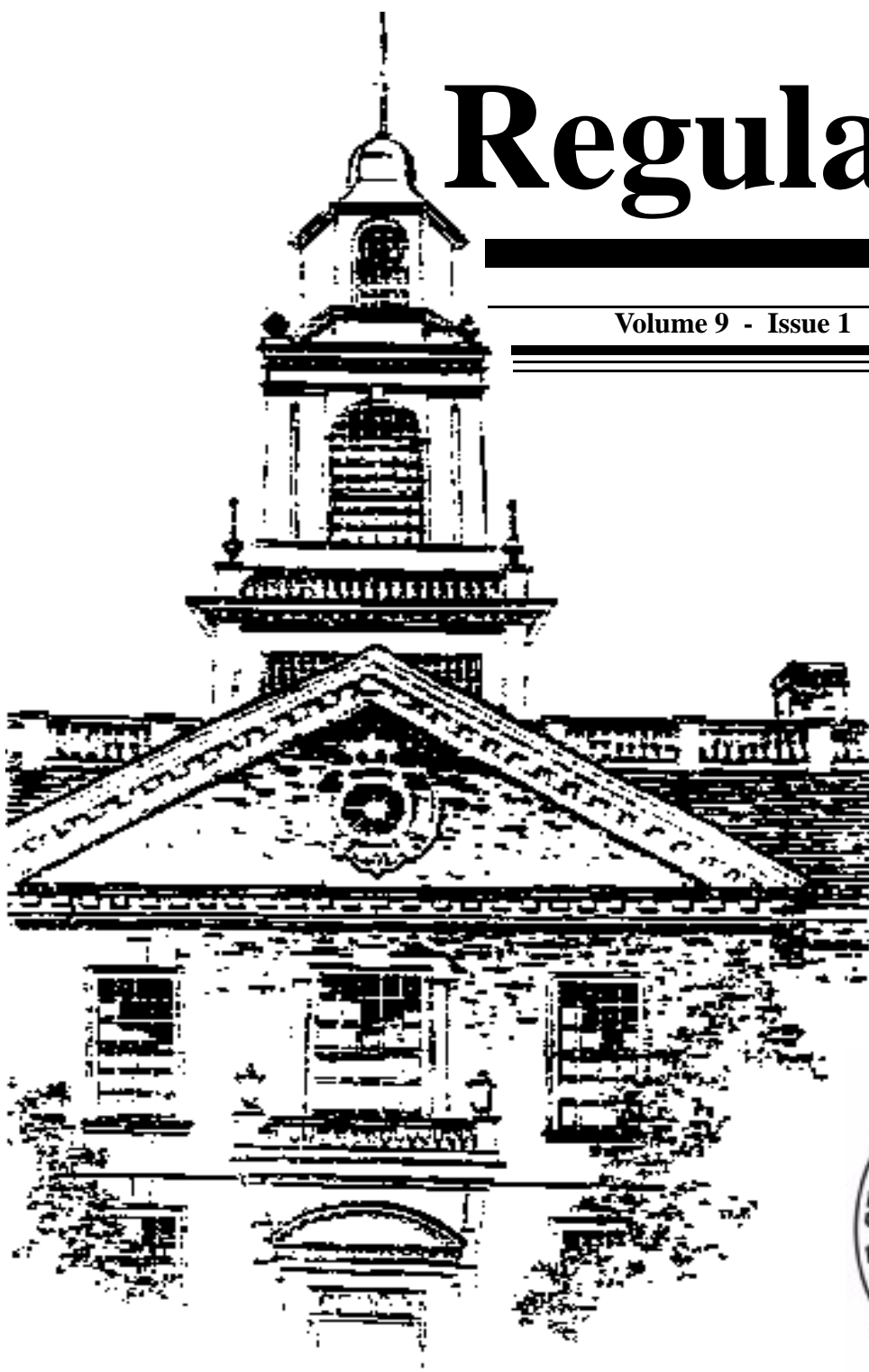


---

---

# Delaware Register of Regulations



---

Issue Date: July 1, 2005

Volume 9 - Issue 1

Pages 1 - 156

---

---

## IN THIS ISSUE:

Regulations:

Emergency

Proposed

Final

Governor

Executive Orders

Appointments

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before June 15, 2005.

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

2

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

---

### CITATION TO THE DELAWARE REGISTER

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

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

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

---

---

### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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

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

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

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

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

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

---

---

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

---

ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

---

---

### DIVISION OF RESEARCH STAFF:

**Deborah A. Porter**, Interim Supervisor; **Sandra F. Clark**, Administrative Specialist II; **Kathleen Morris**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Steve Engebretsen**, Assistant Registrar; **Victoria Schultes**, Administrative Specialist II; **Lady Johnson**, Administrative Specialist I; **Rochelle Yerkes**, Administrative Specialist II; **Ruth Ann Melson**, Legislative Librarian; **Debbie Puzzo**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Legislative Attorney; **Ted Segletes**, Paralegal; **Deborah J. Messina**, Print Shop Supervisor; **Marvin L. Stayton**, Printer; **Don Sellers**, Printer.

# TABLE OF CONTENTS

## EMERGENCY

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Pharmaceutical Services Program.....6

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

Shellfish Regulations: 3210 Horseshoe Crab Reporting Requirements.....9

## PROPOSED

### DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY

101 On-Farm Home Food Processing Operations ..... 12

### DEPARTMENT OF EDUCATION

275 Charter Schools..... 19  
716 Maintenance of Local School District Personnel Records..... 27  
727 Credit for Experience for Educators and for Secretarial Staff..... 28  
920 Educational Programs for Students with Limited English Proficiency..... 30  
930 Supportive Instruction (Homebound)..... 34  
1105 School Transportation..... 35

### PROFESSIONAL STANDARDS BOARD

324 Driver Education And Traffic Safety Education Teacher..... 46  
332 Certification Technology Education Teacher..... 49  
370 Certification Teacher of Autistic/Severely Disabled Children..... 51  
1528 Standard Certificate Foreign Language Teacher Comprehensive..... 54  
1529 Standard Certificate Foreign Language Teacher Secondary, Repeal of..... 57  
1533 Standard Certificate Foreign Language Teacher Elementary, Repeal of..... 58

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

4462 Public Drinking Water Systems..... 59

### DEPARTMENT OF SOCIAL SERVICES

DSSM: 9059 Income Exclusions..... 60  
Title XIX Medicaid State Plan: Attachment 2.6-A, Page 26a (New Page) and Supplement 13 to Attachment 2.6A;..... 70  
DSSM 20910.10, Community Spouse Resource Allowance..... 70  
20950, Initial Eligibility Determinations..... 70  
Pharmaceutical Services Program..... 73

## FINAL

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

1100 Board of Dental Examiners..... 77  
2500 Board of Pharmacy..... 85  
5200 Board of Nursing Home Administrators..... 104

### PUBLIC SERVICE COMMISSION

Regulation Docket No. 55, Regarding the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission. .... 105

### DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

502 Delaware Standardbred Breeders Fund..... 111

### DEPARTMENT OF EDUCATION

764 (Previously 364) Credentials for an Interpreter Tutor for the Deaf and Hard of Hearing..... 113  
765 (Previously 365) Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing..... 115  
1006 Delaware Interscholastic Athletic Association (DIAA)..... 117  
1008 DIAA Junior High/Middle School Interscholastic Athletics..... 124  
1009 DIAA Senior High School Interscholastic Athletics..... 126

---

---

# TABLE OF CONTENTS

---

5

## PROFESSIONAL STANDARDS BOARD

1565 Standard Certificate School-To-Work Transition Teacher.....	136
1513 Denial Of Licenses.....	138
1584 Permits Paraeducators.....	139

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM: 20810 Treatment of Couples in Medical Assistance.....	142
--	-----

---

## GOVERNOR

Exec. Order No. 68, Establishing the Health Disparities Task Force.....	144
Exec. Order No. 69, Establishing A Committee To Recommend Options For Providing Additional Funding To, And Accelerating The Construction Of, Needed Improvements Overseen By The Delaware Department of Transportation.....	145
Appointments.....	147

---

## GENERAL NOTICE

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT

Delaware 2002 Milestone Compliance Demonstration for Kent and New Castle Counties.....	148
---	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

<i>Delaware River Basin Commission, Notice of Public Hearing.....</i>	155
<i>Dept. of Agriculture, Notice of Pubic Hearing....</i>	155
State Board of Education Monthly Meeting.....	155
Dept. of Health & Social Services, Div. of Public <i>Health, Notice of Public Hearing.....</i>	155
<i>Div. of Social Services, Notices of Public Comment Periods.....</i>	156

**Emergency Regulations**

Under 29 Del.C. §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

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 § 10115, 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 this chapter, 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*. (60 Del. Laws, c. 585, §1; 62 Del. Laws, c. 301, §2; 71 Del. Laws, c. 48, §10.)

**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.

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

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

**PUBLIC NOTICE****PHARMACEUTICAL SERVICES PROGRAM****Nature Of The Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan with respect to the Pharmaceutical Services Program: 1) to implement a prior authorization process with a preferred drug list (PDL); 2) to revise the prescription quantity and duration provisions; and, 3) to seek supplemental drug rebates from pharmaceutical manufacturers. 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 agency published this state plan amendment as a notification in the April register. As a result of the changes recommended by the CMS, the originally published plan has changed significantly. The agency is publishing the revised

state plan as an emergency order effective 4/1/05.

**SUMMARY OF CHANGES****Purpose**

The purpose of this action is to implement a preferred drug list and prior authorization for pharmacy services. The agency submitted an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement:

- a prior authorization process with a preferred drug list (PDL) for certain designated drugs in selected therapeutic classes covered under the prescription drug program;
- revisions to prescription quantity and duration provisions; and,
- supplemental drug rebates.

**Statutory Basis**

- Social Security Act, Title 19, Section §1927
- 42 United States Code s1396r-8

**Amending the Following State Plan Page**

Attachment 3.1-A, Page 5 Addendum, Limitations

**Summary of Provisions**

To ensure that the state delivers a medical assistance

prescription drug program, which is both cost effective and prudently administered, the following describes the coverage changes for prescribed drugs and/or supplies, effective April 1, 2005 for Prior Authorization with Preferred Drug List and Supplemental Rebates:

1. Prior Authorization with a Preferred Drug List

a. A process is established which utilizes a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the preferred drug list (PDL) are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prescribers to obtain prior authorization. The Pharmaceutical & Therapeutics (P&T) Committee, comprised of physicians, pharmacists and community members appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.

b. Providers are notified of the drugs selected for placement on the PDL by selected therapeutic classes prior to implementation of the prior authorization process and as additional drugs are subsequently added to the list. This information is posted on the DMAP website.

c. The prior authorization process provides for a turn-around response within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. In emergency situations, providers may dispense at least a 72-hour supply of medication as mandated and pursuant to 42 United States Code s1396r-8.

d. The Drug Utilization Review (DUR) Board will make recommendations to the Department regarding drugs to be considered for prior authorization.

2. Prescription Quantity and Duration

a. Dosage limits: Medications are limited to a maximum dose recommended by the FDA, peer review journals that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines.

b. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:

1. Sedative hypnotics-15 doses per 30 days
2. Triptans, acute treatment of migraines, 9 doses per 45 days
3. Opioid analgesics-200 doses per 30 days
4. Skeletal muscle relaxants-120 tablets/capsules per 30 days
5. Benzodiazepines-120 tablets per 30 days
6. Tramadol-240 tablets per 30 days
7. Narcotic cough medications-480ml per 30 days
8. Adjunctive anticonvulsants-240 tablets/capsules per 30 days
9. Nebulizer solutions-3 acute exacerbations per 30 days

10. Clients utilizing greater than 15 unique medications per 30 days

11. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

c. Duration of therapy

1. Nicotine cessation products are limited to the duration that has been approved by the FDA.

2. Palivizumab-6 months during the high viral period of the year.

d. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through the mail order process.

3. Supplemental Drug Rebates

a. CMS has authorized the state of Delaware to enter into "The State of Delaware Department of Health and Social Services" supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

b. The Division of Social Services (DSS) has contracted with an independent organization to negotiate supplemental rebate agreements with manufacturers.

By implementing these processes, the Department ensures that all eligible Medicaid beneficiaries have the same comprehensive pharmacy coverage available to them, while reducing the cost of pharmaceutical products to the state. Physicians and patients continue to have access to the same FDA-approved drugs as they have had in the past.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the April 2005 *Register of Regulations* should be adopted with changes recommended by CMS.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to establish the provisions related to prior authorization, preferred drug list and supplemental drug rebates is adopted as an emergency order with an effective date of 4/1/05.

Vincent P. Meconi, Secretary, DHSS , 6/15/2005

**DSS EMERGENCY ORDER REGULATION #05-35**

**REVISIONS:**

**Attachment 3.1-A  
Page 5 Addendum**

**LIMITATIONS**

**~~Prescribed Drugs:~~**

~~The following drugs are not covered by Delaware~~

Medicaid or are covered with limitations:

- **DESI Drugs** — products and known related drug products that lack substantial evidence of effectiveness. The State of Delaware does not cover DESI drugs for reimbursement purposes.
- **Drugs Used for Cosmetic Purposes** — products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions.
- **Fertility Drugs** — are not covered when prescribed to stimulate fertility (example: Clomid).
- **Anorectic Drugs** — for the purpose of weight control are not covered. They may be reimbursed when prescribed to remedy hyperactivity in children and for certain sleep disorders.

Delaware Medicaid does not limit the quantity, days supply, or the number and/or frequency of refills for any prescription.

Participating manufacturers' new drugs are covered (except excluded/restricted drugs specific in section 1927(d)(1)-(2) of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

#### **Prosthetic Devices:**

Prosthetic and orthotic devices, as well as other durable medical equipment and assistive technology services, are covered when documented as medically necessary.

#### **Diagnostic Services:**

Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.

#### **12.a. Prescribed Drugs:**

##### **Drug Coverage**

1. Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

2. Drugs excluded from coverage as provided by Section 1927(d)(2) of the Act, include:

- a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
- b. Drugs when used for cosmetic purposes or hair

growth (products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions):

- c. Drugs when used to promote fertility;
- d. Drugs that have an investigational or experimental or unproven efficacy or safety status;
- e. Drugs when used for anorexia, weight loss, or weight gain. Drugs for the purpose of weight control may be reimbursed when prior authorized following established criteria as reviewed and approved by the DUR Board and deemed medically necessary.
3. Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).
4. Participating manufacturers' new drugs are covered (except excluded/restricted drugs specified in Section 1927(d)[1]-[2] of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

#### **Quantity and Duration**

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA, peer review journals that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:

- a. Sedative hypnotics-15 doses per 30 days
- b. Triptans, acute treatment of migraines, 9 doses per 45 days
- c. Opioid analgesics-200 doses per 30 days
- d. Skeletal muscle relaxants-120 tablets/capsules per 30 days
- e. Benzodiazepines-120 tablets per 30 days
- f. Tramadol-240 tablets per 30 days
- g. Narcotic cough medications-480ml per 30 days
- h. Adjunctive anticonvulsants-240 tablets/capsules per 30 days
- i. Nebulizer solutions-3 acute exacerbations per 30 days
- j. Clients utilizing greater than 15 unique medications per 30 days
- k. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.
3. Duration of therapy



a. Nicotine cessation products are limited to the duration that has been approved by the FDA.

b. Palivizumab-6 months during the high viral period of the year.

4. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through mail order.

#### **Prior Authorization**

1. Prior authorization requirements may be established for certain drug classes or particular drugs, or a medically accepted indication for uses and doses.

2. The DUR Board determines which prescription drugs may require prior authorization. The Board assesses data on drug use in accordance with predetermined standards. The standards shall be:

- monitoring for therapeutic appropriateness
- over-utilization and underutilization
- appropriate use of generic products
- therapeutic duplication
- drug-disease contraindications
- drug-drug interactions
- incorrect drug dosage or duration of drug treatment
- clinical efficacy
- safety
- medical necessity
- potential for abuse, misuse and diversion
- experimental use opportunity
- cost effectiveness relative to similar therapies

The recommendations of the DUR Board constitute interpretive guidelines to be used in determining whether to grant or deny prior authorization of a prescription drug. The make up and membership authority for the DUR Board complies with 42U.S.C. S1396r-8.

3. A request for prior authorization for covered outpatient drugs is processed within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. A 72-hour supply of medically necessary covered drugs is provided in an emergency situation as mandated and pursuant to 42 United States Code s1396r-8.

#### **Preferred Drug Lists with Prior Authorization**

A process is established which utilized a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the PDL are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prior authorization. A Pharmaceutical & Therapeutic (P&T) Committee, comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.

#### **Drug Rebate Agreements**

CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

- Pharmaceutical manufacturers are allowed to audit utilization rates;
- Compliance with the reporting requirements for state utilization information and restrictions to coverage;
- The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
- Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are approved by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary of Health and Human Services. The state will remit the federal portion of any cash state supplemental rebates collected.

#### **Diagnostic Services:**

Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.

---

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

Statutory Authority: 7 Delaware Code,  
Sections 2701(d) (7 **Del.C.** §2701(d))

**ORDER NO. 2005-F-0031**

#### **AUTHORITY**

Pursuant to 7 **Del.C.** §2701(d), the Department of Natural Resources and Environmental Control is adopting amendments to Shellfish Regulation 3210 without prior notice or public hearing to assure that the horseshoe crab harvest quota is not exceeded and therefore the horseshoe crab resource is conserved. 7 **Del.C.** §2701(d) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or eminent threat to the horseshoe crab resources and the fishery

thereof.

### **REASON FOR THE EMERGENCY ORDER**

Horseshoe crabs are a vital component to the estuarine foodweb and support several important commercial industries. Horseshoe crabs are important in the diets of the federally protected loggerhead sea turtle, and the eggs are a seasonally important food item in the diets of at least seven species of commercially and/or recreationally important finfish species. Horseshoe crab eggs also are an important component in the diets of migratory shorebirds using Delaware Bay, which serves as one of the most important migratory stopover sites in North America. The spectacle of the birds feeding on horseshoe crab eggs supports an ecotourism industry of regional significance. In addition, horseshoe crabs are harvested for the manufacture of *Limulus Amoebocyte Lysate (LAL)*. LAL is the worldwide standard for testing virtually all pharmaceuticals for the presence of gram negative bacteria. Horseshoe crabs are also extensively harvested for use as a primary bait in the American eel and conch (whelk) pot fisheries and to a lesser extent in several other fisheries. Although the epicenter of horseshoe crab spawning and nursery areas is in the Delaware Bay, the horseshoe crab resource is cooperatively managed coastwide through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC has recognized the particular importance of the Delaware Bay to horseshoe crabs and migratory shorebirds.

Horseshoe crabs take 8 - 12 years to reach sexual maturity. Current estimates place fecundity at approximately 88,000 eggs annually. To place this in context, weakfish often reach sexual maturity in one year and a large (22-inch) female may produce 1,700,000 eggs in a single spawning season. Therefore, failure to adequately protect the horseshoe crab resource may result in consequences not fully realized for a period of 8 - 12 years.

Although the Department has in place a two-tiered system of horseshoe crab harvest reporting including weekly call-ins of landings by harvesting and monthly written reports that detail the numbers of horseshoe crabs taken daily by location, both of these reporting mechanisms depend on self-reporting among harvesters, and there is no independent verification of the actual number of horseshoe crabs taken. By setting up a system of horseshoe crab check stations manned by State employees, verification of the accuracy of the weekly call-in and monthly paper reports can be achieved while still allowing the harvest to proceed as programmed. Due to harvest quotas and moratoriums imposed in surrounding states and an anticipated scarcity of horseshoe crabs available for the conch and eel bait markets, it is likely that the market value of horseshoe crabs will rise, thus providing temptations among harvesters for circumventing reporting requirements in order to meet

market demand. In addition these check stations will serve the biological purposes of providing samples of horseshoe crabs that can be accurately measured and sexed so that mandatory reporting provisions included in the amended Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Horseshoe Crabs can be met as accurately and with as much confidence as possible. These biological samples are necessary to support coast wide efforts to conduct a horseshoe crab stock assessment so that the ASMFC can determine if the horseshoe crab stock is being over fished. Previously biological samples have been taken whenever possible and convenient for DNREC scientists and not always in an entirely systematic fashion that accurately represents the entire hand-harvest fishery.

