introducing gasoline into the vapor piping at the dispenser. When the gasoline can be heard dropping into the appropriate tank, enough gasoline is deemed to have been added to create a blockage should a low point or other restriction be present. Gaseous nitrogen is introduced into the vapor piping at a rate of 60 standard cubic feet per hour (SCFH). A liquid blockage is indicated either by the needle pegging on the pressure gauge and/or wild pulsing of the needle, or a reading in excess of 0.45 inches of water gauge (inches wwg) backpressure at a flow of 60 SCFH of nitrogen.

This test is required to be performed after the entire Stage II system has been installed. Nevertheless, it is recommended for new construction that the contractor conduct this blockage test both before and after the vapor recovery piping is covered to minimize the extensive effort

and cost associated with repairing the piping system should the vapor recovery system fail the test.

b. PREREQUISITES TO TESTING. The following requirements must be met before a valid test can be performed:

1. **The Department Must Be Notified** — The Department must be contacted at least two working days prior to the testing of the Stage II system. The test may or may not be witnessed by a Department personnel; however, if the Department is not notified of this test or any other required test, then this test or other required tests may be declared invalid.

2. **Condition Of The Vapor Recovery System** — The vapor recovery system must be proven leak tight with the Pressure Decay/Leak Test required by the provisions of Section 36 of the regulations, and described in this Appendix, prior to conducting this test. There can be no alteration of the vapor recovery system between the time the Pressure Decay/Leak Test is conducted and the Dynamic Backpressure (Dry) and Liquid Blockage (Wet) Tests are run.

3. **Restriction Of Gasoline Dispensing Operations** — During testing of a given product, no dispensing of that product will be allowed. If the vapor spaces of the underground storage tanks are manifolded, dispensing of gasoline from the entire station shall be prohibited during testing.

e. EQUIPMENT. The following equipment will be needed to perform the Dynamic Backpressure (Dry) Test and the Liquid Blockage (Wet) Test:

1. A bottle of gaseous nitrogen and pressure regulators capable of regulating final downstream pressure to 5.0 pounds per square inch gauge (psig) are required. Use assorted valves, fittings, and pressure tubing as necessary. A means of providing a grounding path from the bottle of compressed nitrogen must be employed. The bottle shall be grounded for safety. It is recommended that the tubing be flexible metal tubing or non-metallic tubing that incorporates a grounding path throughout its length.

A pressure relief valve must be installed prior to testing. Attach it to the vapor piping or a storage tank vent within the piping system. The pressure relief valve must be adjusted to release at one psig (27.7 inches of water column gauge). (The diaphragms in balance system nozzles are not designed to withstand pressures exceeding one psig and may be accidentally ruptured if this procedure is not followed.)

WARNING — The nitrogen bottle must be securely fastened to a large, stationary object at all times. A compressed gas cylinder, which falls and is damaged, can easily become a lethal projectile.

2. A flow regulator is required that is capable of delivering nitrogen at very low pressure and at measured

flow rates of 20, 60, and 100 SCFH.

3. A test panel as shown in **Figure 2** must be used for testing balance system vapor flow restrictions. The panel consists of a section of vehicle fillpipe, attached pressure gauges, a drain to drain off gasoline liquid that spills into fillpipe from the nozzle fill spout, a plug in the back through which nitrogen enters the fill neck, a flow gauge to adjust nitrogen flow control valves and attachments to connect the nitrogen bottle. The pressure drop through the Stage II system is determined using a gauge capable of accurately measuring pressures from 0 to 1 inch of water column gauge (inches weq) and readable in increments of 0.01 inches weq.

The gauge is used to measure backpressure before and after the gasoline is introduced. Pressure is to be sensed through a port, perpendicular to the direction of flow, located as close as possible to the vapor piping. An additional simultaneous reading gauge with a 0 to 10 inches weq range is desirable to quantify excessive flow resistance.

d. TEST PROCEDURES

1. **Dynamic Backpressure (Dry) Test:** The farthest dispensing nozzle from the underground tanks for each product grade shall be tested using the following procedure unless otherwise instructed by the Department.

i. Prop open only the Stage I drybreak valve at the tank with the same product as the nozzle being tested. (The pressure drop is measured through the nozzle, vapor hoses, dispenser, vapor piping, and through the tank to the Stage I drybreak. This comes close to duplicating the actual flow resistances that occur during normal operations.) Set up traffic barriers in the vicinity of the drybreak valve to preclude the approach of potential ignition sources.

ii. For manifold systems, install the pressure relief safety valve, set at one psig (27.7 inches of water), over the opening of one of the storage tank vents and cap the remaining storage tank vents. (Manifolding the tank vent lines is prohibited.) For non-manifolded systems, test each product vapor recovery system separately with the pressure relief safety valve installed on the vent of the storage tank being tested. (Alternative setups may be used as long as they do not interfere with the objectives of the test and have prior Department approval.) (**NOTE:** The tank vents are closed because it was discovered that wind flowing over open vents 12 feet high can interfere with the pressure measurements, even with the drybreaks open. Since the Pressure Decay/Leak Test must be conducted first, the caps and relief valve are usually already in place.)

iii. If there is no remote check valve in the dispenser, proceed to Step d.1.iv., below. If the Stage II balance system employs a remote vapor check valve that can be disabled by removing the poppet on the fuel side, carefully open the fuel side of the remote vapor check valve and remove the poppet. Replace the threaded plug on the fuel side of the valve.

iv. Connect the pressure drop test device to the vapor return piping and the regulated nitrogen source. If the nitrogen is introduced through the vapor recovery nozzle, apply a film of lubricant to the faceplate of the nozzle to be tested and insert the nozzle into the fillpipes simulator of the test device. The nozzle must fit tightly.

v. Zero the pressure gauges.

vi. Adjust the pressure regulators and the pressure drop panel flow control valve to produce a nitrogen flow rate of 20 SCFH. Record the backpressure (balance system pressure drop) measured immediately upstream of the vapor piping, i.e., at the entrance to the nozzle, on a data form acceptable to the Department.

vii. Repeat Step d.1.vi., above, with flow rates of 60 SCFH and 100 SCFH.

viii. If the system failed to meet the criteria for passage set forth below in Section e.1., make necessary replacements of or adjustment to the nozzles, vapor hoses, swivels, dispenser piping, or underground piping to bring the measured pressure drops within the appropriate standard.

ix. After completion of the Dynamic Backpressure (Dry) Test, close and cap the underground storage tank vapor drybreak valves and remove the closures from the tank vent pipes.

x. For Stage II balance systems with remote vapor check valves, carefully reassemble the remote vapor check valve by removing the plug on the fuel side and reinserting the fuel poppet. Replace the threaded fuel plug.

2. **Liquid Blockage (Wet) Test:** Each dispensing nozzle/vapor return piping inlet shall be tested using the following procedure unless otherwise instructed by the Department. Testing shall be done starting with the farthest dispensing nozzle from the underground storage tanks for each product.

i. Prop open only the vapor drybreak valve at the tank with the same product as the nozzle being tested. Set up traffic barriers in the vicinity of the drybreak valve to preclude the approach of potential ignition sources.

ii. Install a pressure relief safety valve set at a maximum cracking pressure of one pound per square inch gauge (27.7 inches weq) at the vent of one of the storage tanks. If the system has manifolded vapor piping, cap the vents of the other storage tanks. If the system has non-manifolded piping, be sure the pressure relief valve is on the tank that has the same product as that which is dispensed at the location where liquid is introduced to the vapor piping.

iii. For each nozzle, introduce gasoline into the vapor piping inlet located at or in each dispenser. (Don't introduce gasoline through the vapor return nozzle and vapor hose.) Have someone listening at the open Stage I drybreaks to identify the tank where liquid splashing is heard. For systems with manifolded underground vapor piping, the liquid must drop into the leaded product tank, or the lowest octane unleaded tank if there is no leaded product. For non-

manifolded systems with separate underground vapor piping, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor piping. If the product at the nozzle does not match the product in the tank, the underground piping is crossed and the system fails the test. For both manifolded and non-manifolded systems, the piping must be the same as the configuration approved in the CARB Executive Orders (see **Appendix "J"**) or the facility fails the test.

iv. Restore the dispensing/vapor return system to its normal balance system configuration.

v. If there is no remote check valve in the dispenser, proceed to Step d.2.vi., below. If the Stage II balance system employs a remote vapor check valve that can be disabled by removing the poppet on the fuel side, carefully open the fuel side of the remote vapor check valve and remove the fuel poppet. Replace the threaded plug on the fuel side of the valve.

vi. Connect the pressure drop test device to the vapor return piping and the regulated nitrogen source. If the nitrogen is introduced through the vapor recovery nozzle, apply a file of lubricant to the faceplate of the nozzle to be tested and insert the nozzle into the fillpipe simulator of the test device. The nozzle must fit tightly.

vii. Zero the pressure gauges.

viii. Adjust the pressure regulators and the pressure drop panel flow control valve to produce a nitrogen flow rate of 60 SCFH. Note the response and reading of the pressure gauge immediately upstream of the vapor piping, i.e., at the entrance to the nozzle. Record the backpressure reading on a data form acceptable to the Department.

ix. If during the "Wet Test" the backpressure gauge pegs at full scale or continuously fluctuates, note this in the "Comments" section for the nozzle being tested.

x. If the system failed to meet the criteria for passage set forth below in Section e.2., make necessary repairs or adjustments to the tested piping to eliminate the blockage.

xi. For Stage II balance systems with remote vapor check valves, carefully reassemble the remote vapor check valve by removing the plug on the fuel side and reinserting the fuel poppet. Replace the threaded fuel plug.

xii. Repeat Steps d.2.1. through d.2.xi. for each nozzle/vapor return piping inlet associated with the vapor return line being tested.

xiii. After completion of the Liquid Blockage (Wet) Test for all nozzles connected to the vapor return line, close and cap the underground storage tank vapor drybreak valves and remove the closures from the tank vent pipes.

e. TEST STANDARDS

1. **Dynamic Backpressure (Dry) Test:** The system passes the Dynamic Backpressure (Dry) Test if at the

nitrogen flow rates of 20, 60, and 100 SCFH, the flow resistance measured does not exceed the following pressure limits:

- i. 0.15 inches of water gauge at 20 SCFH
- ii. 0.45 inches of water gauge at 60 SCFH
- iii. 0.95 inches of water gauge at 100 SCFH

2. **Liquid Blockage (Wet) Test:** The system fails if the backpressure gauge pegs at full scale or continuously fluctuates during the "Wet Test", or if the "Wet Test" backpressure reading at 60 SCFH flow rate exceeds the maximum standard of 0.45 inches of water gauge prescribed in the applicable CARB Executive Orders.

f. REPORTING REQUIREMENTS. The owner shall submit a copy of the results of all test failures to the Department within ten (10) working days of the test. It is the ultimate responsibility of the owner of the facility to make sure that the necessary documentation is submitted to the Department; however, the Department will accept test documentation directly from the contractor performing the tests. It is also the owner's responsibility to see that test results are maintained in a file at the gasoline dispensing facility. Material in this Appendix has been derived from guidance in Chapter 3.2 and Appendix C of EPA's draft CTG for Batch Processes (EPA-453/R-93-017).

**DIVISION OF AIR & WASTE MANAGEMENT
Air Quality Management Section**

Statutory Authority: 7 Delaware Code,
Chapters 60, (7 Del.C. Ch. 60)

Secretary's Order No.: 2001-A-0049

**RE: Consumer Products Rulemaking to Reduce VOC's
(Regulation No. 41, Section 2)**

Date of Issuance: December 10, 2001

Effective Date of the Amendment: January 11, 2002

I. Background:

A public hearing for Regulation No. 41, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products", Section 2, "Consumer Products", was held starting at 6:00 p.m. on Thursday, September 27, 2001, in the auditorium of the DNREC Richardson and Robbins building in Dover.

Based on Start Action Notice 2001-02, the Department proposes to adopt a new regulation for certain consumer

products using as a template the model rule developed earlier this year by the Ozone Transport Commission (OTC). This regulation is more stringent than the Federal rule (40 CFR 59, Subpart C, published 09/11/98), and has 89 categories of regulated products as compared to 42 in the Federal rule. This regulation is one of several to be adopted this year, which will reduce volatile organic compound (VOC) and NO_x emissions, thus reducing ground-level ozone concentrations such that Delaware may attain the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone.

The OTC model rule was prepared by the representatives of the environmental control groups of states that make up the OTC. These are: Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and Vermont. Most have a similar problem meeting the EPA ground-level ozone NAAQS and plan to adopt the consumer products model rule in the near future. Delaware is the first of the OTC states to propose a rule for adoption. All the OTC states signed a Memorandum of Understanding (MOU-01-1, Public Record Document Number 16) pledging to propose, unchanged, the model rule VOC contents. A guiding principle in developing the Delaware version of the OTC model rule was to maintain conformity, where possible, with the model rule.

II. Findings & Recommendations:

The discussions surrounding each comment as set forth in the Response Document are well-reasoned and thorough and lead the author to reach conclusions on each point. These conclusions either agree with the commenter and propose a minor change to address the concern, or they demonstrate how the proposed rule already accomplishes the intended purpose. In a few situations, such as the "Innovative Products Exemption", the Department proposes revisions to allow for acceptance in Delaware of an IPE from another OTC state, but proposes adding language that would allow Delaware to reject an IPE for cause so that this agency does not merely "rubber stamp" such decisions from elsewhere. In short, Air Quality Management (AQM) has developed reasoned responses based on the record, and, where possible, has accommodated industry concerns while preserving the essence of the OTC regional effort. In view of the above, it is hereby ordered that the proposed rule be revised, consistent with AQM's suggestions, and promulgated in the customary manner, and that the following findings be made:

1. Proper notice of the hearing was provided as required by law.

2. The conclusions reached by AQM in its Response Document reflect a reasoned analysis of each issue based on the record, and represent sound findings which may

be relied on in fashioning an appropriate Order. Accordingly, those responses and conclusions constitute specific findings and are hereby incorporated into the Secretary's Order as such.

3. The recommendations in the Response Document further the policies and purposes of 7 Del.C. Ch. 60 by achieving necessary VOC reductions to improve air quality, while at the same time providing flexibility to industry where appropriate.

III. Order

In view of the above findings, it is hereby ordered that the proposed Consumer Products regulation be revised in accordance with suggestions in AQM's Response Document and further that it then be promulgated in the customary manner.

IV. Reasons

This rulemaking meets Delaware's requirements for VOC emission reductions while taking into account industry's needs for flexibility and regional uniformity, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

Nicholas A. DiPasquale, Secretary

REGULATION NO. 41

LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS

Section 2 – Consumer Products

~~{11/11/01 (This is the likely adoption date)}~~

a. Applicability

1. Except as provided in (a)(2) [~~and (a)(3)~~], Section 2 shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on and after January 1, 2005 for use in the State of Delaware.

2. The provisions of Section 2 shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of Delaware, a consumer product that does not comply with the VOC standards specified in (c)(1), as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the State of Delaware, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of Delaware. This does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of Delaware.

3. The provisions of Section 2 shall not apply to a retailer who sells, supplies or offers for sale in the State of Delaware, a particular consumer product that does not comply with the VOC standards specified in (c)(1), provided that retailer demonstrates to the satisfaction of the Department that the manufacturer or distributor of that product mislead that retailer into believing that the product did comply with the VOC standards specified in (c)(1).

b. Definitions

Terms used but not defined in Section 2 shall have the meaning given them in Regulation No.1 or the CAA in that order of priority.

1. **“ACP (alternative control plan)”** means an emissions averaging program, established and managed by a responsible ACP party which allows manufacturers to sell ACP products in the State of Delaware pursuant to the requirements of Section 2.

2. **“ACP emissions”** means the sum of the VOC emissions from every ACP product subject to an ACP, during the compliance period specified in the ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content) \times (Enforceable\ Sales)}{100}$$

where,

For all products except for charcoal lighter material products:

$$VOC\ Contents = \frac{[(B - C) \times 100]}{A}$$

where,

- A ≡ net weight of unit (excluding container and packaging)
- B ≡ total weight of all VOCs per unit
- C ≡ total weight of all exempted VOCs per unit, as specified in (c)(7) through (c)(12)

For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

where,

- Certified Emissions= emissions level for products specified (c)(4)(i)
- Certified Use Rate = see (b)(33)

3. **“ACP limit”** means the maximum allowable ACP emissions during the compliance period specified in an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

$$Limit = \frac{(APC\ Standard) \times (Enforceable\ Sales)}{100}$$

where,

Enforceable Sales=see (b)(54)

ACP Standard= see (b)(6)

1,2,...,N ≡ each product in an ACP up to the maximum N.

4. **“ACP product”** means any consumer product subject to the VOC standards specified in (c)(1), except those products that have been exempted under (c), or exempted as innovative products under (d) and is covered by an ACP established by the responsible ACP party.