### **EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect at 12:01 a.m. on June 14 and shall remain in effect for 90 days.

### **PETITION FOR RECOMMENDATIONS**

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

### **ORDER**

It is hereby ordered, the 13th day of June 2005 that the above referenced amendment to Shellfish Regulation 3210-62, a copy of which is hereby attached, are adopted pursuant to 7 Del.C. §2701(d) and supported by the evidence contained herein.

John A. Hughes, Secretary

Department of Natural Resources and Environmental Control

### **3210 Horseshoe Crab Reporting Requirements (Formerly S-57 & HC-10) (Penalty Section 7 Del.C. §1912)**

**1.0** It shall be unlawful for any person who has been issued a horseshoe crab commercial collecting permit or a commercial eel pot license to take or reduce to possession any horseshoe crabs without taking said horseshoe crabs to a Horseshoe Crab Check Station run by the Department the same day as harvested; unless the Check Stations are closed, in which case said horseshoe crabs must be taken to the Check Station the next working day. It further shall be unlawful for anyone to sell, barter or trade or attempt to sell, barter or trade any horseshoe crab or to attempt to transport

out of state any horseshoe crabs without being in possession of a signed receipt from a certified Delaware Horseshoe Crab Check Station indicating the number of horseshoe crabs in the shipment, when they were taken and by whom.

~~1-0~~ **2.0** It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a weekly basis. Said weekly reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a weekly report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

~~2-0~~ **3.0** Any person who fails to submit a weekly report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.

~~3-0~~ **4.0** In addition to the requirement to phone in weekly catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

**1 DE Reg 1413 (4/1/98)**

**3 DE Reg 1567 (5/1/00)**

**7 DE Reg. 220 (8/1/03)**

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 AGRICULTURE**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 3 Delaware Code,  
Sections 101 and 302 (3 **Del.C.** §§101 & 302)

**101 On-Farm Home Food Processing Operations**

**PUBLIC NOTICE**

The State of Delaware, Department of Agriculture, proposes these regulations pursuant to 3 **Del.C.** §§101 and 302. The proposed regulations contain the following general sections: Authority, Purpose, Scope, Construction, Definitions, Registration, License/permits, Operator qualifications, Labeling, Supervision, Washing of hands, Physical plant characteristics, Program administration, Violations and hearing procedures, Appeals, Civil penalties. These regulations are intended to allow on-farm home processing of non-potentially hazardous foods and clearly define the role of DDA in on-farm home processing of non-potentially hazardous foods.

The On-Farm Home Food Processing Program will exempt certain small food processors, who process and produce specified non-potentially hazardous food products, from the statutory requirements of Title 16 **Delaware Code**, Chapter 1, §122 and §134, and from the regulatory requirements of State of Delaware Food Code as it relates to the specified non-potentially hazardous food products; and the program will ensure protection of the public health through processor compliance with regulatory requirements of the **On-Farm Home Food Processing Program**.

The proposed regulations will be considered at a public hearing scheduled for August 1, 2005 at the Delaware Department of Agriculture building conference room #1 located at 2320 S. Dupont Hwy, Dover, DE. The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed on-farm home processing regulations under 3 **Del.C.** §§101 and 302. The hearing will be conducted in accordance with Title 29, Chapter 101, and the Administrative Procedures Act.

Copies of the proposed regulations may be obtained from the Department of Agriculture by calling the 1-800-282-8685; by writing the Delaware Department of Agriculture, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the Register of Regulations site at: <http://www.delregs.state.de.us/index.html>. Public comments may be submitted in writing to Mark Davis, Executive Assistant to the Secretary of the Department of Agriculture on or before 1:00 p.m. on August 1, 2005 and/ or in person at the public hearing.

**PROPOSED REGULATION**

**101 On-Farm Home Food Processing Operations**

**1.0 Authority**

This regulation is written under the authority of Title 3, Chapters 1 and 3, and Sections 101 and 302 of the **Delaware Code**.

**2.0 Purpose**

This regulatory foundation establishes standards of practice for on-farm home food processing operations that safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented.

**3.0 Scope**

This regulatory foundation sets forth definitions, describes operator qualifications, establishes operational food safety and physical facility requirements, and provides the regulatory authority with procedures to ensure compliance with this foundation.

**4.0 Construction**

4.1 This regulatory foundation shall be construed and interpreted to ensure the maximum protection of the public health and to reduce the risk of foodborne illness, while exempting certain small food processors, who process and produce specified non-potentially hazardous products on-farm utilizing domestic kitchens, from the statutory requirements of Title 16 **Delaware Code**, Chapter 1, §122 and §134, and from the regulatory requirements of State of Delaware Food Code; and the program will ensure protection of the public health through processor compliance with regulatory requirements of the On-farm Home Food Processing Program.

4.2 Where a conflict with local custom or usage arises, the regulatory authority will enforce this foundation in a manner that applies sound scientific principles in a consistent and impartial manner.

**5.0 Definitions**

The following words and terms when used in these regulations mean:

“**Acid foods**” or “**acidified foods**” means foods that have an equilibrium pH of 4.6 or below.

“**Approved**” means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

“**Certified**” means any on-farm home-based processor who has met the requirements of the Delaware Cooperative Extension Service’s eight (8) hours of training in sanitation, cross-contamination controls, and food security.

“**Consumer**” means a person who is a member of the public, takes possession of FOOD, is not functioning as an operator of a food establishment or food processing plant, and does not offer the FOOD for resale.

“**DDA**” means the Delaware Department of Agriculture

“**Drinking water**” means water that meets 40 CFR 141 National Primary Drinking Water Regulations; and is traditionally known as “potable water.”

“**Dry storage area**” means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

“**Easily cleanable**” means a characteristic of a surface that allows effective removal of soil by normal cleaning methods; and is dependent on the material, design, construction, and installation of the surface; and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

“**Easily movable**” means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

“**Equipment**” means an article that is used in a food processing operation such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

“**Exclude**” means to prevent a person from working as a food employee or entering a food establishment, except for those areas open to the general public.

“**Farm**” means a place where agricultural commodities are grown, raised, or harvested for commercial purposes. “Farm” includes a place where, for commercial purposes crops are grown and harvested; fruit, nuts, or other agricultural commodities are harvested from trees; or animals are raised, fed, and managed for meat or other agricultural commodities.

“**Farmers’ market**” means a physical location listed with the Delaware Department of Agriculture for the direct-to-consumer marketing of limited Delaware/Delmarva grown and produced food products.

“**Food**” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

“**Food-contact surface**” means a surface of equipment or a utensil with which food normally comes in contact; or a surface of equipment or a utensil from which food may drain, dip, or splash into a food, or onto a surface normally in contact with food.

“**Hazard**” means a biological, chemical, or physical property that may cause an unacceptable CONSUMER health risk.

“**Home**” means a primary residence occupied by the processor, that contains only two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators used for cold storage. This equipment shall have been designed

## PROPOSED REGULATIONS

for home use and not for commercial use, and shall be operated in the kitchen within the residence.

**“Home-based processor”** means a farmer who, in the farmer’s home, produces or processes whole fruit and vegetables, baked cakes, muffins, or cookies with a water activity of .85 or less, candy (non-chocolate), containerized fruit preparations consisting of jellies, jams, preserves, marmalades, and fruit butters, fruit pies with an equilibrated pH of 4.6 or less, herbs in vinegar with an equilibrated pH of 4.6 or less, honey and herb mixtures, dried fruit and vegetables, spices or herbs, maple syrup and sorghum, snack items such as popcorn, caramel corn, and peanut brittle, and roasted nuts.

**“Imminent health hazard”** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

**“Label”** means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of 3 Del.C. §§101 and 302 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper:

**“Law”** means applicable local, state, and federal statutes, regulations, and ordinances.

**“On-farm home food processing operation”** means a person who, on the person’s farm, produces food items that are not potentially hazardous foods, which are limited to:

- Baked cakes, muffins, or cookies with a water activity of .85 or less
- Candy (non-chocolate)
- Containerized fruit preparations consisting of jellies, jams, preserves, marmalades, and fruit butters
- Fruit pies with an equilibrated pH of 4.6 or less;
- Herbs in vinegar with an equilibrated pH of 4.6 or less;
- Honey and herb mixtures; and
- Dried fruit and vegetables;
- Spices or herbs
- Maple syrup and sorghum
- Snack items such as popcorn, caramel corn, and peanut brittle
- Roasted nuts

**“On-farm market”**, also known as farm stands, means a site on the farm where the farmer sells agricultural and value added products from his farm directly to consumers at

a stand or kiosk located on or near his farm or along a road near the farm.

**“Packaged”** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

**“Permit”** means the document issued by the regulatory authority that authorizes a person to conduct an on-farm food processing operation.

**“Permit holder”** means the entity that is legally responsible for the processing operation such as the owner or other person; and possesses a valid permit to conduct on-farm food processing operation.

**“Person”** means an association, corporation, individual, partnership, or other legal entity.

**“pH”** means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

**“Plumbing fixture”** means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

**“Plumbing system”** means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

**“Potentially hazardous food (PHF)”**

- PHF means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; or the growth and toxin production of Clostridium botulinum; or in raw shell eggs, the growth of Salmonella Enteritidis.
- “Potentially hazardous food” includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures.
- Also included as potentially hazardous foods are low acid canned foods (vegetable, fish, meat, etc.) and acidified foods (pickled vegetables, fish, meat, eggs, etc.)
- “Potentially hazardous food” does not include an air-cooled hard-boiled egg with shell intact; a food with an  $a_w$  value of 0.85 or less; a food with a pH level of 4.6 or below when measured at 24°C (75°F); a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain

commercial sterility under conditions of nonrefrigerated storage and distribution; a food for which laboratory evidence demonstrates that the rapid and progressive growth of combination of barriers that inhibit the growth of microorganisms; or a food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

**“Premises”** means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property not described above in this definition, if its facilities and contents are under the control of the permit holder and may impact food operation, personnel, facilities, or operations, and a food operation is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

**“Ready-to-eat food”** means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. “Ready-to-eat food” includes potentially hazardous food that is unpackaged and cooked to the temperature and time required; and raw, washed, cut fruits and vegetables; whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

**“Regulatory Authority”** means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food operation.

**“Sanitization”** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance; and to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

**“Sewage”** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**“Utensil”** means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in

contact with food; food temperature measuring devices; and probe-type price or identification tags used in contact with food.

**“Value-added”** means any activity or process that allows farmers to retain ownership and that alters the original agricultural product or commodity for the purpose of gaining a marketing advantage. Value-added may include bagging, packaging, bundling, pre-cutting, etc.

**“Waste water system”** means that portion of a plumbing system that normally conveys liquid waste and sewage away from the fixtures and equipment of the premises of the food operation.

**“Water activity ( $A_w$ )”** means a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

## **6.0 Registration**

6.1 In order to be able to inspect and license on-farm home food processing operation facilities that produce non-potentially hazardous foods for commercial sale, DDA will require the registration of all on-farm premises in Delaware where non-potentially hazardous foods are processed for commercial sale. This will allow facility inspection, safeguard public health, and provide consumers with food that is safe, unadulterated, and honestly presented

6.2 The registration form, available from DDA, shall include at a minimum the following information:

6.2.1 Name,

6.2.2 Address,

6.2.3 Telephone number of owner/processor,

6.2.4 Type of Non-potentially hazardous foods being processed,

6.2.5 The geo-reference coordinates (latitude/longitude state plane coordinates NAD 83) of the home kitchen; (if not available, DDA will provide)

## **7.0 License and Permits**

7.1 The Delaware Department of Agriculture may issue an on-farm home food processing operation license to an individual who owns a farm to process non-potentially hazardous food in a home or domestic kitchen located on the individual's farm as set forth in this regulation.

7.2 All on-farm home food processing facilities that manufacture, process, pack or hold for introduction into commerce must obtain and maintain a current license (known as an On-Farm Home Food Processing License) from the Delaware Department of Agriculture Food Products Inspection Section in accordance with 3 Del.C. §§101 and 302.

## 8.0 Operator qualifications

The below framework provides for the operator to possess the knowledge and demonstrate the abilities needed to safely perform production under the on-farm home food processing program.

### 8.1 Education and training:

8.1.1 Persons responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers should receive appropriate training in proper food handling techniques and food protection principles, and should be informed of the dangers of poor personal hygiene and unsanitary practices.

8.1.2 An individual who wishes to process non-potentially hazardous foods in a domestic kitchen shall have adequate knowledge of safe food handling practices and shall have successfully completed a course offered through the Cooperative Extension Program prior to applying for a permit. The course shall be approved by DDA and provide a minimum of 8 hours of training in:

8.1.2.1 Sanitation;

8.1.2.2 Cross-contamination controls; and

8.1.2.3 Food security/defense.

### 8.2 Disease control:

8.2.1 Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to the regulatory authority.

### 8.3 Cleanliness:

8.3.1 All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against contamination of food. The methods for maintaining cleanliness include, but are not limited to:

- Wearing outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials;
- Maintaining adequate personal cleanliness;
- Removing all unsecured jewelry and other objects that might fall into food,

equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials; Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

- Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material;
- Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints;
- Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed;
- Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.
- Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.
- No animals or fowls shall be kept in or permitted to enter the premises of any on-farm food operations.

8.4 While operating with a license issued in accordance with this regulation, the person-in-charge shall manufacture and process only non-potentially hazardous foods such as:

- Baked cakes, muffins, or cookies with a



water activity of .85 or less

- Candy (non-chocolate)
- Containerized fruit preparations consisting of jellies, jams, preserves, marmalades, and fruit butters with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;
- Fruit pies with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;
- Herbs in vinegar with an equilibrated pH of 4.6 or less;
- Honey and herb mixtures; and
- Dried fruit and vegetables;
- Spices or herbs
- Maple syrup and sorghum
- Snack items such as popcorn, caramel corn, and peanut brittle
- Roasted nuts

8.5 While operating with a license issued in accordance with this regulation, the person-in-charge shall not process potentially hazardous foods for commercial sale such as:

- Low-acid canned foods, such as home-canned or jarred fruits, vegetables, pickled products, sauces, relishes.
- Cream, custard, pumpkin, meat, or other single-crust pies or cream or cheese-filled baked goods
- Cured or fermented foods;
- Seafood;
- Apple cider or other juices;

8.6 While operating with a license issued in accordance with this regulation, the person-in-charge shall limit processed food production to:

8.6.1 An amount of food that can safely be produced in the domestic kitchen as evidenced by sanitation and process and cross-contamination control;

8.6.2 \$40,000 of sales of on-farm home processed foods.

8.7 While operating with a license issued in accordance with this regulation, the person-in-charge shall process commercially only during times when the kitchen is not being used for domestic purposes;

8.8 While operating with a license issued in accordance with this regulation immediately before and after processing commercially, the person-in-charge shall clean and sanitize all food contact surfaces, equipment, and utensils;

8.9 While operating with a license issued in accordance with this regulation while processing commercially, the person-in-charge shall:

8.9.1 Use only building areas, equipment, and utensils that DDA has reviewed or inspected and approved;

8.9.2 Shall store ingredients for commercial manufacturing and finished manufactured food in a separate area from foods used domestically.

## **9.0 Labeling**

9.1 Products must be properly labeled as follows:

9.1.1 Name of product

9.1.2 Name and address of manufacturer

9.1.3 Ingredients listed in decreasing order by

weight

9.1.4 Net weight or unit count

9.1.5 The following statement in ten (10) point type: "This product is home-produced and processed"

9.1.6 The date the product was processed.

9.2 Food products identified as non-potentially hazardous in these regulations and not labeled in accordance with subsection (9.1) of these regulations are deemed misbranded.

9.3 Food products identified in subsection (8.4) of Section 8 of these regulations and produced, processed, and labeled in accordance with these regulations are acceptable food products that may only be offered for sale by farmers' markets, roadside produce stands, or the processor's farm.

## **10.0 Supervision:**

10.1 Responsibility for assuring compliance with all requirements of this part shall be clearly assigned to the permit holder of the processing operation.

## **11.0 Washing of hands:**

11.1 Employees engaged in food preparation, service, and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. All persons shall keep their fingernails trimmed and clean.

11.1.1 Handwashing facilities

11.1.1.1 A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

11.1.1.2 Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

11.1.1.3 Adequate hand washing facilities separate from the utensil cleaning facilities, which includes hot and cold water, single service paper towels and hand soap are required. Properly supplied hand washing facilities provided in toilet facilities located within the structure containing the domestic kitchen may suffice for this provision.

---

---

## PROPOSED REGULATIONS

---

---

### **12.0 Physical plant characteristics**

The following requirements are the minimum acceptable standards for food processing areas:

**12.1 Food contact surfaces** shall be smooth and easily cleanable. The use of wood or glass for food preparation is not approved;

**12.2 Non-food contact surfaces** in the facility, including floor, walls and ceilings, shall be smooth and cleanable. The use of carpeting in the processing area is not approved;

**12.3 Refrigeration:** All facilities shall have a sufficient number of mechanical refrigeration units capable of holding raw materials requiring refrigeration at a minimum of 41°F. Each such mechanical refrigerator shall be equipped with a thermometer located in the warmest portion of the refrigerator;

**12.4 Water supply:** All facilities shall have hot and cold running water under pressure, supplied to all sinks in the processing room. If a non-public water supply is used, the laboratory results of a satisfactory water quality test (bacteriological and chemical) shall be submitted to the regulatory authority at least once each year;

**12.5 Waste water system:** All wastewater and other liquid waste generated during processing operations shall be disposed of through an approved wastewater system designed and installed according to law. A non-public wastewater system shall be approved and permitted by the Delaware Department of Natural Resources and Environmental Control (DNREC);

**12.6 Warewashing:** For manual cleaning and sanitizing of cooking equipment, and utensils, a sink of three (3) compartments shall be provided and used. A two-compartment sink, with an additional portable tub is acceptable.

**12.6.1 Mechanical cleaning and sanitizing** shall be conducted as follows: A domestic or home-style dishwasher may be used if the following performance criteria are met:

**12.6.1.1** The dishwasher shall effectively remove physical solids from all surfaces of dishes.

**12.6.1.2** The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

**12.6.1.3** The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle;

**12.6.1.4** The dishwasher shall be installed and operated according to manufacturer's instruction for the highest level possible when sanitizing the kitchen facilities' utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

**12.7 Handwashing:** Adequate hand washing facilities separate from the utensil cleaning facilities, which includes hot and cold water, single service paper towels and hand soap are required. Properly supplied hand washing facilities provided in toilet facilities located within the structure containing the domestic kitchen may suffice for this provision.

**12.8 Plumbing system-** in the processing area shall be designed and installed according to law under a valid plumbing permit with a satisfactory plumbing inspection;

**12.9 Refuse:** recyclables and returnable waste generated during processing operations shall be stored in heavy duty, cleanable waste containers equipped with tight fitting lids;

**12.10 Artificial lighting-** (electrical lamps) in the processing area shall be protected from shattering by either shielding or an approved shatter-resistant coating;

**12.11 Toilet facility:** A completely enclosed toilet room equipped with a toilet and a hand washing sink shall be located on premises. The toilet room shall have a tight fitting door, and shall have either mechanical ventilation or an open-able window. The hand washing sink shall be supplied with hot and cold running water, under pressure and be supplied with liquid soap, paper towels and a wastebasket.

**12.12 Exterior openings:** All exterior doors and windows in the process area shall be tight fitting to prevent the entry of vermin. If these doors or windows are to be kept open for ventilation they shall be covered with screening, not less than 16 mesh to the inch. Exterior doors shall be self-closing;

**12.13 Service sink-** shall be provided separately for the disposal of mop water and other liquid waste;

**12.14 Equipment and utensils-** intended for use in food processing shall be separate from those used to cook domestic meals;

**12.15 Storage areas-** for both raw ingredients and finished product shall protect these items from contamination;

**12.16 Ventilation-**that is adequate to prevent an accumulation of excess steam, heat, and condensation on floors, walls and ceilings of the processing area shall be provided; and

**12.17 Poisonous and toxic materials-** shall be stored so they cannot contaminate raw ingredients, utensils, equipment, packaging materials and finished products. This requirement also applies to medicines and medical items intended for use by humans or on livestock.

### **13.0 Program administration**

**13.1 Permit required.** A person may not conduct an on-farm food processing operation without a valid permit issued by the DDA. DDA may establish and collect a fee for this permit.

13.2 Application procedure. An applicant shall submit a written application for permit using forms provided by DDA authority at least 30 days before the date planned to begin an on-farm food processing operation.

13.3 Application review. DDA will review the application and may set forth specific conditions or stipulations under which a permit will be issued to the applicant. DDA may establish and collect a fee for this review.

13.4 Inspection and approval. No food processing by the applicant or on the premises may begin without an initial approval for permit issue of DDA; such approval may be contingent upon an inspection of the premises to assess compliance with this regulatory foundation. The operator shall allow the DDA access to the premises, equipment and records of the processing operation at reasonable times to inspect and assess compliance, as required.

13.5 Variance. The applicant may request in writing a modification or waiver of any provision of this regulatory foundation, according to procedures established by DDA.

13.6 Permit retention. The permit is not transferable. The permit holder shall renew the permit when required. The permit holder shall surrender the permit and cease operations, if so ordered by DDA. By acceptance of the permit, the permit holder shall be subject to regulatory, administrative, civil, injunctive and criminal remedies authorized by law for failure to comply with this and other directives issued by competent authority.

#### **14.0 Violations and Hearing Procedures.**

14.1 Failure to comply with these regulations may result in the assessment of a civil penalty.

14.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or his or her designee. Administrative hearings for the provisions of this chapter shall be conducted within 30 days of the violation of this chapter. The Department shall issue a decision in writing to the person(s) charged with a violation of this chapter within 30 days of the conclusion of the administrative hearing.

14.3 The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her own behalf.

14.4 The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so

without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.

14.5 The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested person.

#### **15.0 Appeal.**

15.1 Any party, including an individual or corporation that feels aggrieved by decision of the Secretary or his or her designee after an administrative hearing may take appeal to the Superior Court within thirty days of the date the decision is mailed to that party by the DDA. After a full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefore, shall be served upon the Secretary of the DDA.

#### **16.0 Civil penalties.**

16.1 It shall be unlawful for any person to interfere with the DDA in its effort to enforce these regulations and will subject the violator to a civil penalty of no less than \$100 nor more than \$1,000 per proven violation.

16.2 It shall be unlawful for any person to violate a cease and desist order issued by the DDA and will subject the violator to a civil penalty of no less than \$500 nor more than \$1,000 per proven violation.

16.3 The payment of penalties assessed under these regulations may be made on a payment schedule approved by the Secretary of the DDA.

---

## **DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 275**

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

### **PUBLIC NOTICE**

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

### **275 Charter Schools**

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

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code

275 Charter Schools. The proposed amendments are based on the passage of House Bill No.156 from the 143<sup>rd</sup> General Assembly. The legislation is based on a recommendation of the Charter Schools Standards and Licensing Task Force created by House Resolution No. 78 of the 142<sup>nd</sup> General Assembly. The legislation allows a modification requested by a charter school relating to financial matters, enrollment preferences, number of students, or other such matters to be considered a minor modification. These amendments in 9.0 clarify what matters are to be considered minor modifications, major modifications, and modifications that are considered as a new charter. These amendments also clarify the process by which minor modifications are to be considered and decided.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement against state achievement standards to the extent the modification requested relates to areas of the charter that affect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure students receive an equitable education to the extent the modification requested addresses the area of providing an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety is adequately protected to the extent the modification requested addresses the area of health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will help ensure all students' legal rights are adequately protected to the extent the modification requested addresses the area of legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the authority and flexibility of decision making at the local board and school level. Representatives from the local districts participated in the drafting of this regulation.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation provides that the Secretary of Education may decide minor

modifications beyond what were previously considered minor modifications; however, maintains the involvement of the State Board of Education by requiring concurrence on the decision whether to accept or deny the minor modification.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local school boards related to compliance of this regulation. This regulation should streamline the process and lessen the time associated with deciding minor modifications.

## 275 Charter Schools

### 1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law").

1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.

1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by the Department with the consent of the State Board.

#### 6 DE Reg. 274 (9/1/02)

### 2.0 Definitions

2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

**"Accountability Committee"**: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

**“Applicant”**: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the renewal or modification of such a charter, as the context indicates.

**“Audit”**: An informal financial, programmatic, or compliance audit of a charter school.

**“Charter Holder”**: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

**“Charter School”**: A non-home based full time public school that is operated in an approved physical plant under a charter granted by the Department with the approval of the State Board for the personal physical attendance of all students.

**“DSTP”**: The Delaware Student Testing Program established at 14 Del.C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.

**“Department”**: The Delaware Department of Education

**“First Instructional Day”**: The first day a Charter School is open with students in attendance.

**“Formal Review”**: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school’s operations and educational programs.

**“Founding Board of Directors”**: The duly elected Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

**“Parent”**: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. “Parent” also includes individuals authorized to act as Relative Caregivers under the provisions of 14 Del.C. §202(e)(2).

**“Performance Review”**: Reserved

**“Renewal”**: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for three years.

**“Secretary”**: The Secretary of the Delaware Department of Education.

**“State Board”**: The Delaware State Board of Education.

**6 DE Reg. 274 (9/1/02)**

**7 DE Reg. 928 (1/1/04)**

### **3.0 Application Process**

3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department

between November 1st and December 31st for schools preparing to admit students the second September 1st thereafter.

3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.

3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

3.4 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.

3.5 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

3.6 An application is not complete unless all of the following requirements are met:

3.6.1 All questions on the application form are answered.

3.6.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.

3.7 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.

3.8 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.

3.9 The State Board of Education may designate one or more of its members to sit as non-voting members of the Accountability Committee.

3.10 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such

hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

## 6 DE Reg. 274 (9/1/02)

### 4.0 Standards and Criteria for Granting Charter

#### 4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research-based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At-risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 Del.C. Ch. 100 in conducting the Charter School's business.

#### 4.2 Student Performance

##### 4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant

to 14 Del.C. §§151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 At a minimum, the Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration.

##### 4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement may be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

##### 4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver

education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

#### 4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for

Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction and/or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, and/or the construction and/or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.4.5 Reserved

#### 4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun-Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878.

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 11 **Del.C.** Ch. 85 and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self-administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full-time services of a corresponding number of registered nurses.

**6 DE Reg. 274 (9/1/02)**

**7 DE Reg. 928 (1/1/04)**

## **5.0 Nature of Charter**

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require

the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

**6 DE Reg. 274 (9/1/02)**

## **6.0 Funding**

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

**6 DE Reg. 274 (9/1/02)**

## **7.0 Reserved**

**6 DE Reg. 274 (9/1/02)**

## **8.0 Enrollment Preferences, Solicitations and Debts**

### **8.1 Enrollment Preferences**

8.1.1 An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

### **8.2 Solicitations.**



8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

### 8.3 Debts

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

## 9.0 ~~Reserved~~ Modifications of Charters

9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.

9.2 The application shall be submitted on a form approved by the Department and shall specify the exact modification requested and describe the need for the modification.

9.3 The standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.

9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:

9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or

9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or

9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.

9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where

the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.

9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.

9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year.

### 9.8 Major modifications.

9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:

9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or

9.8.1.2 Alter enrollment preferences; or

9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year; or

9.8.1.4 Alter grade configurations; or

9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in *Black's Law Dictionary*; or

9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or

9.8.1.7 Alter any two of the following: the school's mission, goals for student performance, or educational program; or

## PROPOSED REGULATIONS

9.8.1.8 Alter the charter school's performance agreement with the Department.

### 9.9 Minor modifications.

9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:

9.9.1.1 Changes to the name of either the charter school or charter holder; or

9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or

9.9.1.3 Changes in the standards or assessments used to judge student performance (other than the State standards or the assessments administered pursuant to the DSTP); or

9.9.1.4 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in *Black's Law Dictionary*; or

9.9.1.5 Changes to alter not more than one of the following: the school's mission, goals for student performance, or educational program; or

9.9.1.6 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year; or

9.9.1.7 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or

9.9.1.8 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.4 and 9.8.1.1 above; or

9.9.1.9 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 Del C.; or

9.9.1.10 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or

9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.

9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.

9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed

9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.

9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.

9.9.7 Decisions for minor modifications to a charter shall be decided by the Secretary, with the concurrence of the State Board of Education, within 30 working days from the date the application was filed, unless the timeline is waived by the Secretary and the applicant.

**6 DE Reg. 274 (9/1/02)**

### **10.0 Renewals**

10.1 Charters are granted for an initial period of 3 years of operation and are renewable every 5 years thereafter. A Charter School shall file its application for Renewal not less than six months prior to the end of any Renewal Period.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 Charters shall be renewed only if the school receives a satisfactory Performance Review.

**6 DE Reg. 274 (9/1/02)**

**7 DE Reg. 928 (1/1/04)**

**11.0 Public Hearings**

11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

**6 DE Reg. 274 (9/1/02)**

---

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 716

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

**PUBLIC NOTICE**

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

**716 Maintenance of Local School District Personnel  
Records****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 716 Maintenance of Local School District Personnel Records in order to align it with the new rules of the Delaware Public Archives concerning the retention of the personnel records of inactive employees. The retention period has been reduced from sixty (60) years to thirty (30) years by the Delaware Public Archives. In addition, the title and references in 2.0 and 3.0 have been changed to include charter schools and a few formatting changes have been made.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the maintenance of personnel records not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the maintenance of personnel records not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the maintenance of personnel records not students' health and safety.

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

addresses the maintenance of personnel records not students' legal rights.

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

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

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

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

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

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

**716 Maintenance of Local School District and Charter  
School Personnel Records****1.0 Definitions**

**"Delaware Public Archives (DPA)"** means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

**"Employee"** shall in this case mean any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

**"Termination"** in this case does not refer only to retirement but to any reason for the employee to leave the district.

## 2.0 Records for all school district and charter school employees shall be kept up to date including:

2.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and

2.2 Records that show sick leave days earned and used and the number of days available at any time; and

2. The record of vacation time for those employees whose terms of employment provide for earned vacation.

## 3.0 Each school district and charter school shall keep the records referred to in section 2.0 above for all employee's employees' inactive personnel files for at least sixty thirty years following termination of employment.

3.1 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records ~~are to~~ shall be purged in accordance with ~~Delaware Public Archives (DPA) School Districts General Records Retention Schedule~~ the Delaware Public Archives School Districts General Records Retention Schedule and prepared for storage according to ~~DPA's Records Management Handbook "Preparation of Records for Short-Term Storage."~~ the "Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage". Records ~~may~~ shall remain in their original format and ~~will~~ shall then be transferred to DPA and retained in storage for the balance of the ~~60 thirty (30)~~ required years. Local District and charter school ~~Records Officers and~~ authorized Agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.

3.2 The style and form of the records shall be at the discretion of the local school districts or charter schools, except that records transferred to the Delaware Public Archives for storage shall be in a format acceptable to DPA. Individual local school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.

3.2.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of ~~60 thirty (30)~~ years after termination of employment. (It is recommended that for the convenience of employees and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

**3 DE Reg. 1077 (2/1/00)**

**4 DE Reg. 989 (12/1/00)**

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 727

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

### PUBLIC NOTICE

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

### 727 Credit for Experience for Educators and for Secretarial Staff

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 727 Credit for Experience for Educators and for Secretarial Staff. The purpose of the amendment is to clarify who is an eligible employee by adding a definition of an "Eligible Employee" in 1.0 and amending 1.3 to reflect the addition of the definition.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses educator experience credit not student achievement.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator experience credit not students' legal rights.

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be an additional costs involved for districts that choose to increase the local supplement as well as the state salary amount.

### **727 Credit for Experience for Educators and for Secretarial Staff**

#### **1.0 Educators Graduating from a 5-Year or 4-Year Preservice Program**

##### **1.1 Definitions**

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

“Eligible Employee” includes, but is not limited to, teachers, nurses, librarians, psychologists, therapists, and counselors paid in accordance with 14 Del.C. §1305 that were hired into their first professional position after June 30, 2001 and zero years of experience. The exception to the zero years of experience would be an employee who qualified for military experience credit under 14 Del.C. §1312(a) and 14 DE Admin.Code 706.

“**Four Year Preservice Program**” means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

“**Five Year Preservice Program**” means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

“**Grade Point Average (GPA)**” means the grade point average (GPA) stated on the official transcript of

the regionally accredited college or university granting the bachelor’s degree in the Four Year Preservice Program.

1.2 Pursuant to 14 Del.C. §1312(a), a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule.

~~1.3 Eligible Employees for the one year credit of experience shall include any employee paid in accordance with 14 Del.C. §1305 who meets the requirements in 1.2 and was hired after July 1, 2001. Eligible employees include, but are not limited to, teachers, nurses, librarians, psychologists, therapists, counselors, and school and district level administrators. An employee eligible for one year of credited experience shall meet the definition of Eligible Employee in 1.1 and meet the requirements of 1.2.~~

#### **2.0 Administrators**

2.1 No credit for experience shall be given for part time employment in administrative or supervisory positions.

#### **3.0 Teachers**

3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

3.1.1 A "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

#### **4.0 Secretarial Staff**

4.1 Secretaries may be granted one (1) year's experience for each creditable year of experience as a secretary in private business, public or private school, or other governmental agency.

#### **5.0 Creditable experience includes experience obtained while working outside of Delaware.**

#### **6.0 Applicability.**

This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 Del.C. Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 Del.C. Ch. 13.

**3 DE Reg. 1542 (5/1/00)**

**8 DE Reg. 1607 (5/1/05)**

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 920

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

### PUBLIC NOTICE

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

### 920 Educational Programs for Students with Limited English Proficiency

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 920 Educational Programs for Students with Limited English Proficiency. The purpose of these amendments is to align the regulation with the federal statute No Child Left Behind. The title of the regulation has also been changed to Educational Programs for English Language Learners (ELLs) to reflect the new terminology.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation should help to improve student achievement as measured against state achievement standards for English Language Learners (ELLs).

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation should help to ensure an equitable education for English Language Learners (ELLs).

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educational programs for English Language Learners (ELLs) not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation should help to ensure that English Language Learners (ELLs) educational rights are protected.

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

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

amended regulation may place some additional reporting and administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are federal funds available to districts and charter school who are have special programs that serve English Language Learners (ELLs).

### 920 Educational Programs for Students with Limited English Proficiency

~~1.0 General: Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every student who has been determined to be eligible for limited English proficiency services a program of instruction until such time as the student becomes fully proficient in English in accordance with 5.0 below.~~

~~2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use statewide.~~

~~3.0 Determination of Eligibility for Limited English Proficiency Programs. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency and determination of such~~

students' eligibility for limited English proficiency programs. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted in conformance with the following standards:

3.2.1 The assessment shall be based on a standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 The assessment shall measure English proficiency in reading, writing, speaking and oral comprehension, except that reading and writing proficiency will generally not be assessed for students below grade 2;

3.2.3 The assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 The assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be entitled to a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

3.4 For each student enrolled in the 2000-2001 school year, each district shall conduct a home language survey, to the extent practicable, of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3. Beginning with the 2000-2001 school year, each district shall conduct such a home language survey, and as appropriate, an English language proficiency assessment of every new student at the time of enrollment in a school.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a program of instruction for students with limited English proficiency.

4.1 A program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to provide students with limited English proficiency with access to the District's curriculum.

4.2 In selecting program(s), each district may choose from a variety of programs that are research-based and best practice in the education of limited English proficient students. Beginning with the 2001-2002 school year, programs of instruction for students with limited English proficiency are to be reviewed by the Department of Education. Such programs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall include:

4.2.1.1 Standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 Instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall include:

4.2.2.1 Standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 Instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.4 Instruction shall be delivered by teachers who meet Department of Education certification requirements and who are trained in the delivery of instruction to students with limited English proficiency.

4.2.5 Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a program for students with limited English proficiency carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1-3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the

## PROPOSED REGULATIONS

eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established by the Department of Education shall be reclassified as fully English proficient and considered ineligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.4 Before removing any student from a program for students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas. Any reclassified student found to have incurred academic deficits while in the program for students with limited English proficiency shall be provided with supplemental instructional services in the relevant subject areas.

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least two school years following the determination of ineligibility or reclassification, a district shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience academic performance problems during this period shall, based on further assessment, be considered for entry/reentry into a program of instruction for students with limited English proficiency and shall be provided with supplemental instructional services as necessary and appropriate.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. Such evaluation shall be available for review upon request and shall be submitted to the Department of Education beginning with the 2001-2002 school year. This evaluation may be part of the district's annual evaluation required for other district programs. At a minimum, this program evaluation shall:

7.1 Consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 Consider the effectiveness of each program of instruction for students with limited English proficiency in achieving the goal and standards in 4.2. above; and

7.3 Describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background, the current English proficiency level of each LEP student enrolled in the district, and the type of program in which the LEP student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a program for students with limited English proficiency, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, are provided to each language minority parent/guardian in a language the parent/guardian can understand to the extent practicable.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used as provided in Department of Education guidelines, including the Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and any alternative assessment measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient. This shall be based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

4 DE Reg. 467 (9/1/00)

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLs).



**1.0 Definitions:**

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

**“Bilingual Programs”** Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.

**“English as a Second Language (ESL) Programs”** English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.

**“English Language Learners (ELLs)”** English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by a valid English language proficiency assessment approved by the Department of Education for use statewide.

**2.0** A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or Relative Caregiver the student's first acquired language and the language(s) spoken in the student's home or by the student.

2.1 Any student for whom a language other than English is reported on the home language survey or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment. The assessment shall be conducted as soon as practicable, but not later than twenty five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.

2.1.1 The English language proficiency assessment shall be based on the English Language Proficiency Standards for English Language Learners K-12 and shall assess listening, speaking, reading and writing. The assessment shall be validated for this purpose and approved by the Department of Education for use statewide.

2.1.2 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in listening, speaking, reading and writing established by the Department of Education shall

be identified as an ELL and shall be entitled to a program of instruction for ELLs.

**3.0** Programs of instruction for ELLs shall include formal instruction in English language development; and instruction in academic subjects which is designed to provide ELLs with access to the regular curriculum. In selecting a program(s), each district shall choose programs that are research-based and that have been demonstrated to be effective in the education of ELLs.

3.1 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

3.2 Instruction shall be delivered by individuals who meet Department of Education licensure and certification requirements and who are trained in the delivery of instruction to ELLs.

3.3 The student's parent, guardian or Relative Caregiver has a right to refuse placement of their child(ren) in either the Bilingual or the ESL program and also has the right to withdraw an identified student from either program. Parents, guardians or Relative Caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

**4.0 Every student identified as an ELL will be administered an English language proficiency assessment annually.**

4.1 Any student who achieves a score on the annual English language proficiency assessment that is higher than the eligibility cut-off score in listening, speaking, reading and writing established by the Department of Education shall be transitioned as fully English proficient and placed in a regular classroom.

4.1.1 For at least two school years following the identification of the student as fully English Proficient, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further assessment re-enter a Bilingual or ESL program or shall be provided with additional instructional services as necessary and appropriate.

**5.0** Each district and charter school receiving funds to provide services or programs for ELL's shall prepare an annual evaluation of its program(s). This evaluation shall be part of the district's annual evaluation process under and in compliance with the Consolidated Application.

6.0 Each district and charter school shall enter such data and information concerning ELLs as instructed by the Department of Education and as otherwise required by the Department into the statewide database.

7.0 Each district and charter school shall ensure that communication with parents, guardians and Relative Caregivers, including notices of eligibility for programs for ELLs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and Relative Caregivers shall be provided in English or to the extent practicable in a language the parent, guardian or Relative Caregiver can understand.