5. **“ACP reformulation or ACP reformulated”** means the process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

6. **“ACP standard”** means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in (c)(1), whichever is the lesser of the two.

7. **“ACP VOC standard”** means the maximum allowable VOC content for an ACP product, determined as follows:

- i. the applicable VOC standard specified in (c)(1) for all ACP products except for charcoal lighter material;
- ii. for charcoal lighter material products only, the VOC standard for the purposes of Section 2 shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ pound\ CH_2\ per\ start \times 100)}{Certified\ Use\ Rate}$$

where,

0.020 ≡ the certification emissions level as specified in (c)(1).

Certified Use Rate = see (b)(33)

8. **“Adhesive”** means any product that is applied for the purpose of bonding two surfaces together other than by mechanical means. “Adhesive” does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

9. **“Adhesive remover”** means a product designed exclusively for the removal of adhesives, caulk and other

bonding materials from a specific or a variety of substrates.

10. **“Aerosol adhesive”** means an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

11. **“Aerosol cooking spray”** means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

12. **“Aerosol product”** means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. “Aerosol product” does not include pump sprays.

13. **“Agricultural use”** means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. “Agricultural use” does not include the sale or use of pesticides in properly labeled packages or containers which are intended for: (and defined for the purposes of this definition only):

(i) home use which means use in a household or its immediate environment.

(ii) structural pest control which means a use requiring a license under Title 3 Chapter 12 of the Delaware Code.

(iii) industrial use which means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites, and

(iv) institutional use which means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

14. **“Air freshener”** means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. “Air freshener” does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. “Air freshener” does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

15. **“All other carbon-containing compounds”**

means all other compounds which contain at least one carbon atom and are not exempt compounds or “LVP-VOC's.”

16. **“All other forms”** means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, “All other forms” include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

17. **“Anti-microbial hand or body cleaner or soap”** means a cleaner or soap designed to reduce the level of microorganisms on the skin through germicidal activity. “Anti-microbial hand or body cleaner or soap” includes, but is not limited to, anti-microbial hand or body washes/cleaners, food-handler hand washes, healthcare personnel hand washes, pre-operative skin preparations and surgical scrubs. “Anti-microbial hand or body cleaner or soap” does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

18. **“Antiperspirant”** means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

19. **“Architectural coating”** means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

20. **“ASTM”** means the American Society for Testing and Materials.

21. **“Astringent/toner”** means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

22. **“Automotive brake cleaner”** means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

23. **“Automotive hard paste wax”** means a motor vehicle wax or polish which is:

(i) designed to protect and improve the appearance of motor vehicle painted surfaces;

(ii) a solid at room temperature; and

(iii) contains 0% water by formulation.

24. **“Automotive instant detailer”** means a product designed for use in a pump spray that is applied to motor vehicle painted surfaces and wiped off prior to being allowed

to dry.

25. **“Automotive rubbing or polishing compound”** means a product designed primarily to remove oxidation, old paint, scratches or “swirl marks”, and other defects from motor vehicle painted surfaces without leaving a protective barrier.

26. **“Automotive wax, polish, sealant or glaze”** means a product designed to seal out moisture, increase gloss, or otherwise enhance motor vehicle painted surfaces. “Automotive wax, polish, sealant or glaze” includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. “Automotive wax, polish, sealant or glaze” does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

27. **“Automotive windshield washer fluid”** means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. “Automotive windshield washer fluid” does not include fluids placed by the manufacturer in a new vehicle.

28. **“Bathroom and tile cleaner”** means a product designed to clean tile or surfaces in bathrooms. “Bathroom and tile cleaner” does not include products specifically designed to clean toilet bowls or toilet tanks.

29. **“Bug and tar remover”** means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

(i) biological-type residues such as insect carcasses and tree sap and,

(ii) road grime, such as road tar, roadway paint markings, and asphalt.

30. **“CARB”** means the California Air Resources Board.

31. **“Carburetor or fuel-injection air intake cleaners”** means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. “Carburetor or fuel-injection air intake cleaners” does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

32. **“Carpet and upholstery cleaner”** means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. “Carpet and upholstery cleaner” includes, but is not limited to, products that make fabric protectant claims. “Carpet and upholstery cleaner” does not include general purpose cleaners, spot removers,

vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

33. **“Certified use rate”** means the usage level for charcoal lighter materials specified under (c)(4), expressed to the nearest 0.001 pound of charcoal lighter materials used per start.

34. **“Charcoal lighter material”** means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. “Charcoal lighter material” does not include any of the following: electrical starters and probes; metallic cylinders using paper tinder; natural gas; propane; and fat wood.

35. **“Colorant”** means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

36. **“Compliance period”** means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP.

37. **“Construction, panel, and floor covering adhesive”** means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

(i) structural and building components that include, but are not limited to, beams, trusses, studs, paneling [drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.], ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

(ii) floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, non-resilient flooring material, mirror tiles and other types of tiles, and artificial grass.

“Construction, panel, and floor covering adhesive” does not include floor seam sealer.

38. **“Consumer”** means any person who purchases, or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

39. **“Consumer product”** means a chemically formulated product used by household and institutional consumers including, but not limited to: [antiperspirants;] detergents; [deodorants;] cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

40. **“Contact adhesive”** means an adhesive that:

(i) is designed for application to both surfaces to

be bonded together:

(ii) is allowed to dry before the two surfaces are placed in contact with each other;

(iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

“Contact adhesive” does not include rubber cements that are primarily intended for use on paper substrates.

41. **“Container/packaging”** means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. “Container/packaging” includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

42. **“Contact person”** means a representative(s) that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the ACP.

43. **“Crawling bug insecticide”** means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. “Crawling bug insecticide” does not include products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

(i) house dust mite product means a product whose label, packaging or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods, and

(ii) house dust mite means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

44. **“Date-code”** means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

45. **“Delaware sales”** means the sales (net pounds of product, less packaging and container, per year) in Delaware for a specified calendar year. If direct sales data for the State of Delaware are not available, sales may be estimated by prorating national or regional sales data by population.

46. **“Deodorant”** means any product including, but

not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

47. **“Device”** means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

48. **“Disinfectant”** means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.) and Title 3 Chapter 12 of the Delaware Code. “Disinfectant” does not include any of the following:

(i) products designed solely for use on human or animals;

(ii) products designed for agricultural use;

(iii) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs;

(iv) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

49. **“Distributor”** means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

50. **“Double-phase aerosol air freshener”** means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

51. **“Dry cleaning fluid”** means any non-aqueous liquid product designed and labeled exclusively for use on: fabrics which are labeled “for dry clean only”, such as clothing or drapery; or S-coded fabrics. “Dry cleaning fluid” includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer’s residence or work place. “Dry cleaning fluid” does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, S-coded fabric means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

52. **“Dusting aid”** means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating.

“Dusting aid” does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

53. “**Electronic cleaner**” means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

54. “**Enforceable sales**” means the total amount of an ACP product sold for use in the State of Delaware, during the applicable compliance period specified in the ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

55. “**Enforceable sales record**” means a written, point-of-sale record or any other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the State of Delaware during the applicable compliance period can be accurately documented. For the purposes of Section 2, “Enforceable sales records” include, but are not limited to, the following types of records:

(i) accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

(ii) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify any data comprising such summaries is recorded by the responsible ACP party;

(iii) any other accurate product sales records approved by the Department as meeting the criteria specified in (b)(55).

56. “**Engine degreaser**” means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

57. “**Exempt compound**” means any carbon-containing compound listed as an exception to the definition of VOC’s in Regulation No. 1.

58. “**Fabric protectant**” means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric’s fibers. “Fabric protectant” does not include waterproofer, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled “for dry clean only” and sold in containers of 10 fluid ounces or less.

59. “**Facial cleaner or soap**” means a cleaner or soap designed primarily to clean the face. “Facial cleaner or soap” includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. “Facial cleaner or soap” does not include prescription drug

products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

60. “**Fat wood**” means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. “Fat wood” does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

61. “**Flea and tick insecticide**” means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. “Flea and tick insecticide” does not include products that are designed to be used exclusively on humans or animals and their bedding.

62. “**Flexible flooring material**” means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

63. “**Floor polish or wax**” means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. “Floor polish or wax” does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

64. “**Floor seam sealer**” means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

65. “**Floor wax stripper**” means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. “Floor wax stripper” does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

66. “**Flying bug insecticide**” means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. “Flying bug insecticide” does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, moth-proofing product means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

67. “**Fragrance**” means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

68. “**Furniture maintenance product**” means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood

surfaces other than floors. "Furniture maintenance product" does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

69. "**Furniture coating**" means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

70. "**Gel**" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

71. "**General purpose adhesive**" means any non-aerosol adhesive designed for use on a variety of substrates. "General purpose adhesive" does not include:

(i) contact adhesives;

(ii) construction, panel, and floor covering adhesives;

(iii) adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

(iv) adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

72. "**General purpose cleaner**" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. "General purpose cleaner" includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

73. "**General purpose degreaser**" means any product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. "General purpose degreaser" does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(i) sold exclusively to establishments which manufacture or construct goods or commodities; and

(ii) labeled "not for retail sale".

Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

74. "**General-use hand or body cleaner or soap**"

means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. "General-use hand or body cleaner or soap" includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. "General-use hand or body cleaner or soap" does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

75. "**Glass cleaner**" means a cleaning product designed primarily for cleaning surfaces made of glass. "Glass cleaner" does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

76. "**Gross Delaware sales**" means the estimated total State of Delaware sales of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party determines will provide an accurate State of Delaware sales estimate:

(i) apportionment of national or regional sales of the ACP product to State of Delaware sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the State of Delaware's current population; or

(ii) any other documented method which provides an accurate estimate of the total current State of Delaware sales of the ACP product.

77. "**Hair mousse**" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

78. "**Hair shine**" means any product designed for the primary purpose of creating a shine when applied to the hair. "Hair shine" includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. "Hair shine" does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

79. "**Hair styling gel**" means a high viscosity, often gelatinous, product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.

80. "**Hair spray**" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

81. "**Heavy-duty hand cleaner or soap**" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink,

paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. "Heavy-duty hand cleaner or soap" does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

82. "**Herbicide**" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are: for agricultural use, or restricted materials that require a permit for use and possession.

83. "**High volatility organic compound (HVOC)**" means any volatile organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20°C.

84. "**Household product**" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

85. "**Insecticide**" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

(i) for agricultural use;

(ii) for a use which requires a structural pest control license under Title 3 Chapter 12 of the Delaware Code; or

(iii) restricted materials that require a permit for use and possession.

86. "**Insecticide fogger**" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

87. "**Institutional product**" or "Industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

(i) manufactures, transports, or sells goods or commodities, or provides services for profit; or

(ii) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. "Institutional product" does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

88. "**Label**" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to

the product or to the contents of the package.

89. "**Laundry prewash**" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

90. "**Laundry starch product**" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. "Laundry starch product" includes, but is not limited to, fabric finish, sizing, and starch.

91. "**Lawn and garden insecticide**" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

92. "**Liquid**" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in (h)(3). "Liquid" does not include powders or other materials that are composed entirely of solid particles.

93. "**Lubricant**" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. "Lubricant" does not include:

(i) automotive power steering fluids;

(ii) products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes;

(iii) two cycle oils or other products designed to be added to fuels;

(iv) products for use on the human body or animals; or products that are

(a) sold exclusively to establishments which manufacture or construct goods or commodities, and

(b) labeled "not for retail sale".

94. "**LVP content**" means the total weight, in pounds, of LVP-VOC compounds in an ACP product multiplied by 100 and divided by the product's total net weight, in pounds, excluding container and packaging, expressed to the nearest 0.1 percent.

95. "**LVP-VOC**" means a low vapor pressure chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(i) has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310, incorporated by reference in (h)(1); or

(ii) is a chemical "compound" with more than 12 carbon atoms, or a chemical "mixture" comprised solely of "compounds" with more than 12 carbon atoms, and the vapor pressure is unknown; or

(iii) is a chemical "compound" with a boiling point greater than 216°C, as determined by CARB Method 310, incorporated by reference in (h)(1); or

(iv) is the weight percent of a chemical "mixture" that boils above 216°C, as determined by CARB Method 310, incorporated by reference in (h)(1).

For the purposes of the definition of LVP-VOC, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substrate comprised of two or more chemical compounds.

96. **"Manufacturer"** means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

97. **"Medicated astringent/medicated toner"** means any product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. "Medicated astringent/medicated toner" includes, but is not limited to, clarifiers and substrate-impregnated products. "Medicated astringent/medicated toner" does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

98. **"Medium volatility organic compound (MVOC)"** means any volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

99. **"Metal polish/cleanser"** means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To improve the appearance means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. "Metal polish/cleanser" includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. "Metal polish/cleanser" does not include: automotive wax, polish, sealant or glaze; wheel cleaner; paint remover or stripper; products designed and labeled exclusively for automotive and marine detailing; or, products designed for use in degreasing tanks.

100. **"Missing data days"** means the number of days in a compliance period for which the responsible ACP party has failed to record the required enforceable sales or VOC content data, as specified in the ACP.

101. **"Mist spray adhesive"** means any aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

102. **"Multi-purpose dry lubricant"** means any lubricant which is:

(i) designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("Teflon") on surfaces; and

(ii) designed for general purpose lubrication, or for use in a wide variety of applications.

103. **"Multi-purpose lubricant"** means any lubricant designed for general purpose lubrication, or for use in a wide variety of applications. "Multi-purpose lubricant" does not include: multi-purpose dry lubricants; penetrants; or, silicone-based multi-purpose lubricants.

104. **"Multi-purpose solvent"** means any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. "Multi-purpose solvent" includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. "Multi-purpose solvent" does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

105. **"Nail polish"** means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

106. **"Nail polish remover"** means a product designed to remove nail polish and coatings from fingernails or toenails.

107. **"Non-aerosol product"** means any consumer product that is not dispensed by a pressurized spray system.

108. **"Non-carbon containing compound"** means any compound which does not contain carbon atoms.

109. **"Non-resilient flooring"** means flooring of a mineral content which is not flexible. "Non-resilient flooring" includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

110. **"Non-selective terrestrial herbicide"** means a terrestrial herbicide product that is toxic to plants without regard to species.

111. **"One-product business"** means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in the State of Delaware:

(i) only one distinct ACP product, sold under one product brand name, which is subject to the requirements of (c); or

(ii) only one distinct ACP product line subject to the requirements of (c), in which all the ACP products belong to the same product category(ies) and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

112. **"OTC state"** means any of the following, considered to be in the Ozone Transport Region as defined in the CAA and members of the Ozone Transport Commission (OTC): Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania,

Rhode Island, Virginia and Vermont.]

[H2 113]. “Oven cleaner” means any cleaning product designed to clean and to remove dried food deposits from oven interiors.

[H3 114]. “Paint” means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

[H4 115]. “Paint remover or stripper” means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. “Paint remover or stripper” does not include:

- (i) multi-purpose solvents;
- (ii) paint brush cleaners;
- (iii) products designed and labeled exclusively to remove graffiti; and
- (iv) hand cleaner products that claim to remove paints and other related coatings from skin.

[H5 116]. “Penetrant” means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. “Penetrant” does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

[H6 117]. “Pesticide” means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term “pesticide” will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider a pesticide. (EPA Office of Pesticide Programs or see <http://www.epa.gov/oppmsd1/PPISdata/index.html>.)

[H7 118]. “Pre-ACP VOC content” means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the ACP was established by the manufacturer, based on available Delaware sales records, or other accurate records, whichever yields the lowest VOC content for the product. If a valid ACP is in force in another state, product data from that state may be used if it yields the lowest VOC content for the product.

[H8 119]. “Principal display panel or panels” means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the “Principal display panel” shall pertain to all such “Principal display

panels”.

[H9 120]. “Product brand name” means the name of the product exactly as it appears on the principal display panel of the product.

[H10 121]. “Product category” means the applicable category which best describes the product as listed in (b).

[122. **“Product form”** means the form that most accurately describes the products' dispensing form including aerosols, gels, solids liquids and pump sprays.]

[H11 123]. “Product line” means a group of products of identical form and function belonging to the same product category(ies).

[H12 124]. “Propellant” means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

[H13 125]. “Pump spray” means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

[H14 126]. “Reconcile or reconciliation” means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

[H15 127]. “Reconciliation of shortfalls plan” means the plan to be implemented by the responsible ACP party when shortfalls have occurred, pursuant to (j)(2)(vii)(j).

[H16 128]. “Responsible party” means the company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was “manufactured for” or “distributed by”, as noted on the label.

[H17 129]. “Responsible ACP party” means the company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the “Responsible ACP party” is the party which the ACP product was “manufactured for” or “distributed by”, as noted on the label.

[H18 130]. “Restricted materials” means pesticides established as restricted materials under Title 3 Chapter 12 of the Delaware Code or under the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. Section 136 et seq.)