8.0 ELLs and students transitioned as fully English proficient shall be included in the Delaware Student Testing Program (DSTP) as provided for in the Department of Education document *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may from time to time be amended hereafter.

---

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 930

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

### PUBLIC NOTICE

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

#### **930 Supportive Instruction (Homebound)**

#### **A. Type of Regulatory Action Required**

Re-authorization of Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 930 Supportive Instruction (Homebound) in order to clarify the wording in 2.4 and 3.0 concerning supportive instruction which is in the school setting and supportive instruction that takes place at the student's home. The regulation defines Supportive Instruction, describes who is eligible for services and how to implement the program.

#### **C. Impact Criteria**

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

standards? The amended regulation will continue to help improve student achievement as measured against state achievement standards by providing Homebound Instruction when needed.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will continue to help insure that Homebound students receive an equitable education through supportive instruction services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will continue to contribute to the health and safety of Homebound students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will continue to help to ensure that homebound students' legal rights to an education are respected.

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

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

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

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

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

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

**930 Supportive Instruction (Homebound)****1.0 Definition.**

Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the Administrative Manual: Special Education Services, and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

**2.0 Eligibility.**

A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification documentation that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 ~~When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request~~

~~must be certified through a staff conference. Supportive instruction can be requested as an in-school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in-school transitional program, it must be approved through a staff conference.~~

~~3.0 Implementation. Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.~~ Supportive instruction for students shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school program as delineated in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for students K-5th grade, and a minimum of five hours each week of eligibility for students 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

---

**DEPARTMENT OF EDUCATION****14 DE Admin. Code 1105****Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))****PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C.  
Section 122(d)**

### 1105 School Transportation

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1105. The amendments are necessary in order to clarify the reimbursement procedure for school bus ownership and contracts concerning payment dates in section 13.2.1 and for fuel adjustments in section 13.7. The reference to parents in 4.2.11, 6.1, 6.4, 8.6, 11.1.1, 11.1.1.1, 11.2.1, 15.1, 19.7 and 19.9 is also amended to parents, guardians and Relative Caregivers.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses payment procedures and fuel adjustments for school bus owners and contractors not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses payment procedures and fuel adjustments for school bus owners and contractors not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses payment procedures and fuel adjustments for school bus owners and contractors not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses payment procedures and fuel adjustments for school bus owners and contractors not students' legal rights.

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

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

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

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

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

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

### 1105 School Transportation

#### 1.0 Responsibilities of Local Superintendents:

Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

#### 2.0 Conditions for School Bus Contractors:

School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks.

District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

### **3.0 Responsibilities of School Bus Drivers:**

Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

### **4.0 Qualifications and Responsibilities of School Bus Aides**

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level and meet the same requirements (pre-licensing) specified for school bus drivers in the **Delaware Code**.

4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist students with disabilities with personal needs associated with their disabilities.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents, guardians and Relative Caregivers.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

### **6 DE Reg. 643 (11/1/02)**

### **5.0 Student Conduct on School Buses:**

School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

#### **6.0 Procedures for Operating Buses:**

Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents, guardians and Relative Caregivers involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to

wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, guardians or Relative Caregiver and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall

not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

**3 DE Reg. 942 (1/1/00)**

**7.0 Accident Reports**

All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so

that the record of the accident is completed. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

**3 DE Reg. 942 (1/1/00)**

**8.0 Transportation Benefits:**

Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or Relative Caregiver as described in 14 Del.C. §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent, guardian or Relative Caregiver must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

### 8 DE Reg. 541 (10/1/04)

#### 9.0 Bus Capacities:

9.1 Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child.

9.2 A mixture of the criteria will be used to plan loads when pupils come from both of the above groups.

9.3 Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

#### 10.0 Loading and Unloading:

Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

#### 11.0 Unique Hazards:

Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include

hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents, guardians or Relative Caregivers of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, guardians and Relative Caregivers vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, guardians or Relative Caregivers, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process



11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

## **12.0 Contingency Plans:**

12.1 Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies.

12.2 The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

## **13.0 Reimbursements for School Bus Ownership and or Contracts:**

School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September or twenty (20) installments with the first payment on or about September 15th. For those school districts opening before September 1 and making ten (10) installments, payments may be made as early as thirty (30) days following

the start of the school year with follow-up monthly payments to be made no earlier than the date used for the first payment.

For those school districts opening before September 1<sup>st</sup> and making twenty (20) payments, payments may be made as early as fifteen (15) days following the start of the school year with follow up monthly payments to be made no earlier than the dates used for the first two payments.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re- assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district- owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education with the consent of the State Board of Education), Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors and school districts shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel, maintenance and administration. Driver (including layover allowance) and aide allowances shall be paid.

13.6.2 School bus contractors and school districts with buses assigned to midday kindergarten or vocational-technical trips shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel.

13.6.3 The additional mileage allowance for contractor and school district buses will not include fuel and maintenance allowances.

13.6.4 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

13.7 Fuel adjustments shall be made in accordance with the State Budget Bill. When fuel adjustment additions are made, the school districts shall pay a lump sum for the number of days driven up to the date of the adjustment and the remainder shall be paid equally over the remaining months of the school year. For contract reductions, the

adjustments shall be spread equally over the remaining months of the school year.

**7 DE Reg. 1546 (5/1/04)**

**8 DE Reg. 541 (10/1/04)**

## **14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses**

Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

## **15.0 Transportation Allowances for Individuals:**

Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the ~~parent or guardian~~ parent, guardian or Relative Caregiver and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage travelled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

## **16.0 Cost Records:**

Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

### **17.0 Bus Replacement Schedules**

The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced ( it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 ~~m~~May be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

17.4 In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

### **18.0 School Bus Inspections:**

The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

### **19.0 Transportation for Students with Disabilities:**

Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is

determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by ~~the parent or legal guardian or other person who has control of the child~~ parent, guardian or Relative Caregiver to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, ~~legal guardian or other persons in the state having control~~ guardian or Relative Caregiver of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/ programs for children with disabilities.

**3 DE Reg. 1548 (5/1/00)**

## 20.0 Transportation for Alternative Programs:

Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

## 21.0 Drugs and Alcohol Testing

21.1 Content:

21.1.1 Pursuant to 14 **Del.C.** §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable

to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

**“Alcohol”** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

**“CDL”** means a commercial drivers license issued pursuant to 21 **Del.C.** Ch. 26.

**“Department”** means the Delaware Department of Education.

**“DOT”** means the United States Department of Transportation.

**“Drug”** means the controlled substances for which tests are required under the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

**“Employer”** means school bus contractors or school districts and charter schools when they directly employ school bus drivers.

**“Negative Result”** means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

**“Positive Result”** means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

21.3 Federal Regulations

Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator Medical Review Officer (C/ TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation

supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

21.4.2 The Department shall:

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

21.6 Random Testing

21.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

**3 DE Reg. 942 (1/1/00)**

**6 DE Reg. 643 (11/1/02)**

**22.0** The nonpublic, nonprofit schools shall be responsible for the administration and supervision of the

family transportation allowance provided by the State Department of Education.

22.1 The nonprofit, nonpublic school shall act as the administrator and fiscal agent. If the nonpublic, nonprofit school chooses to use an agent to receive payment other than the nonpublic, nonprofit school, written authorization from the governing board of the nonpublic, nonprofit school, such as the board of trustees or the school board, specifying such agent shall be forwarded to the Education Associate for School Transportation in the Department of Education. The use of an agent to accept payment shall not relieve the nonpublic, nonprofit school from its responsibility to administer and supervise the transportation program, to maintain records, or to submit such reports as may be required.

22.2 Those nonpublic, nonprofit schools with families requesting transportation allowances shall have a Federal ID number.

22.3 Transportation allowances shall be made only for those eligible students (Delaware residents attending Delaware schools) who meet residence-to-school proximity guidance of one (1) mile or more for grades K-6 and two (2) miles or more for grades 7-12 and who make application to the nonpublic, nonprofit school for such transportation allowances. These applications for transportation allowances shall be signed by the parent, guardian, or Relative Caregiver and certified by a school administrator. Families of a student who would not otherwise be eligible for the allowance may receive the allowance if a physician certifies that the student is unable to walk or should not walk from home to school and return. The responsibility for establishing a claim for transportation allowances rests upon the claimant, and all records of this request shall be kept on file in the nonpublic, nonprofit school office. Such records shall be made available for audit by a representative of the Department of Education or the State Auditors.

22.4 The State shall provide the transportation funds to the nonpublic, nonprofit school or designated agent for eligible families. The family shall direct the nonpublic, nonprofit school or designated agent how the funds are to be dispersed [e.g; some or all of the funds to the parent, guardian or Relative Caregiver for tuition, for school-provided transportation costs, for an allowance, etc.] The nonpublic, nonprofit school shall ensure that its tuition, transportation fees, and other costs of attendance are independent of the allowances.

22.5 Payment shall be made only on the basis of one trip to and one trip from nonpublic, nonprofit school daily. Families who transport more than one child to the same school by private conveyance shall be reimbursed on the basis of the number of trips rather than on the number of children transported. No family shall qualify for more than one reimbursement for students it transports to a single

school except for families with two or more children, one of whom is enrolled in a half day kindergarten program. In the event of car pools, each family is entitled to reimbursement, but a family shall not receive more than the annual allowance.

22.6 The nonpublic, nonprofit school shall submit the initial transportation form, provided by the Department of Education, no later than August 31<sup>st</sup> of each year. The nonpublic, nonprofit school or designated agent shall submit the final transportation form provided by the Department of Education no later than October 3<sup>rd</sup> of each year. All information shall be based on September 30<sup>th</sup> enrollment and eligibility. After the submission of the final transportation form no further adjustments for eligibility shall be made for the remainder of the school year.

22.7 Upon receipt of the initial form required by the Department of Education the first payment shall be made at the end of September. Upon receipt of the final form the remaining payments will be made at the end of October, January, and April. The school shall return funds not distributed to parents, guardians or Relative Caregivers to the State of Delaware.

**8 DE Reg. 541 (10/1/04)**

---

**PROFESSIONAL STANDARDS BOARD**

**14 DE Admin. Code 324**

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

**PUBLIC NOTICE**

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

**324 Driver Education and Traffic Safety Education  
Teacher**

**A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 324 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding the licensure and certification of educators, and to update the

course requirements for the position. There are no approved educator preparation programs in Delaware for Driver Education teachers, and the programs previously offered in surrounding states have largely been eliminated. Therefore, reference to approved educator preparation programs in Driver Education and Traffic Safety has been eliminated. The option of fulfilling the requirements for the position through DOE approved in-service programs has been added, to address the scarcity of course offerings at colleges and universities. The regulation will be renumbered 1564 to reflect its movement to the Professional Standards Board section of the Department of Education regulations. It will also be renamed Standard Certificate Driver Education and Traffic Safety Education Teacher to make it consistent with other regulations for standard certificates for educators. This regulation was previously published in the May 1, 2005 *Register of Regulations*, but a substantive change necessitates re-publication.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

### ~~324 Certification Driver Education And Traffic Safety Education Teacher~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License for grades 9-12~~

~~1.1 Bachelor's degree from an accredited college and,~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher preparation program in Driver Education and Traffic Safety Education or,~~

~~1.2.2 A Standard Delaware Teacher's License or,~~

~~1.2.3 A minimum of 24 semester hours to include Human Development, Methods of Teaching Driver Education, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (9-12) level and,~~

~~1.2.3.1 A valid Delaware driver's license or approval by the Delaware Department of Education and,~~

~~1.2.4 Specific Teaching Field~~

~~1.2.4.1 A College Major in Driver Education/Traffic Safety Education or,~~

~~1.2.4.2 Completion of an approved teacher preparation program in Driver Education and Traffic Safety Education or,~~

# PROPOSED REGULATIONS

~~1.2.4.3 A minimum of 12 semester hours as indicated below:~~

~~1.2.4.3.1 Required: Driver Education — Methods and Materials — 3 semester hours, Driver Education — In-Car Training — 3 semester hours, General Safety Education — 3 semester hours.~~

~~1.2.4.3.2 Elective: 3 semester hours selected from the following:~~

~~1.2.4.3.2.1 Alcohol and/or Drug Education, \* Motorcycle~~

~~1.2.4.3.2.2 Safety Education, Psychology of Accident Prevention,~~

~~1.2.4.3.2.3 Organization/Administration/ Supervision of Safety, Driver, and/or Traffic Safety Education,~~

~~1.2.4.3.2.4 Problems in Driver/Safety Education, First Aid,~~

~~1.2.4.3.2.5 Research and Evaluation in Driver/Safety Education, Traffic Engineering, Traffic Law and Enforcement, Principles of Accident Prevention/Safety, \* Driving Simulation~~

~~1.2.4.3.2.6 Instructional Methods. \* Multiple Car and Driving Range Instructional Methods and School Transportation.~~

~~\* If assigned to teach on driver education equipment designated above, 3 semester hours of course work will be required as preparation for doing so.~~

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 The Limited Standard License may be issued upon the request of a Delaware public school for a teacher employed for this position who needs only the 3 semester hour elective course required in 1.2.5.

## **1564 Standard Certificate Driver Education and Traffic Safety Education Teacher**

### **1.0 Content:**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Driver Education and Traffic Safety Education Teacher.

### **2.0 Definitions:**

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

**“Department”** means the Delaware Department of Education.

**“License”** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**“Standard Certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Driver Education and Traffic Safety Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

#### **3.1 Professional Education.**

**3.1.1** A bachelor’s degree in any field from a regionally accredited college or university; and

**3.1.3.1** A minimum of twelve (12) semester hours of pedagogy courses, taken either as part of a degree program or in addition to it, from a regionally accredited college or university to include:

**3.1.3.1.1** Human Development;-

**3.1.3.1.2** Identifying/Treating

Exceptionalities;

**3.1.3.1.3** Effective Teaching

Strategies; and

**3.1.3.1.4** Multicultural Education; and

**3.1.3.2** A minimum of nine (9) semester hours, or equivalent in-service courses approved by the Department, as indicated below:

**3.1.3.2.1** Driver Education - Methods and Materials -3 semester hours;

**3.1.3.2.2** Driver Education - In-Car Training -3 semester hours; and

**3.1.3.2.3** Three (3) semester hours selected from the following:

**3.1.3.2.3.1** Alcohol and/or Drug Education;

**3.1.3.2.3.2** Current Issues in Driver Education;

**3.1.3.2.3.3** Organization/ Administration/Supervision of Safety, Driver, and/or Traffic Safety Education;

**3.1.3.2.3.4** Problems in Driver/ Safety Education;

**3.1.3.2.3.5** Research and Evaluation in Driver/Safety Education;

**3.1.3.2.3.6** First Aid;

**3.1.3.2.3.7** Teaching Mentally and Physically Challenged Individuals; or

**3.1.3.2.3.8** Education for Safe Living.

#### **3.2 Other Requirements.**

**3.2.1** A valid driver’s license.



3.2.2 The applicant's driving record shall not have more than five(5) points at the time of application.

3.2.3 The applicant's driver's license shall not have been suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five years and shall remain valid for the duration of the applicant's employment under this standard certificate.

---

**PROFESSIONAL STANDARDS BOARD  
14 DE Admin. Code 332**

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

**PUBLIC NOTICE**

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

**332 Certification Technology Education Teacher**

**A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 332 Certification Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding the licensure and certification of educators, and to update the course requirements for the position. There are no approved educator preparation programs in Delaware for Technology Education teachers. The requirements have been aligned with the Delaware Technology Education student content standards and the national Technology Education content standards. The regulation will be renumbered 1568 to reflect its movement to the Professional Standards Board section of the Department of Education regulations. It will also be renamed Standard Certificate Technology Education Teacher to make it consistent with other regulations for standard certificates for educators.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a

standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There

is no additional cost to local school boards for compliance with the regulation.

### ~~332 Certification Technology Education Teacher~~

Effective July 1, 1994

(Formerly Industrial Arts)

1.0 The following shall be required for the Standard license in the middle level grades and 9-12 and is valid at the elementary level (if appropriate elementary foundation courses have been successfully completed.) NOTE: Many colleges and universities are currently producing K-12 certified technology education teachers:

1.1 Bachelor's degree from an accredited college and,

1.2 Professional Education

1.2.1 Completion of an approved teacher education program in Technology Education or,

1.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Technology Education, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the appropriate level (7-12) and,

1.3 Specific Teaching Field

1.3.1 Major in Technology Education or,

1.3.2 Completion of an approved teacher education program in Technology Education or,

1.3.3 A minimum of 48 semester hours including at least two courses in each of the following technology system or equivalent areas:

1.3.3.1 Communications: Graphic Communications, Photography, Telecommunications, Electric Communications, Architectural Design, Drafting and Design, Research and Development in Communications, Audio-Video Communications, desk top Publishing, Pre-Engineering and other\*.

1.3.3.2 Physical (Product and Transportation): Electricity/Electronics, Transportation Power, Construction, Control Systems, Materials and Processes, Manufacturing Enterprise, Pre-Engineering, Alternate Energy Systems, Aviation and Aero-Space, Research and Development in Physical technology, Material and Testing Processes, Structure Design and Evaluation, Non-metallie Processes, Metallie Processes, Production Systems, and other\*.

1.3.3.3 Bio-Related: Waste Management, Fuels and Chemicals, Environment Technology, Cybernetics, Pre-Engineering, Health Care Systems, Ergonomics, Research and Development in Bio-related Technology, Bio-Technical Systems and other\*.

\*NOTE: This does not comprise an exhaustive list of possible course offerings. Other courses in these areas may be acceptable upon review.

2.0 The following shall be required for the Standard Technology Education Endorsement to the present License (for existing Industrial Arts Teachers holding a Standard or Professional Status Certificate) shall include the following components:

2.1 Introduction to Technology Education, K-12

2.2 Technology Foundations, Transfer and Assessment

2.3 Technology and Society

2.4 Current Trends and Practices In Implementing a Technology Education Program

2.5 Control Technology Systems, Computer Applications, Inventions and Innovations

3.0 The Technology Education endorsement shall be required for all current Industrial Arts certified teachers who have not completed an approved undergraduate or graduate technology education teacher preparation program by June 30, 1999.

3.1 Timeline: 5 years.

3.2 The Department of Education shall offer the endorsement courses (one time on an in-service basis) to all current Industrial Arts certified teachers. Thereafter, cooperative efforts shall be established with local and surrounding higher education institutions to offer the required endorsement courses listed in 2.0.

4.0 Licenses that may be issued for this position include Standard and Limited Standard.

4.1 The Limited Standard License may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards as set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

### 1568 Standard Certificate Technology Education Teacher

#### 1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 DelC. §1220(a), for Technology Education Teacher (Grades K-12).

#### 2.0 Definitions

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

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill,

and/or education to practice a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.

**3.0** In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Technology Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor’s degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in technology education; or

3.2 A bachelor’s degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in technology education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards with a major in technology education; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board in Technology Education; or

3.4 A bachelor’s degree in any field from a regionally accredited college or university and completion of the semester hours indicated below from a regionally accredited college or university, taken either as part of a degree program or in addition to it:

3.4.1 A minimum of twenty-four (24) semester hours in technology systems or equivalent areas, with a minimum of six (6) semester hours in each of the three areas listed below and an additional six (6) semester hours in any one of the areas listed below:

3.4.1.1 Communications (a minimum of six (6) semester hours):

3.4.1.1.1 Courses which contain the applications of communication technologies which compose, store, send, receive, and understand ideas and information.

3.4.1.2 Physical Technology Systems (a minimum of six (6) semester hours):

3.4.1.2.1 Production: Courses which contain the analysis of goals, inputs, processes, outputs, and feedback of manufacturing and construction systems.

3.4.1.2.2 Energy: Courses which contain the principles and applications of radiant and potential energy, fluid and mechanical power.

3.4.1.2.3 Transportation: Courses which contain concepts and applications of land, air, space, and sea transportation.

3.4.1.3 Bio-Related (a minimum of six (6) semester hours):

3.4.1.3.1 Courses which contain techniques and methods for managing and retrofitting bio-related systems in existing and futuristic residential, commercial, and industrial environments; and

3.4.2 A minimum of twenty-one (21) semester hours of pedagogy from a regionally accredited college or university, or equivalent in-service courses approved by the Department, to include:

3.4.2.1 Human Development;

3.4.2.2 Methods and Strategies for Teaching Technology Education;

3.4.2.3 Identifying/Treating Exceptionalities;

3.4.2.4 Effective Teaching Strategies;

3.4.2.5 Multicultural Education;

3.4.2.6 Standards-Based Technology Education in Delaware; and

3.4.2.7 Student Organizations.

---

## PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 370

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

### PUBLIC NOTICE

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

#### **370 Certification Teacher of Autistic/Severely Disabled Children**

**A. Type Of Regulatory Action Requested**  
Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 370 Certification Teacher of Autistic/Severely Disabled Children. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding the licensure and certification of educators, and to update the course requirements for the position. The regulation will be

renumbered 1571 to reflect its movement to the Professional Standards Board section of the Department of Education regulations. It will also be renamed Standard Certificate Teacher of Children with Severe Disabilities to make it consistent with other regulations for standard certificates for educators.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 Del.C. requires that we promulgate this regulation.

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

### ~~370 Certification Teacher Of Autistic/Severely Disabled Children~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License.~~

~~1.1 Bachelor's degree from an accredited college or university with a major in Special Education, Education for the Severely Disabled, or associated fields and;~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved program in the area of autism/severely disabled at either graduate or undergraduate level or;~~

~~1.2.2 Standard Delaware License Exceptional Children (Mildly and/or Moderately Disabled) and 15 semester hours relating to Autistic/Severely Disabled:~~

~~1.2.2.1 Nine semester hours required in Introduction/Survey of Autism and Severe Developmental Disabilities, Methods and Curriculum for Teaching the Autistic/Severely Disabled and Functional Communication Training.~~

~~1.2.2.2 Six semester hours from the following topic areas: Advanced Applied Behavior Analysis Adaptive Recreation Vocational Education for the Disabled, to include the Severely Disabled Transition & Community-based Programming for the Disabled, to include the Severely Disabled Preschool Education for the Disabled, to include the Severely Disabled.~~

~~1.2.3 Practicum of six semester hours of experience under supervision in a setting or settings specifically intended for the education of developmental and communication disorders. This requirement will apply only to individuals who met Standard Exceptional Children certification requirements without a student teaching experience.~~

~~2.0 The following shall be required for the Limited Standard License (not renewable)~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware Public~~

~~School District to a person who meets the requirements listed below and who is assigned as a teacher of autistic/severely disabled, to allow for the completion of the requirements for the Standard License as listed in 1.0.~~

~~2.1.1 The individual meets the base Delaware License requirements for Exceptional Children (Mildly/Moderately Disabled) and is eligible for a Standard License as stated under 1.1, 1.2, and 1.3 of the Exceptional Children License or;~~

~~2.1.2 The individual has a current, valid Delaware teaching License in the area of Exceptional Children (Mildly/Moderately Disabled) or;~~

~~2.1.3 The individual is eligible for a Standard Delaware License in the area of Exceptional Children (Mildly/Moderately Disabled) through the Interstate Reciprocity or National/Regional Accreditation systems or;~~

~~2.1.4 The individual is considered eligible for a Limited Standard License if successful completion of the Pre-Professional Skills Tests is the only requirement necessary or;~~

~~2.1.5 The individual is considered eligible for a Limited Standard License if the only requirement to be met is six semester hours refresher course work for certification in any area of Exceptional Children or renewal of a Delaware License in any area of exceptionalities.~~

### 3.0 Present Autistic Teachers Protected

~~3.1 Those teachers authorized prior to March 28, 1974, to teach classes for children with autism on the basis of Standard Elementary or Secondary Teaching Licenses, and who have the continued recommendation of the local district superintendent, shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a license transferable to any other school district. If re-assignment out of autism occurs, the new requirements for Autistic/Severely Disabled must be met upon re-entry into any autistic/severely disabled position.~~

~~3.2 Those teachers authorized since January 1982 to teach classes for children with autism on the basis of a Standard Teacher of the Autistic Child License, shall be authorized to continue in such a teaching assignment, as well as to be authorized for a teaching assignment with severely disabled children.~~

~~3.3 Anyone holding a Limited Standard License issued previously and based on the 1/82 certification requirements for "Teacher of the Autistic Child" shall be allowed to complete those requirements, if on schedule. Should it seem advantageous to be re-evaluated based on the 7/90 requirements, such may be requested; however, the total time for the Limited Standard License will remain as on the original license.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

### **1571 Standard Certificate Teacher of Students with Autism or Severe Disabilities**

#### **1.0 Content:**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for a Teacher of Students with Autism or Severe Disabilities (Valid Grades K-12).

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

"Department" means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Autism or Severe Disabilities to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:**

3.1 A bachelor's or a master's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities; or

3.2 A bachelor's or a master's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 A bachelor's or master's degree from a regionally accredited college or university with a major in special education; and

3.3.1 A minimum of fifteen (15) graduate credits in the areas of autism or severe disabilities from a regionally accredited college or university, as more specifically set forth in 3.3.1.1 through 3.3.1.5. With approval of a Committee comprised of the candidate's principal or other designated school administrator, the State

Director of Autism Programs, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.

3.3.1.1 Introduction/Survey of Autism and Severe Developmental Disabilities;

3.3.1.2 Methods of Instruction and Functional Curriculum for Students with Autism/Severe Disabilities;

3.3.1.3 Functional Communication Training;

3.3.1.4 Advanced Practicum in Behaviorally Based Teaching Techniques; and

3.3.1.5 One elective chosen from among the following. To be considered as an elective for certification, a course must specifically reference students with autism and/or severe disabilities in the title, catalog description, or syllabus and address an area known to be of critical importance to students with autism and/or severe disabilities:

3.3.1.5.1 Medical Aspects of Severe and Profound Disabilities;

3.3.1.5.2 Consultation and Collaboration;

3.3.1.5.3 Assistive Technology;

3.3.1.5.4 Augmentative

3.3.1.5.5 Evaluation and Assessment for Students with Significant Needs;

3.3.1.5.6 Seminar in Families and

Autism;

3.3.1.5.7 Transition from Secondary

Special Education;

3.3.1.5.8 Adaptive Recreation; or

3.3.1.5.9 Vocational Training and

Assessment: Severe Disabilities; or

3.3.1.5.10 Education of Students with Severe Disabilities/ Sensory Impairments.

#### **4.0 Present Teachers of Students with Autism or Severe Disabilities Protected**

4.1 The Department shall recognize a Standard Teacher of the Autistic Child Standard or Professional Status Certificate issued by the Department between January 1, 1982 and August 31, 2005, if otherwise valid. A teacher holding a Standard Teacher of the Autistic Child Standard or Professional Status Certificate issued between January 1, 1982 and August 31, 2005 shall be considered certified to teach classes for children with autism and/or severe disabilities.

## PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1528

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

### PUBLIC NOTICE

#### Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)

#### **1528 Standard Certificate Foreign Language Teacher Comprehensive**

#### **A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1528 Standard Certificate Foreign Language Teacher Comprehensive. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to update the course requirements for the position, and to provide more appropriate options for native speakers to seek certification, while, at the same time, documenting their competence in the spoken and written language they seek to teach. References to foreign languages have been changed to world language to reflect contemporary practice around language instruction. The regulation will be renamed Standard Certificate World Language Teacher to reflect the change in terminology.

#### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

### **~~1528 Standard Certificate Foreign Language Teacher Comprehensive~~**

#### **1.0 Content**

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher Comprehensive (Grades K-12).~~

#### **2.0 Definitions**

~~2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~“**Department**” means the Delaware Department of Education.~~

~~“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Foreign Language Teacher Comprehensive to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Bachelor's degree from a regionally-accredited college or university and,~~

#### ~~3.2 Professional Education~~

~~3.2.1 Completion of an approved teacher education program in Elementary and Secondary Foreign Language Teaching in the language to be taught; or,~~

~~3.2.2A minimum of 27 semester hours to include Human Development, Methods of Teaching Foreign Language (methods courses to include second language acquisition); Identifying and Treating Exceptionalities; Effective Teaching Strategies; Multicultural Education; Second Language Assessment and Testing; Curriculum and Material Design; and,~~

~~3.2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,~~

~~3.2.4 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,~~

~~3.2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board and an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.\*~~

~~\* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within~~

~~three years. Through 3.3.4 an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.~~

~~4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher Comprehensive after that date must comply with the requirements set forth in ~~14 DE Admin. Code~~ 1516.~~

## 1528 Standard Certificate World Language Teacher Comprehensive

### 1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for World Language Teacher Comprehensive (Grades K-12).

### 2.0 Definitions

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

**“Department”** means the Delaware Department of Education.

**“License”** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**“Major or Its Equivalent”** means a minimum of thirty (30) semester hours of course work in a particular content area.

**“Standard Certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**“State Board”** means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a World Language Teacher Comprehensive to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the world language for which a Standard Certificate is sought; or

3.2 A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the world-language for which a Standard Certificate is sought, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 A bachelor's degree from a regionally accredited college or university, with a major in any field, and passage of the appropriate PRAXIS™ II tests approved by the Standards Board and the State Board in the world language for which a Standard Certificate is sought; or

3.4 A bachelor's degree from a regionally accredited college or university, with a major in any field; and

3.4.1 Where no PRAXIS II test is available, nationally recognized equivalent tests, such as the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing Proficiency Test, may be substituted, in conjunction with completion of the courses set forth in 3.4.2 and 3.4.3 below. For tests of languages using a Roman alphabet, candidates are required to achieve an Advanced Low Level on the oral skills and an Advanced Low Level on the writing skills based on the ACTFL Proficiency Guidelines. For tests of languages using a non-Roman alphabet, an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines are required; and

3.4.2 A minimum of twelve (12) semester hours of language pedagogy courses from a regionally accredited college or university, taken either as part of a degree program or independent of it, to include at least three (3) credits in each of the following:

3.4.2.1 Standards and Approaches in Teaching World/Second Language;

3.4.2.2 Second Language Acquisition

3.4.2.3 Assessment and Testing in Second

Languages;

3.4.2.4 Curriculum Design and Classroom Management for World /Second Language; and

3.4.3 A minimum of three (3) semester hours of general education courses from a regionally accredited college or university, taken either as part of a degree program or independent of it, chosen from among the courses listed below:

3.4.3.1 Human Development/Educational Psychology;

3.4.3.2 Identifying and Treating Exceptionalities;

3.4.3.3 Multicultural Education/ International Education.



**PROFESSIONAL STANDARDS BOARD**  
14 DE Admin. Code 1529  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))

**PUBLIC NOTICE**

**REPEAL OF REGULATION**

**1529 Standard Certificate Foreign Language Teacher  
Secondary**

**A. Type Of Regulatory Action Requested**

Repeal

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 DE Admin. Code 1529 Standard Certificate Foreign Language Teacher Secondary. It is necessary to repeal this regulation as its content has been incorporated into a comprehensive standard certificate which is valid for grades kindergarten through 12.

~~1529 Standard Certificate Foreign Language Teacher  
Secondary~~

**1.0 Content:**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Foreign Language Teacher Secondary (required in grades 9-12, and valid in grades 5-8 in a middle level school).

~~7 DE Reg. 775 (12/1/03)~~

**2.0 Definitions**

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

**"Department"** means the Delaware Department of Education.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

~~7 DE Reg. 775 (12/1/03)~~

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Foreign Language Teacher Secondary to an applicant who holds a valid

~~Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Bachelor's degree from an regionally accredited college or university and,~~

~~3.2 Professional Education~~

~~3.2.1 Completion of an approved teacher education program in the language to be taught or,~~

~~3.2.2A minimum of 24 semester hours to include Human Development, Methods of Teaching Foreign Language, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, Second Language Assessment and Testing, Curriculum and Material Design; and~~

~~3.2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\*<sup>\*</sup>; or,~~

~~3.2.4 Minimum of up to 30 semester hours above the intermediate level for the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher holds 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\*<sup>\*</sup>; or,~~

~~3.2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board and, an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively\*<sup>\*</sup>.~~

~~\* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.~~

~~7 DE Reg. 775 (12/1/03)~~

~~8 DE Reg. 80 (7/1/04)~~

~~4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher Secondary after that date must comply with the requirements set forth in 14 Del.C. §1516.~~

~~7 DE Reg. 775 (12/1/03)~~

## PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1533

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

## PUBLIC NOTICE

## REPEAL OF REGULATION

**1533 Standard Certificate Foreign Language Teacher  
Elementary****A. Type Of Regulatory Action Requested**

Repeal

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 DE Admin. Code 1533 Standard Certificate Foreign Language Teacher Elementary. It is necessary to repeal this regulation as its content has been incorporated into a comprehensive standard certificate which is valid for grades kindergarten through 12.

**1533 Standard Certificate Foreign Language Teacher  
Elementary**

## 1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Foreign Language Teacher Elementary (required in grades K-6, and valid in grades 7-8 in a middle level school).

7-DE Reg. 775 (12/1/03)

## 2.0 Definitions

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

**"Department"** means the Delaware Department of Education.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

7-DE Reg. 775 (12/1/03)

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Foreign Language

Teacher Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally-accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary Education/Foreign Language in the language to be taught or;

3.2.2 Completion of an approved teacher education program in elementary education and;

3.2.2.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language Acquisition and;

3.2.2.2 Demonstrated knowledge of the culture in which the language is spoken natively including significant personal connection with that culture through life or work experience or appropriate course work in the culture; or;

3.2.3 Completion of an approved secondary teacher education program in the language to be taught and;

3.2.3.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language acquisition and;

3.2.3.2 A minimum of 24 semester hours to include Child/Human Development, Methods of Teaching Foreign Language at the Elementary School Level including Second Language Acquisition, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and;

3.3 Specific Teaching Field

3.3.1 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or;

3.3.2 Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or;

3.3.3 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or;

3.3.4 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II

tests in that language, as adopted by the Standards Board and the State Board, and an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively\*.

~~\*Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.~~

~~7 DE Reg. 775 (12/1/03)~~

~~8 DE Reg. 80 (7/1/04)~~

~~4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher - Elementary after that date must comply with the requirements set forth in 14 Del.C. §1516.~~

~~7 DE Reg. 775 (12/1/03)~~

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)c (16 Del.C. §122)(3)c)

#### **PUBLIC NOTICE**

#### **4462 Public Drinking Water Systems**

These proposed regulations, "Regulations Governing Public Drinking Water Systems," will replace by revision the current "Regulations Governing Public Drinking Water Systems," previously adopted May 14, 1971 and most recently amended July 10, 2003.

#### **Nature Of Proceedings**

The Department is proposing amendments to the Regulations Governing Public Drinking Water Systems. A summary of those amendments and amended regulations are attached below.

#### **Notice Of Public Hearing**

The Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing

Public Drinking Water Systems." The public hearing will be held on July 26, 2005 at 1:00 p.m. in room 107, University of Delaware Paradee Center, 69 Transportation Circle, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 Bay Road  
Dover, DE 19901  
Telephone: (302) 741-8630

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by July 25, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by July 31, 2005 to:

David Walton, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903  
Fax 302-739-6659

#### **Summary of Changes to Regulations Governing Public Drinking Water Systems**

- Elimination of Exemption and Variance provisions in lieu of the Bilateral Compliance Agreement process with water system.
- Requiring submission of as-built plans as requirement for obtaining final approval to operate a water system.
- Clarifying the requirement that daily testing is required when treatment is provided.
- Deleting the Maximum Contaminant Level (MCL) and associated requirements for Aldicarb, Aldicarb sulfone and Aldicarb sulfoxide. EPA has not established a MCL for these contaminants.
- Adding Approved Sampler/Tester requirements. Requirements to become effective January 1, 2006.
- Adopting Long Term 1 Enhanced Surface Water Treatment Rule (LT1) requirements. Includes minor changes to Public Notice section.
- Adding requirement in public notices tiers that the Division has the discretion to require more stringent notification requirements.
- Changing date the Consumer Confidence Report (CCR) certification must be provided to the Division.

- Adopting CCR waiver for small systems. This will allow automatic waiver instead of requiring system to apply each year.
- Incorporating corrections identified by EPA in their review.
- Completing adoption of all analytical methods for Secondary Maximum Contaminant Levels (SMCL) by reference.
- Adding failure to have a certified operator as Tier 3 public notice.

**\*PLEASE NOTE: DUE TO THE SIZE OF THE PROPOSED REGULATION, IT IS NOT BEING PUBLISHED HERE. TO OBTAIN A COPY, CONTACT EITHER THE DEPARTMENT OF PUBLIC HEALTH OR THE REGISTRAR'S OFFICE.**

**PDF Version (Adobe Acrobat Reader required)**

**HTML Version**

---

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Food Stamp Program 9059 Income Exclusions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to income exclusions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

### SUMMARY OF PROPOSED CHANGE

#### **Citation**

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707)

#### **Summary of Proposed Change**

Disaster Unemployment Assistance received by individuals who suffered a job loss or were unemployed due to a recent disaster is not counted as income or as a resource for food stamp purposes.

#### **DSS PROPOSED REGULATION #05-32 REVISION:**

#### **9059 Income Exclusions**

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.

2. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E.

3. Other third party payments. Other third party payments shall be handled as follows: Monies legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:

- a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

b) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

c) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a court-ordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

a) A court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income.

b) A civil service retiree is entitled to a retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

4. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

5. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

6. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

7. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

8. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 a quarter.

C. Grants, Loans and Scholarships - Do not count educational financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income. Exclude any other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.

D. All loans, including loans from private individuals as well as commercial institutions.

E. Reimbursements for past or future expenses, to the extent that they do not exceed actual expenses, and do not represent a gain or benefit to the household.

Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense will be counted as income. However, reimbursements will not be

considered to exceed actual expenses, unless the provider or the household indicates that the amount is excessive.

Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

Reimbursements or flat allowances for job or training related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded, as are maintenance funds provided to VR clients for uniforms, supplies, etc.

Reimbursement for out-of-pocket expenses of volunteers incurred in the course of their work.

Medical or dependent care reimbursements.

Reimbursements received by households to pay for a service provided under Title XX of the Social Security Act.

Do not consider the following as excludable reimbursements:

No portion of benefits provided under Title IVA of the Social Security Act, (TANF) to the extent such benefit is attributed to an adjustment for work related or child care expenses, will be considered excludable under this provision.

No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

F. Monies received and used for the care and maintenance of a thirdparty beneficiary who is not a household member.

If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member will be excluded. If the nonhousehold member's portion cannot be readily identified, the payment must be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's prorata share or the amount actually used for the non household member's care and maintenance, whichever is less.

G. The earned income of a student under age 18 who attends elementary or secondary school or classes to obtain a GED at least half-time and lives with a natural, adoptive or step parent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or step parent.

This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount

of work performed cannot be differentiated from that of other household members, prorate the total earnings equally among the working members. The child's prorata share is excluded.

H. Money received in the form of a nonrecurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, cash assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a non-recurring lump-sum payment if the payment is not defined as assistance. (All TANF diversion payments are excluded.) These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be nonrecurring lump sum payments.

I. The cost of producing selfemployment income (See DSSM 9074.4).

J. Any income that is specifically excluded by any other Federal law from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

#### PART A -- GENERAL

1. P. L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P. L. 94-105, provides that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

This law authorizes the School Lunch Program, the Summer Food Service Program for Children, the Commodity Distribution Program, and the Child and Adult Care Food Program. Note that the exclusion applies to assistance provided to children rather than that paid to providers.

2. P. L. 89-642, the Child Nutrition Act of 1966, Section 11(b), provides in part that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not

limited to, laws relating to taxation, welfare, and public assistance programs.

This law authorizes the Special Milk Program, the School Breakfast Program, and the Special Supplemental Food Program for women, infants, and children (WIC).