[H19 131]. “Retailer” means any person who sells, supplies, or offers consumer products for sale directly to consumers.

[H20 132]. “Retail outlet” means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

[H21 133]. “Roll-on product” means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

[H22 134]. “Rubber and vinyl protectant” means any

product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. "Rubber and vinyl protectant" does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

[133 135]. "Rubbing alcohol" means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

[134 136]. "SCAOMD" means the South Coast Air Quality Management District, a part of the California Air Resources Board which is responsible for regulation of air quality in the State of California.

[135 137]. "Sealant and caulking compound" means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. "Sealant and caulking compound" does not include:

- (i) roof cements and roof sealants;
- (ii) insulating foams;
- (iii) removable caulking compounds;
- (iv) clear/paintable/water resistant caulking compounds;
- (v) floor seam sealers;
- (vi) products designed exclusively for automotive uses; or

(vii) sealers that are applied as continuous coatings.

For the purposes of this definition only, removable caulking compound means a compound which temporarily seals windows or doors for three to six month time intervals, and clear/paintable/water resistant caulking compounds means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

[136 138]. "Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

[137 139]. "Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

[138 140]. "Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. "Shortfall" does not include emissions occurring prior to the date the ACP was established.

[139 141]. "Silicone-based multi-purpose lubricant" means any lubricant which is: (i) designed and labeled to

provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and (ii) designed and labeled for general purpose lubrication, or for use in a wide variety of applications. "Silicone-based multi-purpose lubricant" does not include products designed and labeled exclusively to release manufactured products from molds.

[140 142]. "Single-phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

[141 143]. "Small business" means an independently owned and operated business with less than 100 employees as defined by the Administrator of the federal Small Business Administration pursuant to U. S. Public Law 85-536.

[142 144]. "Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in (h)(3).

[143 145]. "Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

(i) "mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(ii) "automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees F.

(iii) "flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-96, incorporated by reference in (h)(5), or from product formulation data.

(iv) "polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

(v) "automotive headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(vi) "polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

(vii) "laminare repair/edgebanding adhesive" means an aerosol adhesive designed for:

(a) touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates,

etc.); or,

(b) for touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition “high pressure laminate” means sheet materials which consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees F, and at pressures between 1,000 and 1,400 psi.

[144 146]. **“Spot remover”** means any product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. “Spot remover” does not include dry cleaning fluid, laundry pre-wash, carpet and upholstery cleaner, or multi-purpose solvent.

[145-147]. **“Spray buff product”** means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

[146 148]. **“Stick product”** means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

[147 149] **“Structural waterproof adhesive”** means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type I, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C).

[148 150]. **“Surplus reduction”** means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in (j) (6)(iii), “Surplus reduction” does not include emissions occurring prior to the date the ACP was established by the manufacturer.

[149 151]. **“Surplus trading”** means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

[150 152]. **“Terrestrial”** means to live on or grow from land.

[151 153]. **“Tire sealant and inflators”** means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

[152 154]. **“Total maximum historical emissions (TMHE)”** means the total VOC emissions from all ACP products for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and

calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where,

Highest

VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording VOC content data (for any portion of the compliance period), as specified in the ACP, or the current actual VOC content, if the responsible ACP party has recorded all required VOC content data (for the entire compliance period), as specified in the ACP.

Highest Sales = the maximum one-year gross State of Delaware sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording enforceable sales records (for any portion of the compliance period), as specified in the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has recorded all required enforceable sales records (for the entire compliance period), as specified in the ACP.

Missing Data = see (b)(100)

Days

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to record the required enforceable sales or VOC content data as specified in the ACP.

[153 155]. **“Type A propellant”** means a compressed gas such as CO₂, N₂, N₂O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

~~[154 156]~~. **“Type B propellant”** means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

~~[155 157]~~. **“Type C propellant”** means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

~~[156 158]~~. **“Undercoating”** means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. “Undercoating” includes, but is not limited to, rubberized, mastic, or asphaltic products.

~~[157 159]~~. **“Usage directions”** means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

~~[158 160]~~. **“VOC content”** means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to (h)(1) and (h)(2).

For charcoal lighter material products only,

$$VOC\ Content = \frac{(Certified\ Emissions\ x\ 100)}{Certified\ Use\ Rate}$$

where,

Certified

Emissions \equiv emissions level for products specified in (c)(4)

Certified

Use Rate \equiv usage level for products specified in (c)(4)

~~[159 161]~~. **“Wasp and hornet insecticide”** means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

~~[160 162]~~ **“Waterproofer”** means a product designed and labeled exclusively to repel water from fabric or leather substrates. “Waterproofer” does not include fabric protectants.

~~[161 163]~~. **“Wax”** means a material or synthetic thermoplastic substance generally composed of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). “Wax” includes, but is not limited to, substances derived from the secretions of plants and animals such as caruba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

~~[162 164]~~. **“Web spray adhesive”** means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

~~[163 165]~~ **“Wood floor wax”** means wax-based products for use solely on wood floors.

~~[164 166]~~. **“Working day”** means any day between Monday through Friday, inclusive, except for days that are federal holidays.

c. Standards [and Exemptions]

1. Except as provided in (a) (Applicability), (d) (Innovative Products), (g) (Variances), and (j) (Alternative Control Plan),

(i) no person shall sell, supply, or offer for sale in the State of Delaware any consumer product manufactured on ~~[or and]~~ after January 1, 2005 which contains VOC's in excess of the limits shown in Table 1 and

(ii) no person shall manufacture any consumer product on ~~[or and]~~ after January 1, 2005 for use in the State of Delaware which contains volatile organic compounds in excess of the limits shown in Table 1.

2. For products that are diluted prior to use, the following shall apply:

(i) The limits specified in Table 1 shall apply to consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, only after the minimum recommended dilution has taken place. Minimum recommended dilution, for the purposes of (c)(2)(i), shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(ii) The limits specified in Table 1 shall apply to consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use only after the maximum recommended dilution has taken place.

3. The effective date of the VOC standards specified in Table 1, for those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq.), is January 1, 2006. Such products also must be registered under Title 3 Chapter 12 of the Delaware Code.

4. The following requirements shall apply to all charcoal lighter material products as defined in (b)(34):

(i) Regulatory standards.

No person shall sell, supply, or offer for sale on ~~[or and]~~ after January 1, 2005 any charcoal lighter material product unless at the time of the transaction:

(a) the manufacturer or distributor of the charcoal lighter material has performed the requisite testing to demonstrate that VOC emissions from ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start (“certified emissions”), using

the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the "SCAQMD Rule 1174 Testing Protocol"), incorporated by reference in (h)(4)(i). The provisions relating to LVP-VOC in (b)(95) and (c)(10) shall not apply to any charcoal lighter material subject to the requirements of (c)(1) and (c)(4). The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the SCAQMD Rule 1174 Testing Protocol (h)(4).

(b) The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable ACP.

(ii) The Department may, at any time, request a manufacturer to submit information concerning the charcoal lighter material manufactured for use in the State of Delaware. The manufacturer shall respond within 30 days, in writing, and shall include, at a minimum, the following:

(a) The results of testing conducted pursuant to the procedures specified in SCAQMD Rule 1174 Testing Protocol (h)(4).

(b) The exact text and/or graphics that appear on the charcoal lighter material's principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol (h)(4) for that product, unless:

1) the charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

2) the charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(c) For a charcoal lighter material which meets the criteria specified in (c)(4)(ii)(b)(i), the usage instructions shall accurately reflect the quantity of charcoal lighter material used in the SCAQMD Rule 1174 Testing Protocol (h)(4) for that product.

(d) Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified an ACP.

(e) Possession of a currently effective certification by the CARB under the Consumer Products provisions of Title 17 of the California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 2, Section 94509(h), or from a state with a similar certification procedure, should be noted and a copy of the applicable certification decision (i.e., the Executive Order) should be included.

5. The following requirements for aerosol adhesives shall apply:

(i) In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions specified in (b)~~[(143) (145)]~~, but if the product label indicates that the product is suitable for use on any substrate or application not listed in (b) ~~[(143) (145)]~~, then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

(ii) If a product meets more than one of the definitions specified in (b)~~[(143) (145)]~~ for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in Table 1.

6. No person shall sell, supply, offer for sale, or manufacture for use in the State of Delaware any floor wax stripper unless the following requirements are met:

(i) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3 percent by weight or less.

(ii) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent by weight or less.

(iii) The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

[Note: Items (C)(7) Through (C)(15) Constitute Miscellaneous Exemptions]

7. The medium volatility organic compound (MVOC) content standards specified in (c)(1) for antiperspirants or deodorants, shall not apply to ethanol.

8. The VOC limits specified in (c)(1) shall not apply to fragrances up to a combined level of 2 percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.

9. The requirements of (c)(1) for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20°C.

10. The VOC limits specified in (c)(1) shall not apply to any LVP-VOC.

11. The VOC limits specified in (c)(1) shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under Regulation No. 1 or exempted under (c)(10).

12. The VOC limits specified in (c)(1) shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

13. VOC limits specified in (c)(1) shall not apply to adhesives sold in containers of 1 fluid ounce or less.

The VOC limits specified in (c)(1) for contact adhesive ~~for construction, panel and floor covering adhesive and general purpose adhesive,~~ do not apply to units of product, less packaging, which consist of more than one gallon. ~~[The VOC limits specified in (c)(1) for construction, panel and floor covering adhesive and for general purpose adhesive do not apply to units of product, less packaging, which consist of more than one pound and more than 16 fluid ounces.]~~

14. The VOC limits specified in (c)(1) shall not apply to bait station insecticides. For the purpose of Section 2, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5 percent active ingredients.

15. Section 2 does not apply to sealant and caulking compound in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

~~[16. The requirements of (c)(1) shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq) or Title 3 Chapter 12 of the Delaware Code.]~~

d. Innovative Products

1. Any manufacturer of consumer products granted an Innovative Product ~~for~~[E]xemption [(IPE) by the CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5 Article 1, Section 94503.5 of Title 17 of the California Code of Regulations, or granted an IPE by any OTC state,] shall be exempt from the standards in (c)(1) (Table 1) ~~for~~ for the period of time that said IPE remains in effect, provided that all consumer products within said IPE are contained in (c)(1) Table 1 of this Section. Any manufacturer claiming an exemption on this basis shall submit to the Department a copy of the IPE decision (i.e., the Executive Order or other comparable state action) including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an IPE which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an IPE. Only the following provisions of (d)(2) shall apply to IPE's exempted under (d)(1): (vii), (viii) and (ix).]

2. Manufacturers of consumer products may seek an ~~[Innovative Products exemption]~~[IPE] in accordance with the following criteria:

(i) The Department shall exempt a consumer product from the VOC limits specified in (c)(1) if a

manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(a) the VOC emissions from a representative consumer product which complies with the VOC limits specified in (c)(1); or

(b) the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in (c)(1). VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where:

E_R = The VOC emissions from the non-complying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the non-complying representative product in its current formulation.

VOC_{STD} = the VOC limit specified in (c)(1) (Table 1).

VOC_{NC} = the VOC content of the non-complying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Department.

(ii) For the purposes (d)(2)(i), representative consumer product means a consumer product which meets all of the following criteria:

(a) The representative consumer product shall be subject to the same VOC limit in (c)(1) as the innovative product.

(b) The representative consumer product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(c) The representative consumer product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(iii) A manufacturer shall apply in writing to the Department for any exemption claimed under (d)(2)(i). The application shall include supporting documentation that

demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage.

In addition, the applicant must provide any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. ~~Some information may be kept confidential.~~ All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 Del. C. Chapter 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 Del. C 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the [DNREC] FOIA regulation which can be obtained from the Department.

If a manufacturer has ~~an currently effective Innovative Product exemption, granted by the CARB, or granted by another state with similar Innovative Products exemption rules, the exemption decision (i.e. Executive Order) should be included in the Delaware application.~~ [been refused an IPE or had an IPE revoked by the CARB or any OTC state, details shall be included in the application.]

(iv) Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.

(v) Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of (c)(1) will be permitted. The applicant and the Department may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Department shall notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in (d)(2)(i), and that such emissions reductions can be enforced.

(vi) In granting an exemption for a product the Department shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Department to be necessary. The Department also shall specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

(vii) For any product for which an exemption has

been granted pursuant to ~~[(d)(1) or] (d)(2)~~, the manufacturer shall notify the Department in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.

(viii) If the VOC limits specified in (c)(1) are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in (d)(2)(viii), shall have no force and effect as of the effective date of the modified VOC standard. This shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of such limits.

(xi) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in (d)(2)(i), the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity to appeal the Department's decision to the Secretary, in writing.

e. Administrative Requirements

1. Each manufacturer of a consumer product subject to Section 2 shall clearly display on each consumer product container or package, the day, month, and year when the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cover/cap) without disassembling any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in (c)(1). No person shall erase, alter, deface or otherwise remove or make illegible any date or date-code from any regulated product container. The requirements of this provision shall not apply to products containing VOCs at 0.10% by weight or less. **[The requirements of (e)(1) shall not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA; 7 U.S.C. Section 136 (et seq.), or Title 3 Chapter 12 of the Delaware Code.]**

2. If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to (c)(1), an explanation of the code must be filed with the Department no later than twelve months prior to the effective date of the

applicable standard specified in (c)(1).

3. Notwithstanding the definition of product category in (b), if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in (c)(1), then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

4. Additional Labeling Requirements for Aerosol Adhesives.

(i) In addition to the requirements specified in (e)(1), (e)(2), and (e)(3), both the manufacturer and responsible party for each aerosol adhesive product subject to Section 2 shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005.

(a) The aerosol adhesive category as specified in (c)(1) (Table 1) or an abbreviation of the category shall be displayed.

(b) The applicable VOC standard for the product that is specified in (c)(1) (Table 1), expressed as a percentage by weight, shall be displayed unless the product is included in an ACP, as provided in (j) and the product exceeds the applicable VOC standard.

If the product is included in an ACP, and the product exceeds the applicable VOC standard specified in (c)(1) (Table 1), the product shall be labeled with the term ACP or ACP product.

(c) If the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed.

(d) If the manufacturer or responsible party uses an abbreviation as allowed by (e)(4)(a), an explanation of the abbreviation must be filed with the Department before the abbreviation is used.

(ii) The information required in (e)(4)(i), shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of (e)(4)(ii), information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

f. Reporting Requirements

1. Upon 90 days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify including, but not limited to, all or part of the following information:

(i) the name of the responsible party and the party's address, telephone number, and designated contact

person:

(ii) any claim of confidentiality which shall be handled as specified in (j)(~~HH~~) (12)];

(iii) the product brand name for each consumer product and upon request by the Department, the product label;

(iv) the product category to which the consumer product belongs;

(v) the applicable product form(s) listed separately;

(vi) an identification of each product brand name and form as a household product, I&I product, or both;

(vii) separate Delaware sales in pounds per year, to the nearest pound, and the method used to calculate Delaware sales for each product form;

(viii) for reports submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All information from both companies shall be submitted by the date specified in (f)(1);

(ix) for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1%):

(a) Total exempt compounds

(b) Total LVP-VOCs that are not fragrances

(c) Total all other carbon-containing compounds that are not fragrances

(d) Total all non-carbon-containing compounds

(e) Total fragrance

(f) For products containing greater than two percent by weight fragrance:

1) the percent of fragrance that are LVP-

VOCs, and

2) the percent of fragrance that are all other carbon-containing compounds

(g) Total paradichlorobenzene;

(x) for each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(a) Each exempt compound

(b) Each LVP-VOC that is not a fragrance;

(xi) if applicable, the weight percent comprised of propellant for each product; and

(xii) if applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

2. All information submitted by responsible parties pursuant to (f) shall be handled in accordance with confidentiality procedures which are specified in (j)(~~HH~~) (12)].

g. Variances

1. Any person who cannot comply with the requirements set forth in (c), because of extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall set forth:

(i) the specific grounds upon which the variance is sought;

(ii) the proposed date(s) by which compliance with the provisions of (c) will be achieved; and

(iii) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

2. Upon receipt of a variance application containing the information required in (g)(1), the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in (c) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing also shall be submitted for publication in the Delaware Register and sent to every person who requests such notice, not less than 30 days prior to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

The applicant may wish to have some information treated as confidential. Procedures for establishing confidentiality are specified in (j)(~~HH~~) (12). The Department may consider such confidential information in reaching a decision on a variance application.

3. No variance shall be granted unless all of the following findings are made:

(i) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with (c) would result in extraordinary economic hardship;

(ii) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(iii) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

4. Any variance order shall specify a final compliance date by which the requirements of (c) will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the State of

Delaware's environmental regulations.