3. P. L. 91-646, Section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded from income and resources.

4. P. L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, as amended.

Payments under Title I of that Act, including payments from such Title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program, to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a Vista or other Title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contraction in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

Payments to volunteers under Title II, including the Retired Senior Volunteer Program (RSVP), Foster Grandparents Program and Senior Companion Program, are excluded from income.

5. P. L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P. L. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for food stamp purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by States, local governments, and disaster assistance organizations.

A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to

save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency is not excluded under this provision.

6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received under the Summer Youth Employment and Training Program. This means that currently only on-the-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.

7. P. L. 99-425, Section (e), the Low-Income Home Energy Assistance Act, 9/30/86. The amount of any home energy assistance payments or allowances provided directly to, or indirectly on behalf of, a household is excluded from income and resources. In determining any excess shelter expense deduction, the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses.

8. P. L. 99-498, the Higher Education Act Amendments of 1986, Section 479B, as amended by P. L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs were excluded from income and resources.

P. L. 102-325, the Higher Education Amendments of 1992, dated 7/23/92, contain two separate provisions that affect the treatment of payments made under the Higher Education Act. In regard to Title IV-- Student Assistance, Part F, Section 479B provides that:

Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Student assistance authorized under Title IV includes the following: (State and local agencies select students for some of these programs. In addition, some State and local agencies have separate programs of their own with similar names.)

- Basic Educational Opportunity Grants (BEOG or Federal Pell Grants)
- Presidential Access Scholarships (PAS-Super Pell Grants)
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- State Student Incentives Grants (SSIG)
- Federal Direct Student Loan Programs (FDSLPL) (Formerly GSL and FFELP):
  - Federal Direct Supplemental Loan Program (provides loans to students)
  - Federal Direct PLUS Program (provides loans to parents)
  - Federal Direct Stafford Loan Program
  - Federal Direct Unsubsidized Stafford Loan Program, and
  - Federal Consolidated Loan Program
  - Federal Perkins Loan Program - Direct loans to students in institutions of higher education (Perkins Loans, formerly NDSL)
  - Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act.)
  - TRIO Grants (Go to organizations or institutions for students from disadvantaged backgrounds):
    - Upward Bound (Some stipends go to students)
  - Student Support Services
  - Robert E. McNair Post-Baccalaureate Achievement Program
  - Robert C. Byrd Honors Scholarship Program
  - College Assistance Migrant Program (CAMP) for students whose families are engaged in migrant and seasonal farm work
    - High School Equivalency Program (HEP)
    - National Early Intervention Scholarship and Partnership Program (NEISP).

There is only one BIA student assistance program per se. It is the Higher Education Grant Program, which is sometimes called the Scholarship Grant Program. However, education or training assistance received under any BIA program must be excluded. There is an Adult Education Program that provides money to adults to get a GED, attend technical schools, and for job training. There is also an employment assistance program. In addition, education and training may be made available under separate programs like the Indian Child and Family Programs. Each tribe has a BIA

agency that may be contacted for more information about education and training assistance.

Section 480(b) provides that:

The changes made in part F of title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

Title XIII, Indian Higher Education Programs, Part E--Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act), Section 1343(c) provides in part that:

... for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other Federal law, and may not penalize students in determining eligibility for other funds.

The Part E exclusion was effective October 1, 1992.

P. L. 98-524, the Carl D. Perkins Vocational Education Act, Section 507, as amended by P. L. 101-392, 9/25/90, Sections 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board). This provision was effective July 1, 1991. The programs under this Act include the following:

- Indian Vocational Education Program
- Native Hawaiian Vocational Education Program
- State Vocational and Applied Technology Education Program which contains the:
  - State Program and State Leadership Activities
  - Program for Single Parents, Displaced Homemakers, and Single Pregnant Women
  - Sex Equity Program
  - Programs for Criminal Offenders
  - Secondary School Vocational Education Program
  - Postsecondary and Adult Vocational Education Program
  - State Assistance for Vocational Education Support Programs by Community-Based Organizations
  - Consumer and Homemaking Education Program
  - Comprehensive Career Guidance and Counseling Program
  - Business-Labor-Education Partnership for Training Program
  - National Tech-Prep Education Program
  - State-administered Tech-Prep Education Program



- Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities
- Community Education Employment Centers Program
- Vocational Education Lighthouse Schools Program
- Tribally Controlled Postsecondary Vocational Institutions Program
- Vocational Education Research Program
- National Network for Curriculum Coordination in Vocational and Technical Education
- National Center or Centers for Research in Vocational Education
- Materials Development in Telecommunications Program
- Demonstration Centers for the Training of Dislocated Workers Program
- Vocational Education Training and Study Grants Program
- Vocational Education Leadership Development Awards Program
- Vocational Educator Training Fellowships Program
- Internships for Gifted and Talented Vocational Education Students Program
- Business and Education Standards Program
- Blue Ribbon Vocational Education Program
- Educational Programs for Federal Correctional Institutions
- Vocational Education Dropout Prevention Program
- Model Programs of Regional Training for Skilled Trades
- Demonstration Projects for the Integration of Vocational and Academic Learning Program
- Cooperative Demonstration Programs
- Bilingual Vocational Training Program
- Bilingual Vocational Instructor Training Program
- Bilingual Materials, Methods, and Techniques Program

(Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.)

Section 5(d)(3) of the Food Stamp Act, as amended by P. L. 101-624, Food, Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P. L. 102-237, Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Section 903, provides that educational monies are excluded from income:

- when they are awarded to a person enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof,

- to the extent that they do not exceed the amount used for or made available as an allowance determined by such school, institution, program, or other grantor, for tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses), of the student incidental to attending such school, institution, or program, and

- to the extent loans include any origination fees and insurance premiums.)

9. P. L. 99-576, Veterans' Benefits Improvement and Healthcare Authorization Act of 1986, Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans' Educational Act of 1984 (GI Bill) provides that any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty and Section 1412 refers to basic educational assistance entitlement for service in the Selected Reserve. (Section 216 of P. L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.)

10. P. L. 100-175, Section 166, Older Americans Act, 11/29/87. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act are excluded from income. Each State and eight organizations receive Title V funds. The organizations that receive some Title V funds are as follows:

- Green Thumb
- National Council on Aging
- National Council of Senior Citizens
- American Association of Retired Persons
- U.S. Forest Service
- National Association for Spanish Speaking

Elderly

- National Urban League
- National Council on Black Aging

11. P. L. 100-242, Section 126(c)(5)(A), 11-6-87, The Housing and Community Development Act of 1987, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126.

Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 additional locations. The affected regional offices will be contacted individually regarding these projects.

12. P. L. 100-383, section 105(f)(2), Wartime Relocation of Civilians, 8/10/88 (the Civil Liberties Act of 1988). Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof Islands and the Aleutian Islands West of Unimak Island are excluded from income and resources.

13. P. L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966. Under WIC demonstration project, food stamp benefits that may be exchanged for food at farmers' markets are excluded from income and resources.

14. P. L. 101-201, Agent Orange Compensation Exclusion Act, 12/6/89. All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income and resources retroactive to January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

P. L. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the Food Stamp Program.

(Note: P. L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to agent orange. Most of the eligible veterans received a lump sum payment for retroactive benefits due them, followed by regular monthly payments. The lump sum payment is excluded as income but the subsequent monthly payments are counted as unearned income. These payments from the Department of Veterans Affairs are issued by the U.S. Treasury. These VA payments are not excluded by law.)

P. L. 101-426, Section 6(h)(2), the Radiation Exposure Compensation Act, dated October 15, 1990, excludes payments made under this public law from food stamp income and resources.

16. P. L. 101-508, 11/5/90, the Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b) provides that any Federal earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its

receipt and the following month. This provision was effective with taxable years beginning after December 31, 1990.

The September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.

17. P. L. 101-610, Section 177(d), 11/16/90, National and Community Service Act (NCSA) of 1990, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. See item 6 above for the JTPA income exclusion. Title I includes three Acts: (1) Serve-America: The Community Service, Schools and Service-Learning Act of 1990, (2) the American Conservation and Youth Service Corps Act of 1990, and (3) the National and Community Service Act. There are about 47 different NCSA programs, and they vary by State. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this Title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a \$1000 post-service educational award. The National and Community Service Trust Act of 1993, P.L. 103-82, 9/23/93, amended the National and Community Services Act of 1990 but it did not change the exclusion.

18. P.S. 101-625, section 22(i), Cranston-Gonzales National Affordable Housing Act, dated 11/28/90 (42 USCS 1437t(i)) provides that,

(i) Treatment of Income - No service provided to a public housing resident under this section [Family Investment Centers] may be treated as income for purposes of any other program or provision of State or Federal law.

This exclusion applies to services such as child care, employment training and counseling, literacy training, computer skills training, assistance in the attainment of certificates of high school equivalency and other services. It does not apply to wages or stipends.

This same public law, Section 522(i)(4), excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, Illinois, and 3 other locations. The affected

regional offices will be contacted individually regarding these projects.

19. P. L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.

20. P. L. 102-586, signed 11/4/92, Section 8, amended the Child Care and Development Block Grant Act Amendments of 1992 by adding a new Section 658S to exclude the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter from income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. (These payments are made under the Social Security Act, as amended.)

21. P. L. 103-286, dated 8/1/94, Section 1 (a) provides in part that:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

22. P. L. 103-322, section 230202, dated 9/13/94, amended Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that:

(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income and resources for food stamp purposes.

23. P. L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or makes contributions into such an account.

24. P.L. 104-204, section 1804(d), dated 9/26/96 provides that:

Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

A monthly allowance (from \$200 - \$1200) is paid to a child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child.

25. Public Law 100-707 authorizes the President, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, to pay Disaster Unemployment Assistance to any individual unemployed as a result of a major disaster. Individuals cannot be eligible for any other unemployment compensation and also receive disaster unemployment benefits. Benefits are limited to 26 weeks.

Disaster unemployment assistance is considered Federal major disaster and emergency assistance under the Stafford Act. It cannot be considered as income or as a resource when determining Food Stamp Program benefits.

Staff needs to verify the source of the unemployment income only if the client suffered a job loss or was unemployed due to a recent disaster.

#### Part B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

1. P. L. 92-203, section 29, dated 1/2/76, the Alaska native Claims Settlement Act, and Section 15 of P. L. 100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 - All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.

2. 25 USCA 640-d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS § 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

3. 25 USCS 1407 Judgment Funds (as amended by P. L. 93-134 and P. L. 97-458) provides that:

None of the funds [appropriated in satisfaction of judgements of the Indian Claims and Commission or Claims Court in favor of any Indian tribe, band, etc.] which--

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act [25 USCS §§ 1401 et seq.], or

(2) on the date of enactment of this Act [enacted Jan. 12, 1983], are to be distributed per capita or are held in trust pursuant to a plan approved by Congress prior to the date of enactment of this Act [enacted Jan. 12, 1983], or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act [enacted Jan. 12, 1983], and any purchases made with such funds, including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 USCS § 301 et seq.] or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program.

The \$2,000 amount applies to each payment made to each person. Initial purchases made with exempt payments distributed between January 1, 1982 and January 12, 1983, are excluded from resources to the extent that excluded funds were used.

3. P. L. 98-64, 8/2/83, applied the exclusion in 25 USCS 1407 to per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions) for an Indian tribe. (Per capita payments may be authorized for specific tribes under other public laws.)

4. 25 USCS 1408 (as amended by P. L. 93-134, P. L. 97-458, and P. L. 103-66, Section 13736, 10/7/93) provides that interests of individual Indians in trust or restricted lands shall not be considered a resource and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued from the funds in trust or the restricted lands. The exclusion applies to each individual Indian than has an interest. The income exclusion applies for both eligibility and benefit level purposes for food stamp purposes. The income exclusion applies to calendar years.

5. P. L. 93-531, section 22 - Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.

6. P. L. 94-114, section 6, 10/17/75 - Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

Bad River Band of the Lake Superior Tribe of

Chippewa Indians of Wisconsin  
Blackfeet Tribe  
Cherokee Nation of Oklahoma  
Cheyenne River Sioux Tribe  
Crow Creek Sioux Tribe  
Lower Brule Sioux Tribe  
Devils Lake Sioux Tribe  
Fort Belknap Indian Community  
Assiniboine and Sioux Tribes  
Lac Courte Oreilles Band of Lake Superior  
Chippewa Indians  
Keweenaw Bay Indian Community  
Minnesota Chippewa Tribe  
Navajo Tribe  
Oglala Sioux Tribe  
Rosebud Sioux Tribe  
Shoshone-Bannock Tribes  
Standing Rock Sioux Tribe

7. P. L. 94-189, Section 6, 12/31/75 - Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83, and 95.

8. P. L. 94-540 - Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.

9. P. L. 95-433, section 2 - Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.

10. 25 USCS 1931 Indian Child Welfare (P. L. 95-608, 11/8/78), subparagraph (a) provides for child and family service grant programs on or near reservations in the preparation and implementation of child welfare codes. Such programs may include, but are not limited to, family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; home improvement; the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters; and education and training of Indians; including tribal court judges and staff, in skills relating to child and family assistance and service programs. Subparagraph (b) provides that assistance under 25 USCS 1901 et seq. shall not be a basis for the denial or reduction of any assistance otherwise authorized under any federally assisted programs. (Similar off-reservation programs are authorized by 25 USCS 1932. We have asked the Office of General Counsel if the exclusion applies to these programs.)

11. P. L. 96-420, section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 - Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.

12. P. L. 97-403 - Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.

13. P. L. 97-408 - Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.

14. P. L. 98-123, Section 3, 10/13/83 - Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.

15. P. L. 98-124, Section 5 - Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Balknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.

16. P. L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources nor otherwise used to reduce or deny food stamp benefits except for per capita shares in excess of \$2,000.

17. P. L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Dockets Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Michigan:

Keweenaw Bay Indian Community (L'Anse,  
Lac Vieux Desert, and Ontonagon Bands)

Wisconsin:

Bad River Reservation  
Lac du Flambeau Reservation  
Lac Courte Oreilles Reservation  
Sokaogon Chippewa Community  
Red Cliff Reservation  
St. Croix Reservation

Minnesota:

Fond du Lac Reservation  
Grand Portage Reservation  
Nett Lake Reservation (including Vermillion  
Lake and Deer Creek)  
White Earth Reservation

Under dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of

Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

18. P. L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.

19. P. L. 99-346, Section 6(b)(2) - Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.

20. P. L. 99-377 - Section 4(b), 8/8/86, - Funds distributed per capita to the Chippewas of the Mississippi or held in trust under this Act are excluded from income and resources. The judgements were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.

21. P. L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets, or income from the trust fund established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program. (The Puyallup Tribe is located in the State of Washington.)

22. P. L. 101-277, 4/30/90, funds appropriated in satisfaction of judgements awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of \$2,000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida.

23. P. L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated November 3, 1990, provides that none of the payments, funds or distributions authorized, established, or directed from this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

24. P.L. 103-436, 11/2/94, Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Section 7(b), provides that payments made pursuant to that Act are totally excluded from income and resources for food stamps purposes.

K. Energy Assistance as follows:

(a) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than Part A of Title IV of the Social Security Act, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or

(b) A one-time payment or allowance applied on an as needed basis and made under a Federal or State law for the costs of weatherizing or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down payment followed by a final payment upon completion of the work will be considered a one-time payment for the purposes of this provision.

Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.

L. Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.

M. Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

N. Any payment made to an E & T participant for costs that are reasonably necessary and directly related to participation in the E & T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home.

O. Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with DSSM 9013.3.

P. Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS). The income set aside for this special PASS account is excluded for income purposes.

Q. Marines living on base in adequate quarters are not entitled to receive a Basic Allowance for Quarters (BAQ) even though the amount is listed under entitlements and a deduction is shown for the same amount under deductions on the Leave and Earnings Statement (LES). For these cases the BAQ is disregarded under the entitlement and deduction

sections when verified. Staff must advise applicants to get a letter from their commanding officer stating that the LES is incorrect, the applicant is not entitled to the BAQ and does not receive it.

R. In HUD's Family Self-Sufficiency (FSS) Program, participants sign a contract to achieve economic independence within five years. As the participant's employment income rises, a portion of the rent increases they would normally be charged would be waived. The amount waived will be credited to an escrow account to be given to the family at the end of the program.

The participating household must fulfill its employment obligation under the contract or HUD may terminate the FSS supportive services. The family will then forfeit any escrow account funds.

While the funds are in the FSS Escrow Account, they are totally unavailable to the household and excluded as a resource. When the household achieves economic independence and is given the escrow account, the money will be excluded as income as a nonrecurring lump-sum payment.

S. The earnings of temporary census workers from the Bureau of Census is not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000.

---

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Long Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Title XIX Medicaid State Plan and the rules in the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal reduces the minimum community spouse resource allowance to the federal standard.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program

Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

**SUMMARY OF THE PROPOSED CHANGE**

**Citations**

- 1924 (c)(3)(c) of the Social Security Act
- 1924(f)(2)(A) of the Social Security Act
- 42 USC 1396r-5
- State Medicaid Manual Sections 3260.1 and 3262

**Amending the Following Sections**

- Title XIX Medicaid State Plan: Attachment 2.6-A, Page 26a (New Page) and Supplement 13 to Attachment 2.6-A
- Division of Social Services Manual (DSSM): 20910.10 and 20950

**Background**

In 1988, Congress enacted provisions to prevent what has come to be called “spousal impoverishment”, which can leave the spouse who is still living at home in the community with little or no income or resources. Within certain limitations, these provisions help ensure that this situation will not occur and that community spouses are able to live out their lives with independence and dignity.

The spousal impoverishment provisions apply when one member of a couple enters a nursing facility or other medical institution and is expected to remain there for at least 30 days.

States decide on a minimum amount of couples’ combined countable resources necessary for community spouses to maintain themselves in the community. The minimum and maximum amounts are increased each calendar year after 1989 by the same percentage as the percentage increase in the Consumer Price Index between September 1988 and the September before the calendar year involved.

Effective January 1, 2005, the Medicaid spousal impoverishment standards for 2005 are as follows:

- Minimum Community Spouse Resource Standard - \$19, 020.00;
- Maximum Community Spouse Resource Standard - \$95, 100.00;
- Maximum Monthly Maintenance Standard - \$2,377.50; and,
- The minimum monthly maintenance standard

remains \$1,561.25 until July 1, 2005.

**Summary of Proposed Change**

Reduce the State minimum spousal resource allowance from \$25,000.00 to the federal standard (\$19,020.00 for the current fiscal year). The calculation of spousal resources will now be divided when the total countable resources exceeds \$19,020.00. Previously, resources were not divided unless the total exceeded \$25,000.00.

**DSS PROPOSED REGULATION #05-34a**

Revision:HCFA-PM- (MB) Attachment 2.6-A  
Page 26a (NEW PAGE)

**Citation**

1924 of the Act

**Condition or Requirement**

15. The agency complies with the provisions of §1924 with respect to income and resource eligibility and post eligibility determinations for individuals who are expected to be institutionalized for at least 30 consecutive days and who have a spouse living in the community. When applying the formula used to determine the amount of resources in initial eligibility determinations, the State standard for community spouse is:

the maximum standard permitted by law;

X the minimum standard permitted by law.

Revision:HCFA-PM- Supplement 13 to Attachment 2.6-A

**Section 1924 Provisions**

a. Income and resource eligibility policies used to determine eligibility for institutional spouses who have a community spouse living in the community are consistent with Section 1924 of the Act.

b. In determination of resource eligibility the state minimum resource standard is ~~\$25,000 in accordance with~~

# PROPOSED REGULATIONS

~~State Senate Bill 99, effective 10/1/93~~ the minimum standard allowed by Federal law.

c. The acknowledgement of undue hardship follows:

An institutionalized spouse who (or whose Spouse) has excess resources shall not be find ineligible under Title XIX of the Social Security Act, per section 1924(c)(3)(C), where the State determines that denial of eligibility on the basis of having excess resources would work an undue hardship.

## DSS PROPOSED REGULATION #05-34b REVISIONS:

### 20910.10 Community Spouse Resource Allowance

The community spouse resource allowance is the amount of resources equal to whichever is greater:-

~~\$25,000.00 (current state spousal share)~~ the minimum resource allowance

OR

1/2 of the value of the couple's combined countable resources as of the beginning of the first continuous period of institutionalization on or after 9/30/89, but no more than current maximum resource allowance determined by Federal law.