5. A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

6. Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of (c) after holding a public hearing in accordance with ~~the~~ provisions ~~of~~ the Delaware Code.

h. Test Methods

1. Testing to determine compliance with the requirements of Section 2, shall be performed using CARB Method 310, "Determination of Volatile Organic Compound (VOC) in Consumer Products", adopted September 25, 1997, and amended on September 3, 1999, which is incorporated herein by reference. This method includes a number of ASTM methods.

Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval by the Department.

2. VOC content determinations using product formulation and records. Testing to determine compliance with the requirements of Section 2 ~~also~~ may ~~also~~ be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(i) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(ii) For the purposes of (h)(2), the VOC content shall be calculated according to the following equation:

$$VOC\ Content = [(B - C) / A] \times 100$$

where,

A ≡ total net weight of unit (excluding container and packaging)

B ≡ total weight of all VOCs per unit

C ≡ total weight of VOCs exempted under (c), per unit

(iii) If product records appear to demonstrate compliance with ~~the~~ VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over ~~the~~ product records and may be used to establish a violation of the requirements of Section 2.

3. Determination of liquid or solid. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material

is a Liquid or a Solid”], ~~which is~~ incorporated by reference herein [see (b)(92) and (b)(~~142~~) (144)].

4. Compliance determinations for charcoal lighter material products.

(i) Testing to determine compliance with ~~the~~ certification requirements for charcoal material shall be performed using ~~the~~ procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), ~~which is~~ incorporated by reference herein.

(ii) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-00a (August 10, 2000), “Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure” ~~which is~~ incorporated by reference in (h)(1).

5. Testing to determine plasticizer in flexible vinyl adhesive [see (b)(~~143~~) (145)](iii) shall be performed using ASTM E260-96 (reapproved 2001) “Standard Practice for Packed Column Gas Chromatography”, incorporated herein by reference.

6. No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

7. Test Method Availability.

(i) CARB Method 310 is available on the web at <http://www.arb.ca.gov/testmeth/cptm/cptm.htm>

(ii) ASTM methods can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

(iii) SCAQMD methods can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

i. Servability

Each part of Section 2 shall be deemed severable, and in the event that any part of Section 2 is held to be invalid, the remainder of Section 2 shall continue in full force and effect.

j. Alternative Control Plan

The purpose of (j) is to provide an alternative method [an alternative control plan (ACP)] to comply with the Table 1 limits specified in (c)(1). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified herein. Only responsible ACP parties for consumer products may establish an ACP.

1. Except as provided in (j)(2), any manufacturer

of consumer products, granted an ACP agreement by the CARB under provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations, or granted an ACP agreement by any OTC state, shall be exempt from the Table 1 limits specified in (c) for the period of time that said ACP agreement remains in effect, provided that all ACP products within said ACP agreement are contained in Table 1. Any manufacturer claiming such an ACP agreement shall submit to the Department a copy of the ACP decision (i.e., the Executive Order or other comparable state action), including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Holders of other state ACP agreements, operating in Delaware, shall be subject to all the provisions of (j)(3) through (j)(13).

~~2~~ Manufacturers of consumer products [granted an ACP under the ACP provision in Subchapter 8.5, Article 4, Sections 9450-94555, of Title 17 of the California Code of Regulations, based on California specific data, or that have been granted an ACP agreement by any OTC state based on state specific data, or that have not been granted an ACP agreement by the CARB or any OTC state] may establish an ACP in accordance with (j)(~~1~~) (2) through (j)(~~12~~) (13). It is not necessary to apply to the Department for authorization. The manufacturer shall submit the information requested in (j)(~~4~~) (5)(i) upon establishing the ACP and from time to time, the Department may require additional reporting as specified in (j)(~~4~~) (5). [The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP established under (j)(2) which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Manufacturers of consumer products whose application to CARB or any OTC state for an ACP was refused or whose ACP agreement was revoked, cancelled or otherwise terminated prior to the specified termination date, shall notify the Department of the circumstances before establishing an ACP for Delaware sales. Decisions by CARB or any OTC state to not approve an ACP application or to cancel or terminate an ACP prior to the specified termination date will be considered in taking any action in Delaware.]

~~3~~ Requirements of an ACP.

To establish an ACP the responsible ACP party shall develop a file of information containing all of the following, which shall be kept current and available to the Department upon request as specified in (j)(~~3~~) (4)(ii) and maintained for at least three years after such records are generated:

(i) an identification of the contact persons, phone

numbers, names and addresses of the responsible ACP party:

(ii) a statement of whether the responsible ACP party is a one-product business, as defined in (b)(111) or a small business as defined in (b)(~~144~~) (143);

(iii) a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

(iv) for each proposed ACP product identified in (j)(~~2~~) (3)(iii) a supported statement that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in (j)(~~2~~) (3)(iv)(e). To support this statement, the responsible ACP party shall include all of the following in the file:

(a) the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(b) the enforceable sales of each product using enforceable sales records as defined in (b)(55);

(c) support the validity of the enforceable sales with enforceable sales records provided by the contact persons or the responsible ACP party;

(d) calculate the percentage of the gross Delaware sales, as defined in (b)(76) which is comprised of enforceable sales;

(e) determine which ACP products have enforceable sales which are 75.0% or more of the gross Delaware sales. Only ACP products meeting this criteria shall be allowed to be sold in the State of Delaware under an ACP.

(v) for each of the ACP products identified in (j)(~~2~~) (3)(iv)(e), the inclusion of the following:

(a) legible copies of the existing labels for each product;

(b) the VOC content and LVP content for each product reported for two different periods, as follows:

1) the VOC and LVP contents of the product at the time the ACP is established, and

2) any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of establishing the ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (+ 10.0%) of the VOC or LVP contents reported in (j)(~~2~~) (3)(v)(b)(1);

(vi) a written commitment obligating the responsible ACP party to date-code every unit of each ACP product included in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP was established.

(vii) an operational plan covering all the products identified under (j)(~~2~~) (3)(iv)(e) for each compliance

period that the ACP will be in effect. The operational plan shall contain all of the following:

(a) an identification of the compliance periods and dates for the responsible ACP party to summarize the information required by the Department in an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party also shall choose the dates for summarizing information such that all required VOC content and enforceable sales data for all ACP products shall be summarized at the same time and at the same frequency;

(b) an identification of specific enforceable sales records summarized in the operational plan for the compliance period dates specified in (j)(~~2~~) (3)(vii)(a);

(c) for a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party(ies) that they will transfer the surplus reductions to the small business or one-product business upon adoption of the ACP;

(d) for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

(e) the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;

(f) a detailed write-up showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This write-up shall use the equations specified in (b)(2) and (b)(3) for projecting the ACP emissions and ACP limits during each compliance period. It shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of Delaware during each compliance period;

(g) a certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of Section 2;

(h) written explanations of the date-codes that will be displayed on each ACP product's container or

packaging:

(i) a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;

(j) a reconciliation of shortfalls plan which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

1) a clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75%, and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

2) a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in (j)(2)(vii)(j); and

3) a commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled.

(k) a declaration, signed by a legal representative for the responsible ACP party which states that all information and plans included in the ACP are true and correct.

[3 4] Record Keeping and Availability of Requested Information.

(i) All information specified in an ACP shall be maintained by the responsible ACP party for a minimum of three years after ~~such records are generated the ACP is cancelled or expires~~. Such records shall be clearly legible and maintained in good condition during this period.

(ii) The records specified in (j)(~~4~~) (5)(i) shall be made available to the Department or an authorized representative:

(a) immediately upon request, during an on-site visit to a responsible ACP party; or

(b) within five working days after receipt of a written request from the Department; or

(c) within a time period mutually agreed upon by the Department and the responsible ACP party.

[4 5] Reporting

(i) Upon establishing an ACP, the responsible ACP party shall notify the Department, in writing, that an ACP has been established and shall submit to the Department all of the information specified in (j)(~~2~~) (3).

(ii) At any time that the information specified in (j)(~~2~~) (3) is modified for any reason, the Department shall be promptly notified of the change.

(iii) When a shortfall occurs, the responsible ACP party shall promptly notify the Department. When the shortfall is reconciled, the responsible ACP party will notify the Department.

(iv) When a VOC exceedance occurs, the

responsible ACP party shall promptly notify the Department of the exceedance and plans for correction. Any exceedance is a violation of Section 2 and may result in penalties.

5. Violations.

(i) Any person who commits a violation of Section 2 may be subject to the penalties specified in applicable Delaware laws and regulations. Failure to meet any requirement of Section 2 or any condition of an ACP shall constitute a single, separate violation of Section 2 for each day until such requirement or condition is satisfied, except as otherwise provided in (j)(5)(ii) through (j)(5)(viii).

(ii) False reporting of any information contained in an ACP, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of Section 2 for each day that the ACP is in effect.

(iii) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP shall constitute a single, separate violation of the requirements of Section 2 for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the State of Delaware.

(iv) Any of the following actions shall each constitute a single, separate violation of the requirements of Section 2 for each day after the applicable deadline until the requirement is satisfied:

(a) Failure to record data (i.e., "missing data") or failure to record data accurately (i.e., "inaccurate data") in writing to the Department regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified by the Department;

(b) False reporting of any information submitted to the Department for determining compliance with the ACP requirements;

(c) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP, within 30 working days from the date of written notification of a shortfall;

(d) Failure to completely reconcile the shortfall as specified in the ACP, within 90 working days from the date of written notification of a shortfall.

(v) False reporting or failure to report any of the information specified in (j)(~~6~~) (7)(ii)(i), or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of Section 2 for each day during the time period for which the surplus reductions are claimed to be valid.

(vi) Except as provided in (j)(~~6~~) (7), any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of Section 2 for each day of the applicable compliance period. The responsible ACP party shall determine whether an exceedance of the ACP limit has

occurred as follows and promptly report the results to the Department:

(a) If the responsible ACP party has recorded all required information for the applicable compliance period specified in an ACP, then the manufacturer shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

(b) If the responsible ACP party has failed to provide all the required information specified in the ACP for an applicable compliance period, determining whether an exceedance of the ACP limit has occurred shall be done as follows:

1) for the missing data days, calculate the total maximum historical emissions, as specified (b)(152) (154);

2) for the remaining portion of the compliance period which are not missing data days, calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

3) the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to (j)(5) (6)(vi)(b)(1), and the emissions determined pursuant to (j)(5) (6)(vi)(b)(2);

(c) calculate the ACP limit for the entire compliance period using ACP standards applicable to each ACP product and enforceable sales records specified in (j)(5) (6)(vi)(b)(2). Enforceable sales for each ACP product during missing data days, as specified in (j)(5) (6)(vi)(b)(1), shall be zero (0).

(d) an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to (j)(5) (6)(vi)(b)(3), exceeds the ACP limit, determined pursuant to (j)(5) (6)(vi)(b)(4).

(vii) If a violation specified in (j)(5) (6)(vi) occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP\ Emissions - ACP\ Limit) \times 1\ Violation / 40\ Pounds$$

where

NEV = number of ACP limit violations

ACP emissions = the ACP emissions for the compliance period

ACP limit = the ACP limit for the compliance period

The responsible ACP party may determine the number of ACP limit violations pursuant to this

paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to (j)(5) (6)(vii).

(viii) In assessing the amount of penalties for any violation occurring pursuant to (j)(5) (6)(i) through (j)(5) (6)(vii), circumstances covered in applicable laws and regulations of the State of Delaware shall be taken into consideration.

(ix) A cause of action against a responsible ACP party under (j)(5) (6) shall be deemed to accrue on the date(s) when the records establishing a violation are received by the Department.

(x) The responsible ACP party is fully liable for compliance with the requirements of Section 2, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of Section 2.

[6 7]. Surplus Reductions and Surplus Trading.

(i) Any surplus reductions of VOC achieved by a responsible ACP party operating under an ACP may be represented in the form of certificates which can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in (j)(6) (7)(ii). All surplus reductions shall be calculated at the end of each compliance period within the time specified in the established ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.

(ii) The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

(a) For the purposes of Section 2, VOC reductions from sources of VOC other than consumer products subject to the VOC standards specified in (c)(1) may not be used to generate Surplus reductions;

(b) Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under a prior established ACP;

(c) Surplus reductions may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to (j)(10) (11);

(d) Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

(e) Except as provided in (j)(6) (7)(ii)(f)(2), only small or one-product businesses selling products under an established ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

(f) While valid, surplus reductions can be

used only for the following purposes:

1) to adjust either the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

2) to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfall plan pursuant to (j)(~~2~~) (3)(vii)(j).

(g) A valid surplus reduction shall be in effect starting five (5) days after the date of identification by the responsible ACP party, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

(h) At least five (5) working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

1) the date the transfer is to become effective;

2) the date the surplus reductions being traded are due to expire;

3) the amount (in pounds of VOCs) of surplus reductions that are being transferred;

4) the total purchase price paid by the buyer for the surplus reductions;

5) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions;

6) a copy of the surplus reductions certificate issued by the responsible ACP party, signed by the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in (j)(~~6~~) (7).

(i) Surplus reduction credits shall only be traded between ACP product(s) for consumer products.

[7 8] Reconciliation of Shortfalls.

(i) At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period. Upon

receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

(ii) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP, within 30 working days from the date of written notification of a shortfall by the Department.

(iii) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP.

(iv) All requirements specified in the ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

[8 9] Notification of Modifications to an ACP by the Responsible ACP Party.

(i) The responsible ACP party shall notify the Department, in writing, of any change in an ACP product's:

(a) product name,

(b) product formulation,

(c) product form,

(d) product function,

(e) applicable product category(ies),

(f) VOC content,

(g) LVP content,

(h) date-codes, or

(i) recommended product usage directions, no later than 15 working days from the date such a change occurs.

For each modification, the notification shall fully explain the following:

(a) the nature of the modification;

(b) the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

(c) the extent to which the ACP emissions and ACP limit specified in the ACP will be changed for the applicable compliance period; and

(d) the effective date and corresponding date-codes for the modification.

(ii) Except as otherwise provided in (j)(~~6~~) (7)(ii), the responsible ACP party shall notify the Department, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of (j)(~~2~~) (3). The responsible ACP party shall provide such notification to the Department no later than 15 working days from the date such information is known to the responsible ACP party.

[9 10] Modification of an ACP by the Department

(i) If the Department determines that:

(a) the enforceable sales for an ACP product are no longer at least 75.0% of the gross Delaware sales for that product, or

(b) the information submitted pursuant to a request is no longer valid, or

(c) the ACP emissions are exceeding the ACP limit specified in the ACP,

then the Department shall modify the ACP as necessary to ensure that the ACP meets all requirements of Section 2 and that the ACP emissions will not exceed the ACP limit.

The Department shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be modified.

(ii) If any applicable VOC standards specified in (c)(1) are modified in a future rule making, the responsible ACP party shall modify the ACP limit specified in the ACP to reflect the modified ACP VOC standards as of their effective dates.

[10 11]. Cancellation of an ACP

(i) An ACP shall remain in effect until:

(a) the ACP reaches the specified expiration date;

(b) the ACP is modified by the responsible ACP party;

(c) the ACP is modified by the Department, as provided in (j)(9) (10);

(d) the ACP includes a product for which the VOC standard specified in (c)(1) is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date(s) of the modified standard;

(e) the ACP is cancelled pursuant to (j)(10) (11)(ii).

(ii) The Department shall cancel an ACP if any of the following circumstances occur:

(a) the responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;

(b) the responsible ACP party violates the requirements of the ACP, and the violation(s) results in a shortfall that is 20.0% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20.0% or more);

(c) the responsible ACP party fails to meet the requirements of (j)(7) (8) (Reconciliation of Shortfalls) within the time periods specified in (j)(7) (8); or

(d) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

(iii) The Department shall not cancel an ACP pursuant to (j)(10) (11)(ii) without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be canceled.

(iv) The responsible ACP party for an ACP which is canceled pursuant to (j)(10) (11)(ii) and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

(a) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of (j)(7) (8), and

(b) all ACP products subject to the ACP shall be in compliance with the applicable VOC standards in (c)(1) immediately upon the effective date of ACP cancellation.

(v) Any violations incurred pursuant to (j)(5) (6) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to (j)(8), (j)(9), ~~or~~ (j)(10) [or (j)(11)].

[12 12]. Treatment of Information

The information required by (j)(2) (3)(i), (j)(2) (3)(ii), and (j)(6)(ii)(h) is public information which may not be claimed as confidential. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 Del. C. Chapter 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 Del. C 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the FOIA regulation which can be obtained from the Department.

[12 13]. Other Applicable Requirements.

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(i) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(ii) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP and Section 2.

[k. Related Delaware Rules

The following Delaware rules are referred to in Section 2 and are required to fully understand the provisions of Section 2. Copies of these related rules may be obtained through the State of Delaware web site <http://www.delaware.gov>, by writing to State of Delaware, Department of Natural Resources and Environmental

Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, Delaware 19720 or by calling 302-323-4542.

1. Some definitions are in "Regulations Governing the Control of Air Pollution", Air Quality Management Section, Division of Air and Waste Management, "Regulation No. 1, Definitions and Administrative Principles". This regulation also is available on the Department of Natural Resources and Environmental Control (DNREC) web site <http://www.dnrec.state.de.us/DNREC2000>.

2. The state pesticide law, "State of Delaware Code Title 3, Part II, Chapter 12" also can be obtained by writing the State of Delaware, Department of Agriculture, 2320 South Dupont Highway, Dover, Delaware 19901 or by calling 302-739-4811. The pesticide law also can be found on the following web site, <http://www.mitchie.com>.

3. The Freedom of Information Act (FOIA), 29 Delaware Code, Chapter 100, Section 10002(d) also is available on the following web site <http://www.mitchie.com>. The DNREC FOIA regulation also is available at <http://www.dnrec.state.de.us/DNREC2000>.

4. The Delaware code relating to public hearings for environmental matters, Title 7, Chapter 60, Section 6006 also can be found on the following web site, <http://www.mitchie.com>.

5. The Delaware Code relating to penalties for violations of environmental regulations, Title 7, Chapter 60, Sections 6005 and 6013 also can be found at the following web site <http://www.mitchie.com>.

TABLE 1
VOC CONTENT LIMITS FOR CONSUMER
PRODUCTS
(percent volatile organic compounds by weight)

<u>PRODUCT CATEGORY</u>	<u>VOC CONTENT LIMIT</u>
Adhesives	
Aerosol	
Mist Spray	65
Web Spray	55
Special Purpose	
(mounting, auto engine compartment & flexible vinyl)	70
(polystyrene foam & automotive headliner)	65
(polyolefin & laminate repair/edgebonding)	60

Contact	80 *
Construction, Panel, and Floor Covering	15
General Purpose	10 *
Structural Waterproof	15 *
Aerosol Cooking Spray	18 *
Air Fresheners	
Double-Phase Aerosols	25
Liquids/ Pump Sprays	18 *
[Pump Sprays]	[18*]
Single-Phase Aerosols	30
Solids/ Gels	3 *
[Gels]	[3*]

Antiperspirants		
Aerosol	(% HVOC)	40
	(% MVOC)	10
Non-Aerosol	(% HVOC)	0
	(% MVOC)	0

Automotive Brake Cleaners	45
Automotive Rubbing or Polishing Compound	17
Automotive Wax, Polish, Sealant or Glaze	
Hard Paste Waxes	45
Instant Detailers	3
All Other Forms	15

Automotive Windshield Washers³⁵ *	
Bathroom and Tile Cleaners	
Aerosols	7 *
All Other Forms	5 *

Bug and Tar Remover	40
Carburetor or Fuel-Injection Air Intake Cleaners	45
Carpet and Upholstery Cleaners	

Aerosols	7
Non-Aerosols (dilutables)	0.1
Non-Aerosols (ready to use)	3
Charcoal Lighter Material	see (c)(4) *

Deodorants		
Aerosol	(% HVOC)	0
	(% MVOC)	10
Non-Aerosol	(% HVOC)	0
	(% MVOC)	0

Dusting Aids	
Aerosols	25
All Other Forms	7 *

Engine Degreasers	
Aerosol	35
Non-Aerosol	5

Fabric Protectants	60
Floor Polishes and Waxes	

Products for Flexible Flooring Materials	7 *
Products for Non-Resilient Flooring	10 *
Wood Flooring	90 *
Floor Wax Strippers (non-aerosols)	see (c)(6)
Furniture Maintenance Products	

Aerosols	17
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<u>All Other Forms (except solid or paste)</u>	7
<u>General Purpose Cleaners</u>	
<u>Aerosols</u>	10
<u>Non-Aerosols</u>	4
<u>General Purpose Degreasers</u>	
<u>Aerosols</u>	50
<u>Non-Aerosols</u>	4
<u>Glass Cleaners</u>	
<u>Aerosols</u>	12 *
<u>Non-Aerosols</u>	4
<u>Hair Mousses</u>	6
<u>Hairshines</u>	55
<u>Hairsprays</u>	55
<u>Hair Styling Gels</u>	6 *
<u>Heavy Duty Hand Cleaner Soap</u>	8
<u>Insecticides</u>	
<u>Crawling Bug (aerosol)</u>	15
<u>Crawling Bug (all other forms)</u>	20
<u>Flea and Tick</u>	25 *
<u>Flying Bug (aerosol)</u>	25
<u>Flying Bug (all other forms)</u>	35
<u>Foggers</u>	45 *
<u>Lawn and Garden (non-aerosol)</u>	3
<u>Lawn and Garden (all other forms)</u>	20
<u>Wasp and Hornet</u>	40
<u>Laundry Prewash</u>	
<u>Aerosols/Solids</u>	22 *
<u>All other forms</u>	5 *
<u>Laundry Starch Products</u>	5 *
<u>Metal Polishes/Cleaners</u>	30
<u>Multi-Purpose Lubricant (excluding solid or semi-solid products)</u>	50
<u>Nail Polish Remover</u>	75
<u>Non-Selective Terrestrial Herbicide (non-aerosol)</u>	3
<u>Oven Cleaners</u>	
<u>Aerosols & Pump sprays</u>	8 *
<u>Liquids</u>	5 *
<u>Paint Removers and Strippers</u>	50
<u>Penetrants</u>	50
<u>Rubber and Vinyl Protectants</u>	
<u>Aerosols</u>	10
<u>Non-Aerosols</u>	3
<u>Sealants and Caulking Compounds</u>	4
<u>Shaving Creams</u>	5 *
<u>Silicone-Based Multi-Purpose Lubricants (excluding solid or semi-solid products)</u>	60
<u>Spot Removers</u>	
<u>Aerosols</u>	25
<u>Non-Aerosols</u>	8
<u>Tire Sealants and Inflators</u>	20
<u>Undercoatings (aerosols)</u>	40

* Limits and definition unchanged from EPA rule at 40CFR59 Subpart C. "National Volatile Organic Compound

Emission Standards for Consumer Products", which remains in force.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code,
Section 5404(a) (24 Del.C. §5404(a))

Summary Of Evidence

A properly notice public hearing was scheduled on November 29, 2001 pursuant to 24 Del. C. sec. 5404(a) and 29 Del. C. ch. 101 in the second floor conference room, Public Safety Building, Dover, Delaware to receive public comment on the proposed Bounty Hunter/Bail Enforcement Agents Regulations ("the Regulations"). The attendance sheet and recording of public comments are attached to this order.

Testimony was given by Lt. Charles Rynkowski of the Delaware State Police stating that the Regulations were based on similar regulations for security guards and private detectives. The Regulations concern the licensing of both the agency and the individual. The age for any agency license is twenty-five and an individual license may be obtained at age twenty-one. The number of hours for training was eliminated and some areas of training were eliminated. He added that a clarification of the Regulations concerning training allows for in-house training.

Lorin Jones objected to the Regulation's excluding felons from the business, the age requirement of twenty-one years for a license, the insurance requirement of \$1,000,000 for liability, the prohibition against licensing of personnel of a law enforcement agency and reciprocity.

There were other comments on requiring a new license if you change employer, the prohibition against the use of dogs, the omission of a .45 caliber handguns, shotguns and rifles from the list of permissible weapons.

The Secretary received written comments from Kevin P. O'Neill, Esquire on behalf of bail enforcement agents in Delaware.

Further comments concerned the requirement for reporting arrests and the cost of training.

Findings Of Fact

Based on the evidence received the Department of Public Safety finds the following facts supported by the record:

1. The Regulations will promote, preserve and protect the public health, safety and welfare by regulating fugitive

recovery.

2. The Regulations benefited from experience with the regulations for private detectives and security guard.

3. Convicted felons are excluded from licensure as a bounty hunter/bail enforcement agent because of the close relationship of this work with the work of courts and law enforcement.

4. The age requirement for individual licensure is twenty-one years of age because this is the minimum age at which a person may carry a firearm.

5. The proposed Regulation requiring liability insurance in the amount of \$1,000,000 is deleted because of the lack of availability of such insurance for licensees.

6. Law enforcement personnel are excluded from licensure as bounty hunters/bail enforcement agent because of their access to restricted information regarding arrested or convicted individuals.

7. The prohibition against the use of animals is based on the potential liability of using and housing the animal. The prohibition is consistent with the regulation for security guards.

8. No licensing reciprocity will occur until there is licensure in most jurisdictions based on national standards. The statute in sec. 5403 prohibits a non-licensed person from apprehending, detaining or arresting a suspected fugitive on behalf of another, and this prohibition applies to both residents of this State and non-residents. Out of state licensees or non-licensed persons will have to work with a Delaware licensee who will apprehend, detain or arrest a fugitive in Delaware. The Secretary believes that this provision will help to prevent unqualified individuals from endangering the public.

9. The Regulations are amended to allow the use of a .45 caliber handgun.

10. Regulation 6.6 is clarified to state that before the Detective Licensing Section will approve a shotgun, rifle, any type of weapon or apprehension device, the licensee must provide proof of training with this weapon or device to the Section for approval.

11. The training requirements concerns area of the law relevant to the work of a licensee, and the cost provision and multiple methods of obtaining training should facilitate the licensees becoming qualified.

12. The regulations are clarified to indicate that a pre-decision hearing will precede any suspension or revocation of a licensee, and action will normally wait until the criminal process issues a conviction. Also the licensee will have 30 days to request a hearing before the Secretary of Public Safety.

13. The list of criminal charges in Regulation 1.1.2 are those crimes relevant to the activity being licensed. The question of whether Regulation 1.1.3 is "to expansive" is answered in its application. Regulation 1.1.2 and 2.1.2 are changed to delete moral turpitude and require a conviction of

any two of the specified misdemeanors within the prior seven years.

14. The language of Regulation 1.3 is clarified and refers to the various legal entities that may seek an agency license. If a bail bondsmen intends to operate as a licensed agency, he/she would need to apply for an agency license. A bail bondsman is not excluded from the definition of bounty hunter/bail enforcement agent in sec. 5402, and is included in the prohibition of sec. 5403 i.e. "No person, . . . including a principal on a bond, wherever issued, etc."

15. The statute, sec. 5404(a) and (b), authorizes a licensing fee of up to \$500 a year and establishes a Bail Enforcement Regulatory Fund. In view of these provisions, the Secretary does not find the amount of the licensing fee of \$180 a year to be excessive.

16. The provisions of proposed Regulation 2.5 and 2.6 are deleted and new Regulation 2.5 is reworded to be consistent with these deletions.

Regulation 4.2 is clarified to advise that review and approval of advertisements and publications are subsequent to use by the licensee and limited to the issue of misrepresentation.

18. Regulation 7.0 is altered to require training and proof of training but delete the requirement for a certified instructor representing the manufacturer.

The Law

The Secretary of the Department of Public Safety's rulemaking authority is provide by 24 Del. C. sec. 5404(a) that states:

- (a) The Secretary of the Department of Public Safety is hereby authorized and directed to promulgate regulations in accordance with Chapter 101 of the Title 29 as are necessary to implement the provisions of this chapter regarding the licensure and registration of bounty hunters and bail enforcement agents, which may include the term of a license or registration, reciprocity and the qualifications of a licensee, and may charge a fee not to exceed \$500 for each application for licensure and each renewal of an existing license.
- (b) The Department of Public Safety shall, by its rules and regulations, determine all fees to be assessed under this chapter, including application and renewal fees not to exceed the maximum fee permitted in subsection (a) hereof. Each fee collected shall be deposited into the Bail Enforcement Regulatory Fund, which fund shall be a revolving fund and monies into the fund shall not revert to the State General Fund. The Department shall use the fund to defray all expenses incurred in its administration of this chapter, including, but not limited to, background investigations, criminal

history investigations, and fingerprinting of an applicant and any investigation of any charge made against a licensee.

Decision

The Secretary hereby adopts the Regulations as proposed with the alterations, deletions and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order. The Secretary relies upon the provisions of the statute, his experience with police agencies, private detectives and security guards and the comments received from the public in promulgating these Regulations.

IT IS SO ORDERED this 17th day of December, 2001.

Honorable James L. Ford, Jr.

*Please note due to vast number of changes between the proposed regulations and the final set, the proposed version is shown here in bold strike-out and the final version is shown in bold.

Bounty Hunter/Bail Enforcement Agents

~~{~~**Preamble**

~~These Rules & Regulations are promulgated pursuant to 24 Del C Section 5404(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 54 to the Division of State Police.~~

1.0 Agency Licensing

~~1.1 Any and all persons, cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must meet and maintain the following qualifications:~~

~~1.1.1 Must not be convicted of any felony;~~

~~1.1.2 Must not have been convicted of any misdemeanor involving theft, drug offenses, offensive touching, assault III, or moral turpitude within the last seven (7) years;~~

~~1.1.3 Must not have been convicted of any charge that, in the discretion of the Detective Licensing Section, bears such a relationship to the performance of the bounty hunter/bail enforcement agent (bounty hunter); and~~

~~1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.~~

~~1.2 An agency license will not be issued if any and all persons, cooperative of persons, partnership, or corporation has a pending charge as listed in Section 1.1.~~

~~1.3 The qualifying individual (license holder) of a cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must also meet the following qualifications;~~

~~1.3.1 Must be at least 25 years of age;~~

~~1.3.2 Must have at least five (5) years of experience as a bounty hunter; and~~

~~1.3.3 Provide five (5) letters of reference attesting to their good character.~~

~~1.4 The person, cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must submit, to the Detective Licensing Section, the following for licensure:~~

~~1.4.1 A fee or pro-rated fee of \$360 for a two (2) year license and will expire on June 30th of even years;~~

~~1.4.2 A \$10,000 surety bond;~~

~~1.4.3 Liability Insurance in the amount of \$1,000,000;~~

~~1.4.4 Any and all applications required by the Detective Licensing Section; and~~

~~1.4.5 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process.~~

~~1.5 Any and all persons, cooperative of persons, partnership, or corporate officer must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.~~

~~1.6 The license issued to the agency shall be posted upon the premises of business and shall not be altered or defaced.~~

~~1.7 After issuance of an agency license, the license holder must obtain a State of Delaware business license from the Division of Revenue.~~

~~1.8 It will be the license holders' responsibility to provide to the Detective Licensing Section:~~

~~1.8.1 Any change of address, phone number, status of cooperative of persons, partnership, or corporation, in writing, within five (5) days, to the Detective Licensing Section;~~

~~1.8.2 A list of all employees by the tenth (10th) of each month as explained in Section 3.0; and~~

~~1.8.3 A list of the previous months apprehensions by the tenth (10th) of each month as explained in Section 3.0.~~

~~1.9 There will be no reciprocity with any other state regarding the licensure of a bounty hunter/bail bondsman agency.~~

2.0 Employee Licensing

~~2.1 Any individual applying for a bounty hunter ID~~

card under Title 24 Chapter 54, to work for a license holder, must meet and maintain the following qualifications:

2.1.1 Must not be convicted of any felony;

2.1.2 Must not have been convicted of any misdemeanor involving theft, any drug offenses, offensive touching, assault III, or moral turpitude within the last seven (7) years;

2.1.3 Must not have been convicted of any charge that, in the discretion of the Detective Licensing Section, bears such a relationship to the performance of the bounty hunter; and

2.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

2.2 An individual bounty hunter ID card will not be issued if there is a pending charge as listed in Section 2.1.

2.3 The individual bounty hunter applying for an ID card under Title 24 Chapter 54 must also meet the following qualifications:

2.3.1 Must be at least 21 years of age;

2.3.2 Must complete the training qualifications set forth in Section 8.0; and/or

2.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 6.0.

2.4 The individual bounty hunter applying for an ID card under Title 24 Chapter 54 must submit the following for approval:

2.4.1 A fee of \$25 for a one (1) year ID card to expire on the birthday of the individual;

2.4.2 Any and all applications required by the Detective Licensing Section; and

2.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process.

2.5 If the individual bounty hunter leaves one agency's employ and is employed by another, that individual must turn in the ID card and re-apply for approval through the Detective Licensing Section, with the requirements from Section 2.4.1 and Section 2.4.2.

2.5.1 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon leaving the employ of an agency, upon expiration of the ID card, or at the request of the Detective Licensing Section.

2.6 An individual that has a bounty hunter ID card issued through Title 24 Chapter 54 shall work for no more than two (2) licensed agencies at a time.

2.7 A bounty hunter that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

2.8 A bounty hunter must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

2.9 There will be no reciprocity with any other state regarding the issuing of an ID card to a bounty hunter.

3.0 Personnel Rosters and Apprehension Lists

3.1 An agency licensed under Title 24 Chapter 54 shall submit an alphabetical personnel roster and a list of the previous months apprehensions to the Detective Licensing Section by the tenth (10th) of every month.