The minimum and maximum resource allowances increase on January 1 of each year by Federal law. Delaware Senate Bill 99 increased the minimum resource allowance from \$14,148 to \$25,000 for applications filed on or after 10/1/93. Effective 7/1/05, Delaware will use the minimum standard allowed by Federal Law.

If the share belonging to the spouse in the community is less than ~~\$25,000~~ the minimum spousal resource allowance, the institutionalized spouse's resources are deemed available to the community spouse to bring the community spouse's resources up to ~~\$25,000~~ the minimum spousal resource allowance for initial eligibility determinations. Any amount above the Maximum Resource Allowance determined by Federal law is considered available to the institutionalized spouse for the purpose of Medicaid eligibility determination.

(Break In Continuity of Sections)

### 20950 Initial Eligibility Determinations

Determine couples' combined countable resources for the month of application. Deduct from the couples' countable resources owned at the time of application a protected amount which is the greater of the following amounts:

the community spouse resource allowance (provided it does not exceed the maximum)

OR

~~the current State spousal share (\$25,000)~~ minimum spousal resource allowance

Compare the remaining resources to the Medicaid resource limit of \$2,000. If the remaining resources are over \$2,000, the institutionalized spouse is ineligible until the combined countable resources are reduced to the greater of the following:

the community spouse resource allowance plus \$2000

OR

~~the current State spousal share (\$25,000)~~ minimum spousal resource allowance plus \$2,000

See PROCEDURES FOR IMPLEMENTATION OF ELIGIBILITY RULES - 20950 Spousal Impoverishment Examples

An institutionalized spouse who (or whose spouse) has excess resources shall not be found ineligible per Section 1924 (c)(3)(C) of the Social Security Act where the state determines that denial of eligibility on the basis of having excess resources would work an undue hardship. Resources may be depleted in whatever manner the client/spouse wishes as long as there is no transfer for less than fair market value. See Section 20350.6 Transfer of Assets.

Once eligibility has been established, resources not used to determine eligibility for institutionalized spouses (i.e., the amount of spousal resource allowances) may be transferred to community spouses to assist such spouses in meeting their needs in the community. Thus, resources are not merely deemed available (or attributed) to community spouses in initial eligibility periods, but are actively made available to meet their needs in the community. Spouses who intend to transfer resources for this purpose are encouraged to do so as soon as is practicable before the first regularly scheduled redetermination of eligibility.

See PROCEDURES FOR IMPLEMENTATION OF ELIGIBILITY RULES 20950 #2 Community Spousal Resource Allowance

Resources transferred to community spouses as well as other specified parties, without receiving fair market value for the property transferred, do not adversely affect continuing eligibility of institutionalized spouses. See Section 20350.6 Transfer of Assets



**NOTE:** Although the revised transfer of assets provisions allow the institutionalized spouse to transfer all of his or her resources to the community spouse without regard to the resource allowance, the initial eligibility determination will still attribute resources in excess of the community spouse allowance to the institutionalized spouse.

After eligibility has been determined the eligibility worker must provide a written notice to both spouses including the following information as appropriate:

the amount of combined countable resources at the beginning of the first continuous period of institutionalization;

- the method used to compute the community spouse resource allowance, and
- institutionalized spouses' right to rebut through a fair hearing ownership or availability of income and resources.

---

### **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **Nature Of The Proceedings**

Delaware Health and Social Services (Department) / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan with respect to the Pharmaceutical Services Program: 1) to implement a prior authorization process with a preferred drug list (PDL); 2) to revise the prescription quantity and duration provisions; and, 3) to seek supplemental drug rebates from pharmaceutical manufacturers. 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 agency published this state plan amendment as a notification in the April register. As a result of the changes recommended by the CMS, the originally published plan has changed significantly. The agency is publishing the revised state plan as emergency order APA 05-35, effective 4/1/05 and also as proposed regulation, APA 05-35a, in order to solicit public comment prior to establishing a final order.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program

Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

### **Summary Of Changes**

#### **Purpose**

The purpose of this action is to implement a preferred drug list and prior authorization for pharmacy services. The agency submitted an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement:

- a prior authorization process with a preferred drug list (PDL) for certain designated drugs in selected therapeutic classes covered under the prescription drug program;
- revisions to prescription quantity and duration provisions; and,
- supplemental drug rebates.

#### **Statutory Basis**

- Social Security Act, Title 19, Section §1927
- 42 United States Code s1396r-8

#### **Amending the Following State Plan Page**

Attachment 3.1-A, Page 5 Addendum, Limitations

#### **Summary of Provisions**

To ensure that the state delivers a medical assistance prescription drug program, which is both cost effective and prudently administered, the following describes the coverage changes for prescribed drugs and/or supplies, effective April 1, 2005 for Prior Authorization with Preferred Drug List and Supplemental Rebates:

- 1) Prior Authorization with a Preferred Drug List
  - a) A process is established which utilizes a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the preferred drug list (PDL) are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prescribers to obtain prior authorization. The Pharmaceutical & Therapeutics (P&T) Committee, comprised of physicians, pharmacists and community members appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.
  - b) Providers are notified of the drugs selected for placement on the PDL by selected therapeutic classes prior to implementation of the prior authorization process and as

additional drugs are subsequently added to the list. This information is posted on the DMAP website.

c) The prior authorization process provides for a turn-around response within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. In emergency situations, providers may dispense at least a 72-hour supply of medication as mandated and pursuant to 42 United States Code s1396r-8.

d) The Drug Utilization Review (DUR) Board will make recommendations to the Department regarding drugs to be considered for prior authorization.

## 2) Prescription Quantity and Duration

a. Dosage limits: Medications are limited to a maximum dose recommended by the FDA, peer review journals that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines.

b. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:

- 1) Sedative hypnotics-15 doses per 30 days
- 2) Triptans, acute treatment of migraines, 9 doses per 45 days
- 3) Opioid analgesics-200 doses per 30 days
- 4) Skeletal muscle relaxants-120 tablets/capsules per 30 days
- 5) Benzodiazepines-120 tablets per 30 days
- 6) Tramadol-240 tablets per 30 days
- 7) Narcotic cough medications-480ml per 30 days
- 8) Adjunctive anticonvulsants-240 tablets/capsules per 30 days
- 9) Nebulizer solutions-3 acute exacerbations per 30 days
- 10) Clients utilizing greater than 15 unique medications per 30 days
- 11) Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

## c. Duration of therapy

1) Nicotine cessation products are limited to the duration that has been approved by the FDA.

2) Palivizumab-6 months during the high viral period of the year.

d. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through the mail order process.

## 3) Supplemental Drug Rebates

a. CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and

Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

b. The Division of Social Services (DSS) has contracted with an independent organization to negotiate supplemental rebate agreements with manufacturers.

By implementing these processes, the Department ensures that all eligible Medicaid beneficiaries have the same comprehensive pharmacy coverage available to them, while reducing the cost of pharmaceutical products to the state. Physicians and patients continue to have access to the same FDA-approved drugs as they have had in the past.

## Findings Of Fact

The Department finds that the proposed changes as set forth in the April 2005 Register of Regulations should be adopted with changes recommended by CMS.

THEREFORE, IT IS ORDERED, that the proposed regulation to establish the provisions related to prior authorization, preferred drug list and supplemental drug rebates is adopted as an emergency order with an effective date of 4/1/05.

Vincent P. Meconi, Secretary, DHSS , 6/16/2005

## DSS PROPOSED REGULATION #05-35

### REVISIONS:

**Attachment 3.1-A**  
**Page 5 Addendum**

## LIMITATIONS

### **Prescribed Drugs:**

~~The following drugs are not covered by Delaware Medicaid or are covered with limitations:~~

- ~~**DESI Drugs** — products and known related drug products that lack substantial evidence of effectiveness. The State of Delaware does not cover DESI drugs for reimbursement purposes.~~
- ~~**Drugs Used for Cosmetic Purposes** — products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions.~~
- ~~**Fertility Drugs** — are not covered when prescribed to stimulate fertility (example: Clomid).~~
- ~~**Anorectic Drugs** — for the purpose of weight control are not covered. They may be reimbursed when prescribed to remedy hyperactivity in children and for certain sleep disorders.~~

~~Delaware Medicaid does not limit the quantity, days~~

~~supply, or the number and/or frequency of refills for any prescription.~~

~~Participating manufacturers' new drugs are covered (except excluded/restricted drugs specific in section 1927(d)(1)-(2) of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.~~

**Prosthetic Devices:**

~~Prosthetic and orthotic devices, as well as other durable medical equipment and assistive technology services, are covered when documented as medically necessary.~~

**Diagnostic Services:**

~~Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.~~

**12.a. Prescribed Drugs:**

**Drug Coverage**

1. Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

2. Drugs excluded from coverage as provided by Section 1927(d)(2) of the Act, include:

a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;

b. Drugs when used for cosmetic purposes or hair growth (products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions);

c. Drugs when used to promote fertility;

d. Drugs that have an investigational or experimental or unproven efficacy or safety status;

e. Drugs when used for anorexia, weight loss, or weight gain. Drugs for the purpose of weight control may be reimbursed when prior authorized following established criteria as reviewed and approved by the DUR Board and deemed medically necessary.

3. Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

4. Participating manufacturers' new drugs are covered (except excluded/restricted drugs specified in Section

1927[d][1]-[2] of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

**Quantity and Duration**

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA, peer review journals that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR)Board and accepted by the DHSS Secretary.

2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:

a. Sedative hypnotics-15 doses per 30 days  
b. Triptans, acute treatment of migraines, 9 doses per 45 days

c. Opioid analgesics-200 doses per 30 days  
d. Skeletal muscle relaxants-120 tablets/capsules per 30 days

e. Benzodiazepines-120 tablets per 30 days  
f. Tramadol-240 tablets per 30 days  
g. Narcotic cough medications-480ml per 30 days  
h. Adjunctive anticonvulsants-240 tablets/capsules per 30 days

i. Nebulizer solutions-3 acute exacerbations per 30 days

j. Clients utilizing greater than 15 unique medications per 30 days

k. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

3. Duration of therapy

a. Nicotine cessation products are limited to the duration that has been approved by the FDA. Palivizumab-6 months during the high viral period of the year.

b. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through mail order.

**Prior Authorization**

1. Prior authorization requirements may be established for certain drug classes or particular drugs, or a medically accepted indication for uses and doses.

2. The DUR Board determines which prescription drugs may require prior authorization. The Board assesses data on drug use in accordance with predetermined standards. The standards shall be:

## PROPOSED REGULATIONS

- monitoring for therapeutic appropriateness
- over-utilization and underutilization
- appropriate use of generic products
- therapeutic duplication
- drug-disease contraindications
- drug-drug interactions
- incorrect drug dosage or duration of drug treatment
- clinical efficacy
- safety
- medical necessity
- potential for abuse, misuse and diversion
- experimental use opportunity
- cost effectiveness relative to similar therapies

The recommendations of the DUR Board constitute interpretive guidelines to be used in determining whether to grant or deny prior authorization of a prescription drug. The make up and membership authority for the DUR Board complies with 42 U.S.C. §1396r-8.

3. A request for prior authorization for covered outpatient drugs is processed within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. A 72-hour supply of medically necessary covered drugs is provided in an emergency situation as mandated and pursuant to 42 United States Code §1396r-8.

### **Preferred Drug Lists with Prior Authorization**

A process is established which utilized a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the PDL are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prior authorization. A Pharmaceutical & Therapeutic (P&T) Committee, comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.

### **Drug Rebate Agreements**

CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

- Pharmaceutical manufacturers are allowed to audit utilization rates;
- Compliance with the reporting requirements for state utilization information and restrictions to coverage;
- The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
- Rebate agreements between the state and a

pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are approved by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary of Health and Human Services. The state will remit the federal portion of any cash state supplemental rebates collected.

### **Diagnostic Services:**

Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.

**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**

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

**ORDER**

A public hearing was held on Thursday, March 10, 2005, at a scheduled meeting of the Board of Dental Examiners to receive and consider public comment concerning proposed Regulation Nos. 10 and 11. Regulation No. 10 sets forth and clarifies the eligibility of individuals to take the practical (clinical) examination in Dentistry and Dental Hygiene. Regulation No. 11 sets forth crimes which the Board of Dental Examiners has determined to be substantially related to the practice of Dentistry and Dental Hygiene.

The proposed regulations were published in the *Register of Regulations* in Volume 8, Issue 8, on Tuesday, February 1, 2005. Notice of the consideration of the Regulations and of the time and place of the hearing on such Regulations was published in two newspapers of general circulation as required by the State Administrative Procedures Act, and also was published in the *Register of Regulations*.

**Background**

The Board of Dental Examiners has determined that it is appropriate to provide clarification of eligibility to take the clinical or practical examinations given by the Board and required for dental license applicants, and also for dental hygiene applicants. The Board has concluded that in order to protect the safety of the patients upon whom the applicant practices during the clinical examination a certain minimum level of professional education is essential. Regulation 10 establishes the required level of professional education.

Regulation No. 11 relates to the action of the 142<sup>nd</sup> General Assembly of the State of Delaware which passed Senate Bill No. 229. This legislation, among other things, directed various Boards, Agencies and Commissions including the Board of Medical Practice to adopt a regulation specifically identifying and setting forth crimes which were deemed to be substantially related to the practice of dentistry and dental hygiene (See Section 21, Senate Bill No. 229; 24 **Del.Code Ann.**, §1106). The Governor signed this Bill into law.

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

## Summary of the Evidence and Information Submitted

The Board received no written comments concerning either proposed Regulation and no persons appeared at the hearing to present comments.

The Board notes that in proposing these Regulations the Board is dealing with concerns regarding patient safety. In Regulation 10, minimum education standards are established to treat patients as a part of the clinical or practical licensing examination. In Regulation No. 11, the Board considered a compilation of crimes extracted from the **Delaware Code** and included federal criminal offenses (Title 18, U.S.C.A.) to include Federal Health Care offenses as being substantially related to the fitness of an individual to provide health care services in the State of Delaware as a dentist or a dental hygienist. Also included are any crimes under other laws which are substantially similar to those crimes identified in the proposed regulation.

It is the view of the Board that the conviction of such crimes should form the basis for a proposal to deny certification to an applicant or to discipline a licensee in appropriate circumstances as a matter of public information and protection. The legislation mandates that the Board specify in advance a list of all crimes which are deemed to be substantially related to the practice of dentistry or dental hygiene. This is problematic because, in the view of the Board, such determinations are more appropriately made after a review of the circumstances surrounding the crime and the particular facts leading to the conviction.

To address this the Board will be seeking the statutory ability to waive any such criminal convictions as well as other disqualifications for licensure as a dentist or dental hygienist in appropriate cases. The presence of a waiver provision vesting appropriate discretion in the Board would enable the Board to take into consideration things such as the circumstances surrounding the commission of the crime, how much time has elapsed since the conviction, the extent to which restitution has been made, the age of the individual at the time of the conviction, and any other circumstances bearing on the present ability of the individual to practice in the health care field competently and with safety to the public.

## Decision and Effective Date

By unanimous vote, the Board of Dental Examiners adopts the proposed Regulation No. 10 and Regulation No. 11 to be effective ten (10) days after the publication of this Order in the *Register of Regulations*. The Board notes that Section 10.1 and 10.2 as published in Volume 8, Issue 8 of the *Delaware Register of Regulations* are to be clarified and corrected to include omitted statutory language and should, in the final Regulation read as follows:

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

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

## Text and Citation

With the above noted corrections, the text of Regulation No. 10 and Regulation No. 11 remains as published in the *Register of Regulation*, Volume No. 8, Issue No. 8, Tuesday, February 1, 2005 (a copy of which is attached).

**IT IS SO ORDERED THIS \_\_\_ DAY OF \_\_\_\_, 2005.**

Thomas W. Mercer, DMD, President  
 Robert P. Marier, DDS, Secretary  
 Mr. John M. Kirby  
 Mr. William H. Daisey  
 Wanda Gardiner Smith, DDS  
 David Williams, DMD  
 Kimberly A. Hickman-Bowen, RDH  
 Fay Rust, RDH  
 Ms. Angela Beranek  
 Robert R. Hoopes, DDS  
 Laurie J. Leary, RDH  
 Debora Mause, RDH

## 1100 Board of Dental Examiners

### **10.0 Eligibility to Take the Practical (Clinical) Examination**

#### **Authority:**

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

#### **Purpose:**

This regulation clarifies eligibility to take the

practical (clinical) examination in dentistry and dental hygiene administered by the Board.

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

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

10.3 The Board reserves the right to waive the requirement set forth above in sections 10.1 and 10.2 if the Applicant can establish to the satisfaction of the Board's Credentialing Committee that he or she is a student in good standing in an educational facility accredited by the Commission on Dental Accreditation of the American Dental Association and will graduate within sixty (60) days of the administration of the practical (clinical) examination with a degree in dentistry or dental hygiene.

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

#### **Authority:**

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

#### **Purpose:**

The Board of Dental Examiners believes that the State of Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence

but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals. Therefore, the Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Dentistry and Dental Hygiene in the State of Delaware without regard to the place of conviction:

#### **Definitions.**

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

"Substantially similar crimes in another state or jurisdiction" includes all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

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

#### Assaults and Related Offenses

11.1.1. §601. Offensive touching;

11.1.2. §602. Menacing;

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

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

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

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

11.1.7. §611. Assault in the third degree;

11.1.8. §612. Assault in the second degree;

11.1.9. §613. Assault in the first degree;

11.1.10. §614. Assault on a sports official;

11.1.11. §615. Assault by abuse or neglect;

11.1.12. §616. Gang Participation;

11.1.13. §621. Terroristic threatening;

11.1.14. §622. Hoax devices

11.1.15. §625. Unlawfully administering drugs;

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

11.1.17. §627. Prohibited acts as to substances

releasing vapors or fumes;

11.1.18. §628. Vehicular assault in the second

degree;

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

11.1.20. §630. Vehicular homicide in the second

degree;

11.1.21. §630A. Vehicular homicide in the first

degree;

11.1.22. §631. Criminally negligent homicide;

11.1.23. §632. Manslaughter;

11.1.24. §633. Murder by abuse or neglect in the

second degree;

11.1.25. §634. Murder by abuse or neglect in the

first degree;

11.1.26. §635. Murder in the second degree;

11.1.27. §636. Murder in the first degree;

11.1.28. §645. Promoting suicide;

Abortion and Related Offenses

11.1.29. §651. Abortion;

11.1.30. §653. Issuing abortifacient articles;

Sexual Offenses

11.1.31. §763. Sexual harassment;

11.1.32. §764. Indecent exposure in the second

degree;

11.1.33. §765. Indecent exposure in the first

degree;

11.1.34. §766. Incest;

11.1.35. §767. Unlawful sexual contact in the third

degree;

11.1.36. §768. Unlawful sexual contact in the

second degree;

11.1.37. §769. Unlawful sexual contact in the first

degree;

11.1.38. §770. Rape in the fourth degree;

11.1.39. §771. Rape in the third degree;

11.1.40. §772. Rape in the second degree;

11.1.41. §773. Rape in the first degree;

11.1.42. §776. Sexual extortion;

11.1.43. §777. Bestiality;

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

11.1.45. §780. Female genital mutilation;

Kidnapping and Related Offenses

11.1.46. §781. Unlawful imprisonment in the

second degree;

11.1.47. §782. Unlawful imprisonment in the first

degree;

11.1.48. §783. Kidnapping in the second degree;

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

11.1.50. §785. Interference with custody;

Coercion

11.1.51. §791. Acts constituting coercion.