3.1.1 Alphabetical personnel rosters shall include any and all persons, cooperative of persons, partners, corporate officers, and individual bounty hunters. The rosters shall include the full name, DOB, sex, and expiration date. For example: Mark A. Smith 01/25/60 M 01/25/02

3.1.2 The apprehension lists shall include the name, date of birth, date, time, and address of attempted or successful apprehension. For example:

John F. Henry (Apprehended) or (Attempted Apprehension)

DOB: 05/23/48

09/23/01 9:35pm

689 Old Berry Lane

Marydel, DE

4.0 Badges, Patches, Advertisements

4.1 No person, cooperative of persons, partnership, or corporation licensed under Title 24 Chapter 54 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

4.2 All advertisements or other forms of publication are subject to review and approval by the Detective Licensing Section.

4.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

5.0 Use of Animals

5.1 The use of animals is prohibited in the performance of any bounty hunter activity.

6.0 Firearms Policy

6.1 No person licensed under Title 24 Chapter 54 shall carry a firearm unless that person has first obtained

~~a Carrying Concealed Deadly Weapon (CCDW) permit for the State of Delaware.~~

~~6.2 In addition to possessing a CCDW permit, the individual must complete, and pass, an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.~~

~~6.3 All persons licensed to carry a firearm under this chapter must be re-certified yearly by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.~~

~~6.4 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:-~~

~~6.4.1 .9mm~~

~~6.4.2 .357~~

~~6.4.3 .38~~

~~6.4.4 .40~~

~~6.5 All ammunition will be factory fresh (no re-loads).~~

~~6.6 The carrying of any shotguns, rifles or any type of weapon that is not specifically approved by the Detective Licensing Section is PROHIBITED.~~

~~7.0 Nightstick, Pr24, Mace, Peppergas, Chemical Spray, and Handcuffs~~

~~7.1 To carry the above weapons/items a bounty hunter must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.~~

~~8.0 Training~~

~~8.1 All bounty hunters licensed under Title 24 Chapter 54 must complete a minimum, but not limited to, 21 hours of training, which must be approved by the Detective Licensing Section. The training will include, but not limited to, the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Rules & Regulations of Bounty Hunters, Use of Deadly Force, Officer Survival, and Weaponless Defense.~~

~~8.2 This training will be waived for the initial~~

~~licensing, but must be completed by January 19, 2003. Thereafter, the training must be completed prior to obtaining a license.~~

~~9.0 Notification of Apprehensions~~

~~9.1 All bounty hunters licensed under Title 24 Chapter 54 are required to notify the police emergency 911 dispatch center (i.e., Reccom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.~~

~~10.0 Notification of Arrest~~

~~10.1 Anyone licensed under Title 24 Chapter 54 shall, excluding weekends and State holidays, notify the Detective Licensing Section within 24 hours of being arrested if that arrest could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of an agency license or individual ID card.~~

~~11.0 Suspensions and Revocations~~

~~11.1 The Detective Licensing Section shall have the power to suspend or revoke any agency or individual, licensed under Title 24 Chapter 54, that violates the Chapter or the promulgated Rules & Regulations.~~

~~11.2 The Detective Licensing Section may suspend or revoke any agency or individual, licensed under Title 24 Chapter 54, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Sections 1.0 or 2.0.~~

~~11.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Public Safety.~~

~~11.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within five (5) days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.]~~

Bounty Hunter/Bail Enforcement Agents

[Preamble

These Rules & Regulations are promulgated pursuant to 24 Del.C. Section 5404(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 54 to the Division of State Police.

1.0 Licensing

1.1 Any individual applying for a bail enforcement agent ID card under Title 24 Chapter 54 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony; and

1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and

1.1.3 Must not have been convicted of any charge that bears a relationship to the performance of the bounty hunter as determined by the Detective Licensing Section; and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 54 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 54 must submit the following for approval:

1.4.1 A fee of \$25 for a four (4) year ID card which shall expire and be renewable on the 4th anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4th year; and

1.4.2 Any and all applications required by the Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.

2.0 Badges, Patches, Advertisements

2.1 No individual licensed under Title 24 Chapter 54 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

3.0 Use Of Animals

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

4.0 Firearms Policy

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.4.5 .45

4.4 All ammunition will be factory fresh (no reloads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs

5.1 To carry the above weapons/items a bail enforcement agent must have completed training on each and every weapon/item carried. Proof of training must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

6.0 Training

6.1 All bail enforcement agents licensed under Title 24 Chapter 54 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 This training will be waived for the initial licensing, but must be completed by January 19, 2003. Thereafter, the training must be completed prior to obtaining a license.

7.0 Notification Of Apprehensions

7.1 All bail enforcement agents licensed under Title 24 Chapter 54 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

8.0 Notification Of Arrest

8.1 Anyone licensed under Title 24 Chapter 54 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

9.0 Suspensions And Revocations

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under Title 24 Chapter 54, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under Title 24 Chapter 54, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Public Safety.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.]

EXECUTIVE DEPARTMENT**DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code, Section 5005(11) (29 Del. C. § 5005(11)) and 26 Delaware Code, Section 1014(a) (26 Del. C. § 1014(a))

Title Of Regulation

Energy Alternatives Program Regulation.

Order Adopting And Promulgating Regulation

AND NOW, this 13 day of December, 2001, John D. Wik, as Director ("Director") of the Delaware Economic Development Office ("DEDO"), in accordance with 29 Delaware Code §§ 5005(11), and 10118(b), for the reasons stated below enters this ORDER adopting and promulgating the Energy Alternatives Program Regulation (the "Regulation")

Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Director of DEDO proposed to adopt the Regulation for the administration and operation of the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of 1999, 72 Del. Laws, c. 10 (March 31, 1999) (the "Act"). The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. The Regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to receive a rebate designed to defray a part of certain purchase and installation costs of certain solar photovoltaic electricity generating systems, certain solar water heating systems, certain geothermal heat pump systems, and certain wind turbine

systems (ii) the photovoltaic electricity generating, solar hot water heating, geothermal, and wind turbine systems that now qualify for rebates, (iii) how to request a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

Notice of the public hearing to consider the proposed amendments and the text of the amendments appeared in the November 1, 2001 issue of the Delaware Register of Regulations, 5 Del. R. 989-1175 (November 1, 2001), and in Delaware newspapers of general circulation on November 6, 2001, November 7, 2001 and November 12, 2001 in accordance with 29 Del. C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del. C. §§ 5005(10) and 10117(1) held a public hearing for the purpose of receiving comments on the Regulation on December 6, 2001 from 5:00 until 7:00 p.m. in Conference Room 398 of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801. This is the order of the Director of DEDO adopting the Regulation.

Summary Of Evidence And Information Submitted

Following enactment of the Act, DEDO, the Delaware Energy Office and the Division of the Public Advocate began to consult on the design and implementation of the Energy Alternatives Program required to be created under the Act. To assist the agencies, DEDO engaged a consultant. Because 29 Del. C. § 1014(a) is very general, the working group drew specific guidance as to some aspects of the program from Senate Resolution 30 (140th General Assembly). The group also surveyed similar programs established by the states of New Jersey, Pennsylvania, Wisconsin and California to gain an understanding of the types of technologies being funded elsewhere and the level of funding used to promote more widespread use of energy conservation technologies.

The working group initially focused on three technologies that used renewable resources, e.g., photovoltaic and wind turbine powered electricity generation and solar hot water heating. The working group had information that each of these technologies has a proven track record. The focus of the Act was not, however, limited to renewable resource technologies. Accordingly, the group broadened the scope of technologies included in the program to include geothermal heat pump technology. The working group included this technology because it produces large heating and cooling efficiencies in both residential and nonresidential applications with a relatively short payback period.

The working group concluded that the adoption of a few technologies with proven track records would provide early success to the Energy Alternatives Program. The group also

believed that this strategy would make it easier to administer the program in the short-run, and increase public acceptance of additional energy conservation technologies and initiatives that might be adopted at a later date. This approach was based upon the belief that it is better to start small and build upon early successes.

The working group intended that the selected technologies should be used in both residential and nonresidential settings. Accordingly, it divided the Environmental Incentive Fund into a Nonresidential Pool and a Residential Pool, based on an allocation ratio of 60% to the Nonresidential Pool and 40% to the Residential Pool. Data available to the working group suggested that this allocation approximated the ratio of electricity payments by nonresidential consumers to payments by residential consumers.

The working group incorporated technical and engineering standards and a 5-year warranty requirement for the various types of Qualifying Systems into the Regulation to ensure that consumers received systems that were warranted against defects, manufactured according to industry standards and properly installed. The working group had information that the technical and engineering standards and the warranty requirement all are currently reflected in industry best practices. Similarly, in order to protect consumers from price gouging by manufacturers or installers of Qualifying Systems, the working group incorporated certain cost limitations based on the appropriate unit of energy generated by the type of Qualifying System. The working group had information that these limitations were reasonable, based on the current costs associated with the purchase and installation of Qualifying Systems.

The working group also concluded that the Delaware Energy Office's core competencies would better enable that agency to evaluate applications for Energy Alternatives Rebates than DEDO could.

DEDO received written comments from W.L. Gore & Associates, Inc. ("Gore") and oral testimony from representatives of McConnell Development, AstroPower, Rockford Construction & Design and Gore.

In its written and oral comments, Gore provided information about the history of fuel cell technology, the various types of existing technology and current applications of the technology and urged its inclusion in the Energy Alternatives Program. It also suggested that the Regulation include provisions (i) "to ensure a balance of rebate investments across the identified qualified technologies," (ii) to specify mechanisms for reviewing effectiveness of the program or benchmarks for reviewing its effectiveness, and (iii) to identify qualifications for additional future technologies for inclusion in the program. Gore also questioned the reasonability of the requirement in Section 3.1.2 of the Regulation that Qualifying Systems have a full 5-year warranty, as described in the Regulation.

DEDO declined to include fuel cell technology in the Energy Alternatives Program, at least at the outset of the program, based on information that it developed through the working group. First, fuel cell technology is still very expensive, when compared to the other technologies selected for the program. The cost of existing technologies is important for the adequate proliferation in both the commercial and residential marketplace. Funds available in the Environmental Incentive Fund are limited, and DEDO believed that it was important to use the available funds for the largest number of projects in order to launch the program successfully. Second, cost effective applications for fuel cell technology are still in their infancy, and at this time, the available fuel cell technologies are in their embryonic stages, when compared with the other technologies adopted into the Energy Alternatives Program. Future development of fuel cell technology and the cost of implementing it may warrant a re-evaluation of this decision. DEDO intends to monitor new and developing technologies for promoting energy efficiency and conservation and it believed that the best approach to determining whether new technologies would be incorporated would be to be flexible. Accordingly, DEDO has not followed Gore's suggestion to incorporate benchmarks for the inclusion of new technologies in the program. If DEDO determines that it is appropriate, such technologies may be added by amendment to the Regulation. DEDO considered incorporating some allocation mechanism among the included technologies but decided instead to let the demand of rebate users determine the allocation. The Energy Alternatives Program is designed to benefit electricity consumers and encourage energy conservation and efficiency, not to serve as an economic benefit tool for the primary benefit of the producers or vendors of included technologies. DEDO intends to monitor the program for effectiveness and the tools by which it measures effectiveness may change over time; accordingly, it has not followed Gore's suggestion that such benchmarks be included in the Regulation.

The representative of McConnell Development expressed support for the program and stated that McConnell Development was a developer of residential, commercial and industrial real estate. He stated that McConnell Development had already constructed a 25 kW system was in the process of designing and installing one large industrial project and one large office project using technologies covered by the Regulation

The representative of AstroPower stated that AstroPower was the largest independent manufacturer of solar electric products, expressed support for the program and stated that AstroPower was in the process of expanding its headquarters in Newark, Delaware to include the largest building integrated photovoltaic system in the United States. He stated that AstroPower desired a rebate under the Energy Alternatives Program for this system.

The representative of Rockford Construction & Design explained that his employer is an installer for AstroPower and expressed support for the program.

Findings Of Fact And Conclusions Of Director

1. As part of the Act, the Delaware General Assembly provided for the establishment of the Environmental Incentive Fund and the Energy Alternatives Program to be administered by DEDO in consultation with the Delaware Energy Office and the Division of the Public Advocate for the purpose of funding environmental incentive programs for conservation and energy efficiency within the DP&L Service Territory. DEDO, in consultation with the Delaware Energy Office and the Division of the Public Advocate, determined that it would be necessary to promulgate the Regulation in order to set forth the definition of certain terms used in the Energy Alternatives Program and describe (i) the eligibility requirements for persons desiring to receive a rebate designed to defray a part of certain purchase and installation costs of certain solar photovoltaic electricity generating systems, certain solar water heating systems, certain geothermal heat pump systems, and certain wind turbine systems (ii) the photovoltaic electricity generating, solar hot water heating, geothermal, and wind turbine systems that now qualify for rebates, (iii) how to request a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

2. Photovoltaic, Solar Water Heating, Geothermal Heat Pump and Wind Turbine technologies are proven technologies that either use renewable resources or offer large heating and cooling efficiencies at a relatively low cost. All of these technologies can be used in residential and nonresidential applications. Fuel cell technology is, at this time, relatively expensive when compared to other technologies and does not yet enjoy cost effective and widely developed applications. Thus, inclusion of fuel cell technology in the Energy Alternatives Program at this time is not consistent with the goals of the program.

3. In order to to ensure that consumers receive systems that are warranted against defects, manufactured according to industry standards, properly installed and appropriately priced, it is necessary to incorporate technical and engineering standards and a 5-year warranty requirement for Qualifying Systems and to impose certain cost limitations based on the appropriate unit of energy generated by the type of Qualifying System.

4. To ensure that the selected technologies are used in both residential and nonresidential applications, the Environmental Incentive Fund should be divided into a Residential Pool and a Nonresidential Pool in the same approximate proportion that residential and nonresidential electric customers pay for electricity, i.e., 40% of the

Environmental Incentive Fund should be allocated to the Residential Pool and 60% to the Nonresidential Pool. The demand by Residential and Nonresidential consumers seeking rebates should determine the amount or percentage of funds within each pool used for Energy Alternatives Rebates with respect to the various included technologies. Rather than a fixed allocation among such funds.

5. It is undesirable to include in the Regulation rigid benchmarks for evaluating the success of the Energy Alternatives Program or for the inclusion of new technologies, because DEDO, in consultation with the Delaware Energy Office and the Division of the Public Advocate will continually evaluate the program and the development of other technologies that might be included in the program. Because of the rapid pace of change in technology, a more flexible approach to these evaluations will better serve the program than the incorporation of rigid benchmarks.

6. Certain extra verbiage and mispunctuation appeared in the Regulation, as proposed and published in the Delaware Register of Regulations, 5 Del. R. 989-1175 (November 1, 2001), and that excess verbiage is excluded and the mispunctuation is corrected in the Regulation as finally promulgated and set forth below. The exclusion of such verbiage and the correction of such mispunctuation do not constitute "substantive" changes within the meaning of 29 Del. C. § 10118(c).

7. The Director of DEDO has statutory authority to promulgate regulations pursuant to 29 Del. C. § 5005(11).

Decision And Order Concerning Amendments To The Regulation

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO ORDERS that the Regulation be, and it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, in accordance with 29 Del. C. § 10118(g).

John D. Wik, Director
Delaware Economic Development Office

Energy Alternatives Program Regulation

1.0 Introduction

This regulation is promulgated under the authority granted to the Director of the Delaware Economic Development Office ("DEDO") by 29 Del. C. § 5005(11) to make regulations for the administration and operation of DEDO. One of the programs administered by DEDO is the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of

1999. The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. This regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to participate in the program, (ii) the systems that now qualify for rebates, (iii) how to apply for a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

2.0 Definitions.

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

"DEDO" has the meaning set forth in Section 1.0 hereof.

"DP&L Service Territory" means the service territory of Delmarva Power and Light Company, doing business as Conectiv Power Delivery, 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.

"Conectiv Power Delivery" means the trade name used by Delmarva Power and Light Company.

"Eligible Qualifying Geothermal Heat Pump System Costs" has the meaning set forth in Section 3.4.3 hereof.

"Eligible Qualifying Photovoltaic System Costs" has the meaning set forth in Section 3.2.4 hereof.

"Eligible Qualifying Solar Water Heating Costs" has the meaning set forth in Section 3.3.4 hereof.

"Eligible Qualifying Wind Turbine System Costs" has the meaning set forth in Section 3.5.4 hereof.

"Energy Alternatives Program" has the meaning set forth in Section 1.0 hereof.

"Energy Alternatives Program Manager" means the State Energy Office employee whose duties include consultation with DEDO in the management and administration of the Environmental Incentive Fund, and the Energy Alternatives Program.

"Energy Alternatives Rebate" for Photovoltaic, Solar Water Heating and Wind Turbine systems means, except as provided hereafter, 35% of Eligible Qualifying Photovoltaic System Costs, Eligible Qualifying Solar Water Heating System Costs, or Eligible Qualifying Wind Turbine System Costs, as the case may be, ~~is~~ subject to the following limitations: if the Qualifying System is to be used by a Nonresidential Purchaser, an Energy Alternatives Rebate shall not exceed \$250,000; if the Qualifying System is a Photovoltaic system to be used by a Residential Purchaser, an Energy Alternatives Rebate shall not exceed \$10,500 per Residential Dwelling Unit; if the Qualifying System is to be used by a Residential Purchaser for Solar Water Heating, an

Energy Alternatives Rebate shall not exceed \$1,500 per Residential Dwelling Unit; if the Qualifying System is to be used by a Residential Purchaser for a Wind Turbine System, an Energy Alternatives Rebate shall not exceed \$5,000 per Residential Dwelling Unit. Energy Alternative[s] Rebate for a Geothermal Heat Pump system means the lesser of 35% of the Eligible Qualifying Geothermal Heat Pump System Costs ~~[difference between the installed cost of the Geothermal Heat Pump System and a conventional heating/air conditioning alternative (air source heat pump, air-cooled or water-cooled unitary air conditioning equipment and/or gas or oil-fired heating equipment) of equal heating and cooling capacity]~~, or \$500 per Ton of Capacity. An Energy Alternative Rebate for a Nonresidential Geothermal Heat Pump system shall not exceed \$25,000. An Energy Alternative[s] Rebate for a Residential Geothermal Heat Pump system shall not exceed \$2,500.

“Environmental Incentive Fund” means the fund established by 26 Del. C. § 1014(a) and administered by the Delaware Economic Development Office, in consultation with the State Energy Office and the Division of Public Advocate.

“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 2001 means the period beginning on July 1, 2000 and ending on June 30, 2001.

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

“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.

“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

be only alternating current loads. The Photovoltaic or Wind Turbine system need only to be capable of serving electrical loads that would otherwise be served by the local utility.

“Kilowatt” means 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 Energy Alternatives Rebates, such term refers to systems owned by, or leased to, or rebates granted to Nonresidential persons.

“Nonresidential List” has the meaning set forth in Section 4.2.2 hereof.

“Nonresidential Pool” has the meaning set forth in Section 4.1.1.3 hereof.

“Photovoltaic” means a nonmechanical semiconductor device, most commonly made of silicon, that produces direct current (dc) electricity.

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

“Program Documentation Checklist” means the “Energy Alternatives Program Documentation Checklist (EO-1000)” or other form prescribed by the State Energy Office for the same purpose.

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

“Qualifying System” has the meaning set forth in Section 3.0 hereof.

“Rebate Confirmation and Claim Form” means the “Energy Alternatives Program Rebate Confirmation and Claim Form (EO-1002)” or other form prescribed by the State Energy Office for the same purposes.

“Rebate Reservation” means the reservation of the amount of a requested Energy Alternatives Rebate against the previously unreserved funds within the Nonresidential Pool or the Residential Pool of the Environmental Incentive Fund available for Energy Alternatives Rebates in accordance with Section 4.2.3 hereof.

“Rebate Reservation Number” has the meaning set forth in Section 4.2.2 hereof.

“Rebate Reservation Request” means the request of a Purchaser for the reservation of an Energy Alternatives Rebate made in accordance with the procedures specified in Section 4.2 hereof.

“Rebate Reservation Request Form” means the “Energy Alternatives Program Rebate Reservation Request Form -- Photovoltaic (EO 1001PV)”, the “Energy

Alternatives Program Rebate Reservation Request Form – Solar Water Heating (EO 1001SWH)”, the “Energy Alternatives Program Rebate Reservation Request Form -- Geothermal (EO 1001GEO)” the “Energy Alternatives Program Rebate Reservation Request Form -- Wind Turbine (EO 1001WT)”, or such other form prescribed by the State Energy Office for making a Rebate Reservation Request pursuant to Section 4.2 hereof.

“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 Energy Alternatives Rebates, such term refers to systems owned by, or leased to, or rebates granted to Residential persons.

“Residential Dwelling Unit” means a single-family house, whether free-standing or attached to one or more other houses, or an apartment. A Residential Dwelling Unit must be separately metered for purposes of measuring electricity consumption.

“Residential List” has the meaning set forth in Section 4.2.2 hereof.

“Residential Pool” has the meaning set forth in Section 4.1.1.3 hereof.

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

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

“State” means the State of Delaware.

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

“Vendor Data Form” means the “Energy Alternatives Program Vendor Data Form” or other form prescribed by the State Energy Office for the same purpose.

“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 electric power.

3.0 Qualifying System

3.1 In General. A Qualifying System must be located within the DP&L Service Territory, and the Purchaser must be a customer of Conectiv Power Delivery. Only Photovoltaic, Solar Water Heating, Geothermal Heat Pump and Wind Turbine systems may constitute Qualifying Systems.

3.1.1 Code Compliance; Contractor Licensing. All Qualifying Systems must be installed in accordance with standards and specifications of the manufacturers of the components in such systems and in compliance with all applicable electrical, plumbing and building codes.

3.1.2 Warranties. All Qualifying Systems must have a full 5-year warranty against component failure, malfunction and premature output degradation. The warranty must cover all components for which the Energy Alternatives Rebate 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.

3.2 Photovoltaic Systems.

3.2.1 Capacity. In order to be a Qualifying System, Photovoltaic systems must have an expected annual system output that does not exceed the historic or current electricity needs of the Purchaser at the installation site. Qualifying Systems must produce at least 300 Watts. For Qualifying Systems producing more than 10,000 Watts (i.e., 10 Kilowatts), the Energy Alternatives Program Manager may require additional evidence of feasibility with the Rebate Reservation Request Form. If the installation site is new construction, the expected annual system output must not exceed the estimated building electrical needs, as set forth in the Conectiv Power Delivery service request with respect to the installation site submitted by the Purchaser.

3.2.2 Technical Standards. All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the Underwriters Laboratory Standard 1703. All qualifying grid-connected systems must comply with ~~and~~ 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 arrangements 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*. Conectiv’s generation interconnection documents are available on the Division of the Public Advocate’s web site at www.state.de.us/publicadvocate. 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*.

3.2.3 Cost Limitations. A Photovoltaic system may not have Eligible Qualifying Photovoltaic System Costs in excess of \$12 per Watt.

3.2.4 Eligible Qualifying Photovoltaic System Costs. “Eligible Photovoltaic Qualifying System Costs” means (i) the sum of costs of the components of a Qualifying System that are used to convert sunlight to electricity, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser,

engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs,† cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System that is Photovoltaic, the costs of which may be counted toward Eligible Qualifying System Costs, are the photovoltaic module, the foundation for such photovoltaic module, mounting or tracking structures and wiring, inverters and utility interconnection equipment. Components that are energy storage equipment may not be counted toward Eligible Qualifying System Costs.

3.3 Solar Water Heating

3.3.1 Capacity. In order to be a Qualifying System a Solar Water Heating system must have a minimum combined tank capacity of 80 gallons. A Solar Water Heating system must be designed to reduce or eliminate the need for electric or gas-heated hot water.

3.3.2 Technical Standards. All Qualifying Systems that are 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 Systems that are Nonresidential Solar Water Heating systems must utilize collectors certified to meet the Solar Rating and Certification Corporation's (SRCC) OG-100, *Operating Guidelines for Certifying Solar Collectors*.

3.3.3 Cost Limitations. A Solar Water Heating system may not have Eligible Qualifying Solar Water Heating System Costs in excess of \$2.50 per Kilowatt-Hour of annual energy savings, as estimated by the Solar Rating and Certification Corporation's (SRCC) OG-300 *Estimated Annual Performance* document.

3.3.4 Eligible Qualifying Solar Water Heating System Costs. "Eligible Qualifying Solar Water Heating System Costs" means (i) the sum of costs of the components of a Qualifying System that are used to convert sunlight to heated water, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form

of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System for Solar Water Heating, the costs of which may be counted toward Eligible Qualifying System Costs, are collectors, mounting components, storage tanks, circulators, controllers, timers, heat exchangers, expansion tanks, piping and insulation. Components that are point of use heating devices or solar pool heating equipment may not be counted toward Eligible Qualifying System Costs.

3.4 Geothermal Heat Pump

3.4.1 Capacity. In order to be a Qualifying System a Geothermal Heat Pump must be sized in accordance with good heating, ventilation and air conditioning design practices for the occupancy and location. Vendor shall provide a Manual J calculation, or other equivalent calculation, to determine proper size of equipment.

3.4.2 Technical Standards. All Qualifying Systems must have a warranty for protection of the integrity and performance of the ground heat exchanger for at least five years. All 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.

3.4.3 Eligible Qualifying Geothermal Heat Pump System Costs. "Eligible Qualifying Geothermal Heat Pump System Costs" means (i) the sum of costs of the components of a Qualifying System that are used to collect and/or reject heat to the ground or groundwater, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs,† cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System for Geothermal Heat Pump systems, the costs of which may be counted toward Eligible Qualifying System Costs, are wells and well drilling, in-ground piping and heat exchanger loops and excavation for such piping and loops, circulating pumps, controllers, timers, heat exchangers, expansion tanks, piping and insulation. Vapor-compression heat pump units, air handling units, fans, ductwork, filter systems, and other fluid and air handling system components are excluded.

3.5 Wind Turbine

3.5.1 Capacity. In order to be a Qualifying System, Wind Turbine systems must ~~not~~ have an expected annual system output that does not exceed the historic or current electricity needs of the Purchaser at the installation site. The Energy Alternatives Program Manager may require additional evidence of feasibility with the Rebate Reservation Request Form. The Energy Alternatives Program Manager may also reject applications if the location of the proposed Wind Turbine System has an inadequate wind resource for reasonable utilization of the equipment. If the installation site is new construction, the expected annual system output must not exceed the estimated building electrical needs, as set forth in the Conectiv Power Delivery service request with respect to the installation site submitted by the Purchaser.

3.5.2 Technical Standards. 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* and the appropriate generation interconnection arrangements 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*. Conectiv's generation interconnection documents are available on the Division of the Public Advocate's web site at www.state.de.us/publicadvocate. 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*.

3.5.3 Cost Limitations. A Wind Turbine system may not have Eligible Qualifying Wind Turbine System Costs in excess of \$5.00 per Watt.

3.5.4 Eligible Qualifying Wind Turbine System Costs. "Eligible Qualifying Wind Turbine Systems Costs" means (i) the sum of costs of the components of a Qualifying System that are used to convert wind energy to electricity, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the Wind Turbine System components of a Qualifying System, the costs of which may be counted

toward Eligible Qualifying System Costs, are the wind turbine-generator assembly, tower, tower foundations, other support structure components, wiring, inverters and utility interconnection equipment. Components that are energy storage equipment may not be counted toward Eligible Qualifying System Costs.

4.0 Energy Alternatives Rebate Reservation and Payment Procedure

4.1 Availability of Funds; Duration of Program.

4.1.1 In General.

4.1.1.1 Program Duration. Energy Alternatives Rebates will be available on the effective date of this regulation. DEDO may, however, modify or suspend the Energy Alternatives Program and the criteria for, or availability of Energy Alternatives Rebates. Such action shall be taken in consultation with the State Energy Office and the Division of the Public Advocate.

4.1.1.2 Funds Available. The availability of any amount for Energy Alternatives Rebates will depend entirely upon whether sufficient unencumbered funds are available in the Environmental Incentive Fund at the beginning of a Fiscal Year, or are deposited pursuant to 26 Del.C. § 1014(a) into the Environmental Incentive Fund pursuant to Section 4.1.1.5 hereof during such Fiscal Year. DEDO can give no assurance that any funds will be available for Energy Alternatives Rebates.

4.1.1.3 Allocation of Environmental Incentive Fund for Nonresidential and Residential Energy Alternatives Rebates. On the effective date of this regulation, DEDO will allocate sixty percent (60%) of the Environmental Incentive Fund for the funding of Nonresidential Energy Alternatives Rebates (the "Nonresidential Pool") and forty percent (40%) of the Environmental Incentive Fund for the funding of Residential Energy Alternatives Rebates (the "Residential Pool"). DEDO will allocate all funds received in the Environmental Incentive Fund after the effective date of this regulation in the same proportion into the Nonresidential Pool or the Residential Pool.

4.1.1.4 Carryforwards. At the end of each Fiscal Year amounts in the Nonresidential Pool and the Residential Pool shall carry forward into the next Fiscal Year within the same pool.

4.1.1.5 Waiting List. If, at any time, the State Energy Office has made Rebate Reservations within the Nonresidential Pool or the Residential Pool of all funds in such pool, the State Energy Office will not disburse further Energy Alternatives Rebates from such pool, unless and until additional funds become available in such pool; however, it will continue to accept, evaluate and classify Rebate Reservation Request Forms and will continue to assign Rebate Reservation Numbers to Rebate Reservation Requests in accordance with Section 4.2.2. If additional funds become available within a pool for Energy Alternatives Rebates, the State Energy Office will process

such rebates in the order of the Rebate Reservation Numbers in either the Nonresidential List or the Residential List, as the case may be, assigned to Rebate Reservation Requests. There can be no assurance that additional funds for Energy Alternatives Rebates will become available. Rebate Reservation Requests that have been assigned Rebate Reservation Numbers, but for which funds are unavailable at any time at which the Director of DEDO decides to suspend the Energy Alternatives Program shall lapse, and the persons who submitted such Rebate Reservation Requests shall have no right to receive any funds from the State with respect to their Rebate Reservation Requests.

4.1.2 Special Rule for Qualifying Systems Placed in Service during Fiscal Year 2001. Purchasers of Qualifying Systems Placed in Service during Fiscal Year 2001 may apply for an Energy Alternatives Rebate even though they were unable to submit Rebate Reservation Request Forms until after the end of Fiscal Year 2001.

4.2 Rebate Reservation Procedure.

4.2.1 Submission of Rebate Reservation Request Form. Purchasers or Retailers may submit a Rebate Reservation Request Form to the State Energy Office at the address set forth hereafter. The Rebate Reservation Request Form (i) must be on the appropriate Rebate Reservation Request Form for the type of Qualifying System being installed, (ii) must provide all requested information, (iii) must be accompanied by all required accompanying documentation specified in the Program Documentation Checklist, and (iv) must be signed by the Purchaser. A Nonresidential Purchaser who proposes to construct either a Qualifying Photovoltaic System or a Qualifying Wind Turbine System with a capacity exceeding 10 Kilowatts, or a Qualifying Geothermal Heat Pump System, and who intends to request a 12-month Rebate Reservation in accordance with Section 4.2.3 hereof shall also submit preliminary plans and a project schedule so that the State Energy Office can determine the feasibility of the system. It is the responsibility of the Purchaser to ensure that a Rebate Reservation Request Form is accurate, complete and contains all required accompanying documentation. Rebate Reservation Request Forms and accompanying documentation shall be submitted to the following address:

State Energy Office
Attention: Energy Alternatives Program Manager
149 Transportation Circle
Dover, DE 19901

4.2.2 State Energy Office Processing of Rebate Reservation Request Form; Assignment of Rebate Reservation Numbers within Nonresidential Pool or Residential Pool. The State Energy Office will review and evaluate the Rebate Reservation Request Form and the accompanying documentation for accuracy, completeness (including all required accompanying documentation) and eligibility of the proposed project as a Qualifying System. In

making its evaluation of the Rebate Reservation Request Form and accompanying documentation and in determining whether the proposed project is a Qualifying System, the State Energy Office may request further information, or inspect the site of the proposed project. The State Energy Office shall reject any Rebate Reservation Request, if the Rebate Reservation Request Form is not accurate or complete (including all required accompanying documentation), or if the proposed project is not a Qualifying System, and shall notify the Purchaser of such rejection in writing. After the State Energy Office completes its review of a Rebate Reservation Request Form and all required accompanying documentation and if it determines (i) that such submitted forms are accurate and complete (including all required accompanying documentation) and (ii) that the project being proposed is a Qualifying System, the State Energy Office shall take the following actions: First, it will classify each Rebate Reservation Request as a request to be reserved against the Nonresidential Pool or the Residential Pool, depending on whether the Rebate Reservation Request describes a Nonresidential or a Residential Qualifying System and assign such Rebate Reservation Request to a list of Nonresidential Rebate Reservation Requests (the "Nonresidential List") or a list of Residential Rebate Reservation Requests (the "Residential List"). Second, it will assign a unique consecutive number to each such Rebate Reservation Request within either the Nonresidential List or the Residential List based on the chronological order of the date on which such form was submitted in complete form (a "Rebate Reservation Number").

4.2.3 Reservation of Energy Alternatives Rebate. When the State Energy Office assigns a Rebate Reservation Number to a Rebate Reservation Request, provided that sufficient previously unreserved funds are available for Energy Alternatives Rebates in the Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests), the State Energy Office shall reserve the amount of the Energy Alternatives Rebate so requested (subject to the applicable limitations) against the funds in the Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests) (a "Rebate Reservation"). A Rebate Reservation shall be valid for six months from the date on which the State Energy Office makes such Rebate Reservation. If the Purchaser with respect to a Nonresidential Photovoltaic Qualifying System, or a Nonresidential Wind Turbine Qualifying System with a capacity exceeding 10 Kilowatts, or a Nonresidential Geothermal Heat Pump Qualifying System makes a written request therefor, the State Energy Office may, after such further investigation of the proposed project as it deems necessary, extend the validity of the Rebate Reservation to

twelve months from the date on which the State Energy Office made such Rebate Reservation. When a Rebate Reservation expires, it shall be of no further effect and the Rebate Reservation Request with respect to which it was made shall be deemed to have been rejected as of such expiration date. If the State Energy Office has assigned a Rebate Reservation Number to a Rebate Reservation Request but was unable to make a Rebate Reservation because of the unavailability of funds for such purpose within the Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests), and if funds within the applicable pool sufficient to make such Rebate Reservation subsequently become available, the State Energy Office shall make the Rebate Reservation when such funds become available. Promptly after making a Rebate Reservation, the State Energy Office shall inform the Purchaser who made the Rebate Reservation Request of the amount of the Rebate Reservation and the date on which such Rebate Reservation expires by mailing a Rebate Confirmation and Claim Form to the Purchaser.

4.2.4 Modification of Rebate Reservation Request.

A Purchaser may request in writing a modification of a Rebate Reservation Request at any time prior to the disbursement of the Energy Alternatives Rebate requested. A request for a modification of a Rebate Reservation Request, other than a minor modification, will be treated as a new Rebate Reservation Request, and the State Energy Office will evaluate the request for modification as such. The State Energy Office will exercise its discretion in determining whether a requested modification is considered "minor." Upon receipt of a request for modification of a Rebate Reservation Request that the State Energy Office does not consider minor, any prior Rebate Reservation made by the State Energy Office with respect to the Rebate Reservation Request sought to be modified will expire. The State Energy Office will evaluate the modified request. If it determines (i) that the modified Rebate Reservation Request Form and any accompanying documentation are accurate and (ii) that the modified project being proposed is a Qualifying System, the State Energy Office shall assign a new Rebate Reservation Number to the modified Rebate Reservation Request and proceed in accordance with Section 4.2.3.

4.3. Claim for and Disbursement of Energy Alternatives Rebate. If the State Energy Office makes a Rebate Reservation with respect to a Rebate Reservation Request Form, after the Qualifying System described in such Rebate Reservation Request Form has been Placed in Service and prior to the expiration date of such Rebate Reservation, the Purchaser may request disbursement of the Energy Alternatives Rebate that was the subject of the Rebate Reservation by submitting to the State Energy Office at the address set forth in Section 4.2.1 a copy of the Rebate

Confirmation and Claim Form that the State Energy Office sent to the Purchaser after assigning a Rebate Reservation Number. The Purchaser must complete the section of the Rebate Confirmation and Claim Form entitled "Rebate Claim Form" together with all documentation required by the Program Documentation Checklist to accompany such Rebate Confirmation and Claim Form. The State Energy Office must receive the Rebate Confirmation and Claim Form and all accompanying documentation prior to the expiration date of the Rebate Reservation specified in the Rebate Confirmation and Claim Form. The State Energy Office will evaluate the Rebate Confirmation and Claim Form and the required accompanying documentation. In performing such evaluation, the State Energy Office may make an inspection of the installed system. If there are only minor modifications to the Rebate Reservation Request or the Qualifying System, as Placed in Service, that are described in the Rebate Confirmation and Claim Form, the State Energy Office will process payment of the Energy Alternatives Rebate within 30 days of receipt of the Rebate Confirmation and Claim Form. The State Energy Office will ordinarily request DEDO to pay the Energy Alternatives Rebate to the Purchaser; however, if the Purchaser so requests in writing, the State Energy Office will request DEDO to pay the Energy Alternatives Rebate to the Retailer. If modifications to the Rebate Reservation Request or the Qualifying System, as Placed in Service, that are described in the Rebate Confirmation and Claim Form are deemed by the State Energy Office to be other than minor, the Rebate Confirmation and Claim Form will be treated as a request for modification of the original Rebate Reservation Request and processed in accordance with Section 4.2.3 and 4.2.4.

4.4 Maintenance of Balances of Nonresidential Pool and Residential Pool within the Environmental Incentive Fund Available for Energy Alternatives Rebates. When the State Energy Office makes a Rebate Reservation pursuant to Section 4.2.3 hereof, the funds within either the Nonresidential Pool or the Residential Pool (as the case may be) of the Environmental Incentive Fund that have been set aside for Energy Alternatives Rebates shall be reduced by the amount of such Rebate Reservation. Whenever a Rebate Reservation expires in accordance with Section 4.2.3 or Section 4.2.4 hereof without the corresponding Energy Alternatives Rebate's having been disbursed in accordance with Section 4.3 hereof, the funds within either the Nonresidential Pool or the Residential Pool of the Environmental Incentive Fund that have been set aside as available for Energy Alternatives Rebates shall be increased by the amount of such expired undisbursed Rebate Reservation.

GOVERNOR'S APPOINTMENTS

1539

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Authority on Radiation Protection	Dr. Robert N. Arm	7/01/04
	Mr. Michael L. Clerkin	7/01/04
	Ms. Robin L. Elliott	7/01/04
	Mr. Norman W. Henry, III	7/01/04
	Mr. David H. Irwin	7/01/04
	Mr. Costas S. Krikelis	7/01/04
	Dr. Stephen J. Lawless	7/01/04
Board of Architects	Mr. Goodwin K. Cobb, III	12/06/04
Board of Professional Counselors of Mental Health	Ms. Dawn S. Brown	11/27/04
	Mr. David M. Ciamaricone	11/27/04
Charitable Campaign Steering Committee	Ms. Helen J. Kruger	Pleasure of the Governor
Child Placement Review Board Executive Committee	Ms. Shirley Ann Cupery	Pleasure of the Governor
Commission on Uniform State Laws	Ms. Judith N. Renzulli	Pleasure of the Governor
Committee on Employment of People with Disabilities	Ms. Carol E. Barnett	12/06/04
	Mr. Griff Campbell	12/06/04
	Mr. Mark A. Chamberlin	12/06/04
	Mr. Bruce C. Crouch	12/06/04
	Ms. Maureen B. Gleckner	12/06/04
	Ms. Regina Greenwald	12/06/04
	Ms. Ann Stewart	12/06/04
Ms. Celeste W. Williams	12/06/04	
Committee on Massage/Bodywork Practitioners	Ms. Jaclynn W. Stuart-Cordrey	12/06/04
Council on Aging and Adults with Physical Disabilities	Ms. C. Regina Byers	11/27/04
	Mr. Edward N. Cahill	11/27/04
	Mr. Keith Campbell	11/27/04
	Ms. Lucien Ferguson	11/27/04
	Mr. John E. Jefferson	11/27/04
	Mr. Albert W. Madora	11/27/04
	Ms. Lelia D. Perkins	11/27/04
	Ms. Mary A. Teller	11/27/04
	Mr. David B. Webb	11/27/04
	Ms. Karen W. Wood	11/27/04
Mr. Franklin Woodruff, Jr.	11/27/04	
Council on Alcoholism, Drug Abuse and Mental Health	Mr. Joseph P. Connor, Jr.	11/27/04
	Dr. Terry L. Horton	11/27/04
	Mr. Richard E. Patterson	11/27/04
	Ms. Sandra Payne	11/27/04

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Apprenticeship and Training	Mr. B. Eugene Battaglia	11/27/04
	Mr. Edward J. Brady	11/27/04
	Mr. Donato R. Buccini	11/27/04
	Mr. R. Jerald Craig	11/27/04
	Ms. Patricia D Creedon	11/27/04
Council on Development Finance	Mr. George W. Forbes, III	11/27/04
	Mr. Andrew M. Lubin	11/27/04
	Mr. Fred C. Sears, II	11/27/04
Council on Hispanic Affairs	Mr. Harry J. Sanchez	11/28/04
Developmental Disabilities Planning Council	Mr. Raymond P. Beaudry	12/06/04
	Ms. Percila A. Bell	12/06/04
Governor's Advisory Council for Exceptional Citizens	Ms. Nancy J. Cordrey	Pleasure of the Governor
	Ms. Andrea Guest	Pleasure of the Governor
	Mr. David L. Hosier, II	Pleasure of the Governor
	Ms. Brenda S. Kramer	Pleasure of the Governor
	Mr. Christopher O. Laniyan	Pleasure of the Governor
	Ms. Deborah L. Pote	Pleasure of the Governor
	Mr. Dennis L. Rubino	Pleasure of the Governor
	Ms. Kristin R. Wilson	Pleasure of the Governor
Governor's Council on Agriculture	Mr. Douglas Corey	Pleasure of the Governor
	Mr. Dale J. Ockels	7/30/02
Real Estate Commission of Delaware	Mr. Harry Kreger	11/27/04
	Ms. Mary B. Parker	11/27/04
	Mr. David Weldin	11/27/04
SCR 5 Task Force	Ms. Deborah C. Barnes	11/28/04
	Ms. Crystal M. Webb	11/28/04
State Board of Electrical Examiners	Mr. James T. Anderson	12/06/04
	Mr. Edward A. Muir	12/06/04
State Board of Pharmacy	Ms. Carolyn Calio	11/27/04
State Board of Registration for Land Surveyors	Mr. Roy B. Kemp, III	11/27/04

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Committee of Dietetics/Nutritionists	Mr. Elton M. Murray	11/27/04
	Ms. T. Genelda Cornwell	12/06/04
	Mr. Clayton C. Yocum	12/06/04
State Examining Board of Physical Therapists	Mr. Patrick A. McKenzie	12/06/04
	Ms. Ruth Ann Messick	12/06/04

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3006(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes to revise its Rules and Regulations. The proposed revisions delete the International Christian Institute Certification Board and Commission on Rehabilitation Counselor Certification Board as national mental health specialty certifying organizations automatically considered acceptable by the Board for purposes of initial licensure and renewal of licenses. Substantive changes include inserting a new rule that permits licensees to maintain membership in the certifying organization acceptable to the Board at the time of their initial licensure for purposes of renewal of their license notwithstanding that such organization is no longer deemed acceptable by the Board for failing to meet certain criteria.

A public hearing will be held on the proposed Rules and Regulations on Friday, February 1, 2002 at 3:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address by calling (302) 744-4520.

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

**DEPARTMENT OF AGRICULTURE
FOOD PRODUCTS INSPECTION SECTION**

NOTICE

The Delaware Department of Agriculture, Food Products Inspection Section is proposing to amend its regulations concerning the rules of practice that apply to agency enforcement actions by bringing them into the conformity with federal law. The Department is proposing to define each type of enforcement action that it may take, the conditions under which it likely to take each of these

actions, and the procedures it will follow in doing so.

These proposed amendments are part of the Department's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations. To that end, the Department is proposing to adopt by reference, in their entirety, the federal regulations published in the Federal Register at Volume 64, Number 228, dated November 29, 1999, amending the Code of Federal Regulations at 9 CFR Sections 304, 305, 327, 335, 381 and adding a new Part 500 which became effective January 25, 2000.

The proposed amendments to the regulations will be considered at a public hearing scheduled for February 15, 2002 at 1:00 p.m. at the Department of Agriculture Building in Conference Room 1, located at 2320 South DuPont Highway, Dover, Delaware. Interested persons are invited to attend and make comments. Comments concerning the proposed amendments to the regulations can be submitted in writing to H. D. Shockley for consideration by the Department at the public hearing.

Copies of the relevant portions of the Code of Federal Regulations and the Federal Register may be obtained by contacting the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402-9328. For more information, or to request accommodations for disabilities, contact Debbie Whitmore by calling (302) 698-4505.

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

Public Notice

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared six (6) revised draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in 16 Del. C., Chapter 30A. The remainder of the regulations addressing certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification appear as final regulations in the January 1, 2002 Register of Regulations. The following six (6) draft regulations, revised after the November 8 public hearing, will be the subject of a further public hearing: Regulations 69.111, 69.301E, 69.301F, 69.303D5g, 69.303D6, 69.600B. Regulation 69.502A5 is deleted.

Invitation For Public Comment**A Public Hearing Will Be Held As Follows:**

Wednesday, February 6, 2002
9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

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

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

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

The last time to submit written comments will be at the public hearing February 6, 2002.

The Regulations currently in place are being replaced in their entirety by the final regulations printed in the January Register of Regulations and the six (6) revised draft regulations being submitted for publication on January 1, 2002.

DIVISION OF SOCIAL SERVICES

Public Notice
Division of Social Services
Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 9085. This change is based on the option and waiver of 7 CFR 273.12(a)(1)(i) through (vi).

Summary of Change

- The option allows DSS to require households with earned income to only report a change of income when the total monthly gross income exceeds 130%

of the Federal Poverty Level (FPL) during a six-month certification period.

- The waiver allows DSS to make changes on all reported changes, not just those that increase the benefits.
- The six-month reporting option is strongly being encouraged by Food and Nutrition Service (FNS). The waiver approval will allow DSS to take the option.

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

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

**DEPARTMENT OF
TRANSPORTATION****Regulations for Outdoor Advertising****Nature of the Proceedings:**

The Department of Transportation initiated proceedings to update its "Delaware Department of Transportation Rules and Regulations of Outdoor Advertising" as issued in 1975. The proposed re-written regulations were published in the August 1, 2001 issue of the Delaware Register of Regulations. Written comments were requested and accepted through October 1, 2001.

The Department received and evaluated nine letters that set out a wide range of comments. The results of the evaluation are summarized below. The Department revised the draft regulations as a result of the comments received and is presenting the revised draft here, along with the original 1975 regulations for comparison. The Department invites written comments on the current draft until February 1, 2002. Comments should be sent to:

William F. Smith, III
Department of Transportation
Field Services
P.O. Box 778
Dover, DE 19903

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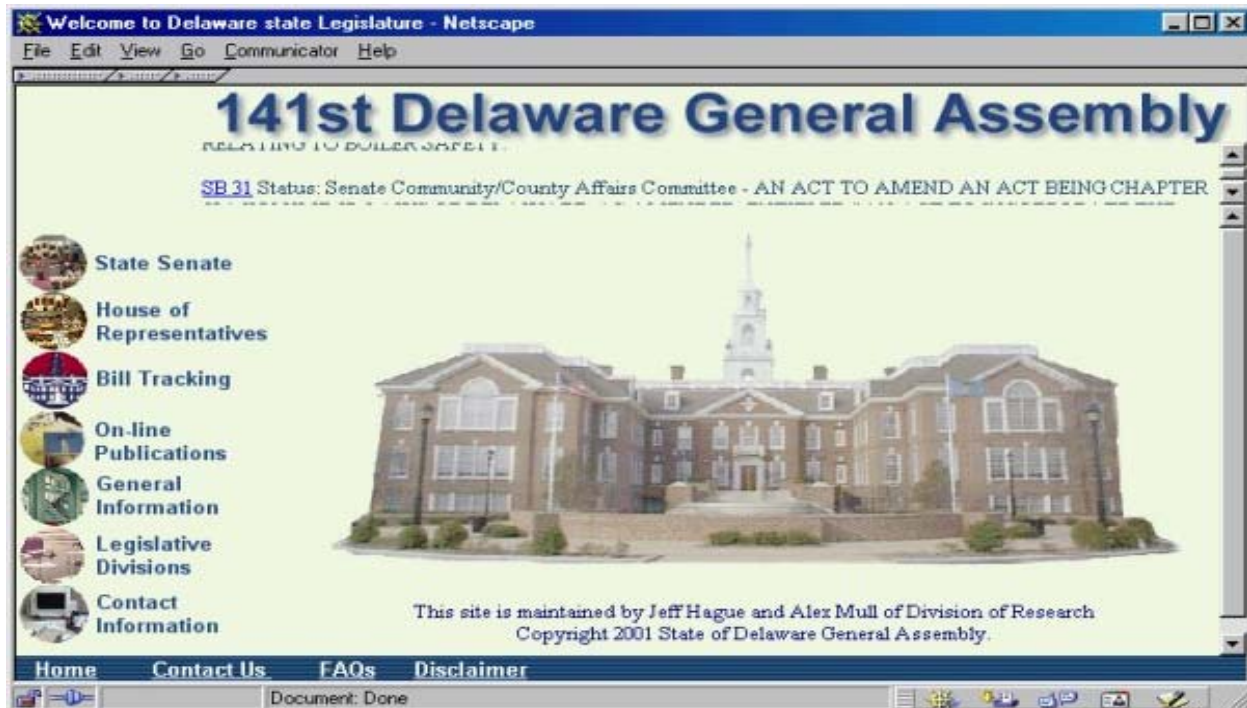
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