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

Title 11 of the **Delaware Code** Annotated:

Arson and Related Offenses

11.2.1. §801. Arson in the third degree;

11.2.2. §802. Arson in the second degree;

11.2.3. §803. Arson in the first degree;

11.2.4. §804. Reckless burning or exploding;

11.2.5. §805. Cross or religious symbol burning;

11.2.6. §811. Criminal mischief;

Criminal Trespass and Burglary

11.2.7. §820. Trespassing with intent to peer or

peep into a window or door of another;

11.2.8. §821. Criminal trespass in the third

degree;

11.2.9. §822. Criminal trespass in the second

degree;

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

11.2.11. §824. Burglary in the third degree;

11.2.12. §825. Burglary in the second degree;

11.2.13. §826. Burglary in the first degree;

11.2.14. §828. Possession of burglar's tools or

instruments facilitating theft;

Robbery

11.2.15. §831. Robbery in the second degree;

11.2.16. §832. Robbery in the first degree;

11.2.17. §835. Carjacking in the second degree;

11.2.18. §836. Carjacking in the first degree;

Theft and Related Offenses

11.2.19. §840. Shoplifting; class G felony;

11.2.20. §840A. Use of illegitimate retail sales

receipt or Universal Product Code Label;

11.2.21. §841. Theft;

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

mistaken delivery;

11.2.23. §843. Theft; false pretense;

11.2.24. §844. Theft; false promise;

11.2.25. §845. Theft of services;

11.2.26. §846. Extortion;

11.2.27. §848. Misapplication of property;

11.2.28. §849. Theft of rented property;

11.2.29. §850. Use, possession, manufacture,

distribution and sale of unlawful telecommunication and

access devices;

11.2.30. §851. Receiving stolen property;

11.2.31. §853. Unauthorized use of a vehicle;

11.2.32. §854. Identity theft;

11.2.33. §859. Larceny of livestock;

11.2.34. §860. Possession of shoplifter's tools or

instruments facilitating theft;

Forgery and Related Offenses

11.2.35. §861. Forgery; class F felony;

11.2.36. §862. Possession of forgery devices;

Offenses Involving Falsification of Records

11.2.37. §871. Falsifying business records;

11.2.38. §872. Falsifying business records;



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

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

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

11.2.42. §878. Issuing a false certificate;  
Bribery Not Involving Public Servants

11.2.43. §881. Bribery;

11.2.44. §882. Bribe receiving;

Frauds on Creditors

11.2.45. §891. Defrauding secured creditors;

11.2.46. §892. Fraud in insolvency;

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

Other Frauds and Cheats

11.2.48. §900. Issuing a bad check;

11.2.49. §903. Unlawful use of credit card;

11.2.50. §903A. Reencoder and scanning devices;

11.2.51. §906. Deceptive business practices;

11.2.52. §907. Criminal impersonation;

11.2.53. §907A. Criminal impersonation, accident

related;

11.2.54. §907B. Criminal impersonation of a police

officer;

11.2.55. §908. Unlawfully concealing a will;

11.2.56. §909. Securing execution of documents by

deception;

11.2.57. §910. Debt adjusting;

11.2.58. §911. Fraudulent conveyance of public

lands;

11.2.59. §912. Fraudulent receipt of public lands;

11.2.60. §913. Insurance fraud;

11.2.61. §913A. Health care fraud;

11.2.62. §914. Use of consumer identification

information;

11.2.63. §915. Use of credit card information;

11.2.64. §916. Home improvement fraud;

11.2.65. §917. New home construction fraud;

Offenses Relating to Recorded Devices

11.2.66. §920. Transfer of recorded sounds;

11.2.67. §921. Sale of transferred recorded sounds;

11.2.68. §922. Improper labeling;

Computer Related Offenses

11.2.69. §932. Unauthorized access;

11.2.70. §933. Theft of computer services;

11.2.71. §934. Interruption of computer services;

11.2.72. §935. Misuse of computer system

information;

11.2.73. §936. Destruction of computer equipment;

11.2.74. §937. Unrequested or unauthorized

electronic mail or use of network or software to cause same;

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

Offenses relating to marriage.

11.2.76. §1001. Bigamy;

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

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

Child Welfare; Sexual Offenses, Animal Offenses

11.3.1. §1100. Dealing in children;

11.3.2. §1101. Abandonment of child;

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

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

11.3.5. §1106. Unlawfully dealing with a child;

11.3.6. §1107. Endangering children;

11.3.7. §1108. Sexual exploitation of a child;

11.3.8. §1109. Unlawfully dealing in child pornography;

11.3.9. §1111. Possession of child pornography;

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

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

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

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

11.3.14. §1114A. Tongue-splitting;

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

11.3.16. §1325. Cruelty to animals;

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

11.3.18. §1327. Maintaining a dangerous animal.

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

Bribery and Improper Influence

11.4.1. §1201. Bribery;

11.4.2. §1203. Receiving a bribe;

11.4.3. §1205. Giving unlawful gratuities;

11.4.4. §1206. Receiving unlawful gratuities;

11.4.5. §1207. Improper influence;

11.4.6. §1211. Official Misconduct;

11.4.7. §1212. Profiteering;

Perjury, Escape and related offenses

11.4.8. §1221. Perjury in the third degree;

11.4.9. §1222. Perjury in the second degree;

11.4.10. §1223. Perjury in the first degree;

11.4.11. §1233. Making a false written statement;  
 11.4.12. §1239. Wearing a disguise during commission of a felony;  
 11.4.13. §1240. Terroristic threatening of public officials or public servants;  
 11.4.14. §1244. Felony hindering prosecution;  
 11.4.15. §1245. Felony false reporting an incident  
 11.4.16. §1246. Compounding a crime;  
 11.4.17. §1248. Felony obstructing control and suppression of rabies;  
 11.4.18. §1249. Felony abetting violation of driver's license restrictions;  
 11.4.19. §1250. Offenses against law-enforcement animals;  
 11.4.20. §1252. Felony escape;  
 11.4.21. §1253. Escape after conviction.  
 11.4.22. §1254. Assault in a detention facility;  
 11.4.23. §1256. Felony promoting prison contraband;  
 11.4.24. §1257A Felony use of an animal to avoid capture;  
 11.4.25. §1259. Sexual relations in a detention facility;  
 11.4.26. §1260. Felony misuse of prisoner mail;  
 Offenses Relating to Judicial and Similar Proceedings

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

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

Disorderly Conduct and Related Offenses

11.5.1. §1302. Riot;  
 11.5.2. §1304. Hate crimes;  
 11.5.3. §1312A Felony Stalking;  
 11.5.4. §1313. Malicious interference with emergency communications;  
 11.5.5. §1325. Felony Cruelty to Animals;  
 11.5.6. §1326. Animals, fighting and baiting prohibited.  
 11.5.7. §1327. Felony maintaining a dangerous

animal;  
 11.5.8. §1332. Abusing a corpse;  
 11.5.9. §1333. Trading in human remains and associated funerary objects  
 11.5.10. §1335. Felony violation of privacy;  
 11.5.11. §1336. Wiretapping and electronic surveillance;  
 11.5.12. §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;  
 11.5.13. §1339. Adulteration;  
 Offenses Involving Public Indecency  
 11.5.14. §1351. Promoting prostitution in the third degree;  
 11.5.15. §1352. Promoting prostitution in the second degree;  
 11.5.16. §1353. Promoting prostitution in the first degree;  
 Obscenity  
 11.5.17. §1361. Obscenity; acts constituting.  
 11.6. Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the **Delaware Code Annotated**:  
 11.6.1. §4751. Prohibited acts A;  
 11.6.2. §4752. Prohibited acts B;  
 11.6.3. §4752A Unlawful delivery of noncontrolled substance;  
 11.6.4. §4753. Prohibited acts C;  
 11.6.5. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs;  
 11.6.6. §4754. Prohibited acts D;  
 11.6.7. §4754A Possession and delivery of noncontrolled prescription drug.  
 11.6.8. §4755. Prohibited acts E;  
 11.6.9. §4756. Prohibited acts;  
 11.6.10. §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;  
 11.6.11. §4758. Keeping drugs in original containers;  
 11.6.12. §4761. Distribution to persons under 21 years of age;  
 11.6.13. §4761A Purchase of drugs from minors;  
 11.6.14. §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;  
 11.6.15. §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;  
 11.6.16. §4774. Drug paraphernalia.  
 11.7. Any crime which involves the misuse or illegal

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

Offenses Involving Deadly Weapons and Dangerous Instruments

11.7.1. §1442. Carrying a concealed deadly weapon;

11.7.2. §1443. Carrying a concealed dangerous instrument;

11.7.3. §1444. Possessing a destructive weapon;

11.7.4. §1445. Felony unlawfully dealing with a dangerous weapon;

11.7.5. §1447. Possession of a deadly weapon during commission of a felony;

11.7.6. §1447A Possession of a firearm during commission of a felony;

11.7.7. §1448. Possession and purchase of deadly weapons by persons prohibited;

11.7.8. §1448A Criminal history record checks for sales of firearms;

11.7.9. §1449. Wearing body armor during commission of felony;

11.7.10. §1450. Receiving a stolen firearm;

11.7.11. §1451. Theft of a firearm;

11.7.12. §1452. Unlawfully dealing with knuckles-combination knife;

11.7.13. §1453. Unlawfully dealing with martial arts throwing star;

11.7.14. §1454. Giving a firearm to person prohibited;

11.7.15. §1455. Engaging in a firearms transaction on behalf of another;

11.7.16. §1456. Unlawfully permitting a minor access to a firearm;

11.7.17. §1457. Felony Possession of a weapon in a Safe School and Recreation Zone;

11.7.18. §1458. Removing a firearm from the possession of a law enforcement officer;

11.7.19. §1459. Possession of a weapon with a removed, obliterated or altered serial number;

11.7.20. §1471. Prohibited Acts; Offenses Involving Organized Crime and Racketeering

11.7.21. §1504. Criminal Penalties for Organized Crime & Racketeering;

Offenses Involving Intimidation of Victims or Witnesses

11.7.22. §3533. Aggravated act of intimidation;

11.8 Other Crimes

Title 16 Health and Safety

11.8.1 §1136. Abuse or neglect of a patient or resident of a nursing facility;

11.8.2 §4751. Prohibited acts A;

11.8.3 §4752. Prohibited acts B;

11.8.4 §4752A Unlawful Delivery of Noncontrolled Substance;

11.8.5 §4753. Prohibited acts C;

11.8.6 §4753A Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamines, Lysergic Acid Diethylamide, Designer Drugs or 3,4-Methelenedioxymethamphetamine

11.8.7 §4754. Prohibited acts D

11.8.8 §4754A Possession and Delivery of NonControlled Prescription Drug.

11.8.9 §4755. Prohibited Acts

11.8.10 §4756. Prohibited Acts

11.8.11 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties

11.8.12 §4758. Keeping drugs in original containers;

11.8.13 §4761. Distribution to persons under 21 years of age; penalties;

11.8.14 §4761A Purchase of drugs from minors; penalties;

11.8.15 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses;

11.8.16 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses;

11.8.17 §4771. Drug paraphernalia;

11.8.18 §4774. Penalties;

Title 23 Navigation and Waters

11.8.19 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;

11.8.20 §2305. Second, Third and Fourth Offense Penalties; jurisdiction;

Title 30 State Taxes

11.8.21 §571. Attempt to evade or defeat tax; class E felony;

11.8.22 §572. Failure to collect or pay over tax; class E felony;

11.8.23 §573. Failure to file return, supply information or pay tax; class A misdemeanor;

11.8.24 §574. Fraud and false statements; class E felony;

Title 31 Welfare

11.8.25 §1007. Felony Penalties;

Title 21 – Motor Vehicles

11.8.26 §2118A Unlawful possession or manufacture of proof of insurance, penalties;

11.8.27 §2133. Penalties; jurisdiction of justices of the peace;

11.8.28 §2315. False statements; penalty;

11.8.29 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle

identification plate

11.8.30 §2620. False statements; incorrect or incomplete information;

11.8.31 §2751. Unlawful application for or use of license or identification card;

11.8.32 §2752. False statements;

11.8.33 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards;

11.8.34 §2814. Additional penalty when convicted of an offense which would render an individual a habitual offender;

11.8.35 §3107. False statements;

11.8.36 §4177. Felony Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties;

11.8.37 §4177M Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;

11.8.38 §4202. Felony Duty of driver involved in accident resulting in injury or death to any person; penalty;

11.8.39 §4601. Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties;

11.8.40 §4603. Reporting of keys; penalties;

11.8.41 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires; penalty; class E felony;

11.8.42 §6704. Receiving or transferring stolen vehicle; penalty;

11.8.43 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty;

11.8.44 §6708. Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card; class E felony; penalty;

11.8.45 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty; class E felony;

11.8.46 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty; class E felony;

Title 3 – Agriculture

11.8.47 §1224. Unlawful Acts (Only to include crimes related to fraud and conspiracy);

11.8.48 §8713. Felony offenses

11.8.49 §10049 Fraudulent Written Statements;

11.8.50 §10050 Fraudulent Certificate of Registration or Eligibility Documents;

11.8.51 §904. Offenses Concerning Certain Persons;

Title 6 – Commerce and Trade

11.8.52 §4619. Felony Prohibition of Intimidation; Title 7 – Conservation

11.8.53 §1717. Unauthorized Acts against a Service Guide or Seeing Eye Dog;

11.8.54 §6003. Felony Permits Required; Title 11 – Crimes

11.8.55 §2402. Felony Interception of Communications Generally; Divulging Contents of Communications;

11.8.56 §2403. Manufacture, Possession or Sale of Intercepting Device;

11.8.57 §2410. Breaking and Entering, Etc. to Place or Remove Equipment;

11.8.58 §2412. Obstruction, Impediment or Prevention of Interception;

11.8.59 §2422. Divulging Contents of Communications;

11.8.60 §3534. Attempt to Intimidate;

11.8.61 §8523. Felony Violation of Reporting Provision;

11.8.62 §8562. Felony Failure of Child Care Provider to Obtain Information or Providing False Information;

11.8.63 §8572. Penalties for Providing False Information when Seeking School Employment;

11.8.64 §9016. Filing False Claim under Victims' Compensation Fund

Title 12 – Descendants' Estates

11.8.65 §210. Alteration, Theft or Destruction of Will

Title 16 – Health & Safety

11.8.66 §2513. Felony Penalties Relating To Improper Health-Care Decisions;

11.8.67 §7112. Felony Penalties for Violations of Chapter;

11.8.68 §7416. Penalties for Violating Statute Governing Radiation Control;

Title 24 – Professions and Occupations

11.8.69 §903. Deadly Weapons Dealers – Sale to Persons under 21 or Intoxicated Persons;

Title 31 – Welfare

11.8.70 §3913. Felony Violations – Knowing or Reckless Abuse of an Infirm Adult.

11.9. Any crime which is a violation of either Title 24, Chapter 11 (Board of Dental Examiners) as it may be amended from time to time or of any other statute which requires the reporting of a medical/dental situation or condition to state, federal or local authorities or a crime which constitutes a violation of the dental or hygiene practice act of the state in which the conviction occurred or in which the dentist or dental hygienist is licensed.

11.10. The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such

additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

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

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

---

## **DIVISION OF PROFESSIONAL REGULATION**

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

### **ORDER**

A public hearing was held after due notice on May 11, 2005 at a meeting of the State Board of Pharmacy to receive public comments related to proposed changes in Regulations 1.0, 3.0, 5.0, 9.0, and 10.0. The notice appeared in two Delaware newspapers and in the *Register of Regulations*, 8 DE Reg 1372(4/1/05).

#### **Summary of the Evidence and Information Submitted**

1. The written comment is summarized as follows:

Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities submitted a memorandum dated April 29, 2005 with three comments which was marked as Board Exhibit 1. First, Council recommended consistency in the use of the term "prescriber" and noted that in Regulation 5.7.2.4 and 5.7.4 the term "physician" was used.

Secondly, Council suggested correcting an inconsistency in Regulations 5.3.1. and 5.7.4. The former permits a prospective drug review by a student in a practical experience program.

Finally, Council seeks clarification and explanation of the deletion of the reinstatement standards.

John A. Werner, Chairperson, Governor's Advisory Council for Exceptional Citizens, submitted a letter dated May 2, 2005 which was marked as Board Exhibit 2. Mr. Werner repeated the three comments expressed in Board Exhibit 1 from the State Council for Persons with Disabilities.

James A. Krahulec, R.Ph., Esq., Vice President, Government and Trade Relations, Rite Aid Corporation, submitted a letter dated May 9, 2005 which was marked as Board Exhibit 3. Mr. Krahulec, on behalf of the twenty-four

(24) Rite Aid pharmacy locations operating in Delaware, expressed support of the Board's proposed amendments to regulation 5.3.4 concerning patient counseling. He commended the Board's proposal to delete language under regulation 5.3.4 that requires the documentation of who made the offer to counsel as unnecessarily redundant in light of the requirement to document a patient's acceptance or refusal of counseling. Mr. Krahulec urged the Board to adopt the amendments under regulation 5.3.4 as proposed.

Kevin N. Nicholson, R.Ph., JD, Director, Pharmacy Regulatory Affairs, National Association of Chain Drug Stores, submitted a letter dated May 9, 2005 which was marked as Board Exhibit 4. Mr. Nicholson, on behalf of the approximately 143 chain pharmacies operating in the State of Delaware, repeated the comments expressed in Board Exhibit 3 and urged adoption of regulation 5.3.4 as proposed. Gary Wirth, R.Ph., MBA, Director of Professional Services, Ahold USA Inc., submitted a letter dated May 11, 2005 that was marked as Board Exhibit 5. Mr. Wirth expressed support for the proposed change to paragraph 5.3.4 to delete the requirement to record the identity of the pharmacy associate who makes the offer to counsel. Mr. Wirth commented that the proposed amendment is consistent with the pharmacy regulations in surrounding states and simplifies administrative procedure at their SUPER G pharmacies.

2. The following verbal comment was offered on May 11, 2005:

Pat Carroll-Grant, Director of Pharmacy at the Delaware Hospital for the Chronically Ill and Director of the Delaware Pharmacy Society, submitted verbal comment at the hearing. Ms. Carroll-Grant stated that the comments were hers and those of the legislative and executive committees of the Delaware Pharmacy Society.

First, Ms. Carroll-Grant questioned the proposed language in Regulation 1.2.3 regarding preceptors that states "A pharmacist employed by a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program." She commented that her employer does not allow her to be employed by a College of Pharmacy. Ms. Carroll-Grant recommended that the Board remove the word "employed" and replace it with another term that would still get across the point that the college is responsible for certifying or selecting the preceptors. She stated that requiring a preceptor to be an employee of the college could be a problem and would limit the available preceptors of pharmacy corporations that do not want their employees to be employed by a college but that are very willing to take on students to avail them of multiple preceptors at multiple sites.

Ms. Carroll-Grant stressed that it is important for students to practice in Delaware and stated that expanded sites are needed. Ms. Carroll-Grant recommended that the Board remove the words "employed by" and replace them with "affiliated with."

Next, Ms. Carroll-Grant questioned the requirement in Regulation 1.5 that requires a pharmacist to retain supporting documentation of continuing education for a minimum of six years. She commented that there is no other documentation that a pharmacist needs to keep for six years including controlled substance documentation. She stated that six years places a burden on the pharmacist and requested that it be changed to three years to be consistent with the requirements that apply to retention of other types of documents.

Ms. Carroll-Grant also urged the Board to adopt written audit procedures as previously requested by the Delaware Pharmacy Society to expand on the provision that now only provides for a random selection of 10% of pharmacists to be audited during the biennial term. She stated that written procedures are needed to inform pharmacists of what is involved in the audit process, what years will be covered in the audit and what happens if they do not comply. Specifically, she questioned whether the pharmacist could be audited back for six years and, if so, what would happen if a pharmacist was found not to be in compliance. She commented that if an interpretation was made that they were practicing without a license as a result of the audit, issues would arise as to the prescriptions that they filled and their professional liability insurance.

Ms. Carroll-Grant also questioned the deletion of Regulation 1.6 relating to Re-Entry. She commented that the Delaware Pharmacy Society is on record as saying that they do not agree with the removal of grace periods. While they want pharmacists to pay their dues on time and be compliant with the regulations, they believe removal of the language altogether places a burden on the pharmacist. She requested that the Board at least consider some definition of a grace period.

Ms. Carroll-Grant had no issues with Regulation 3.0 and supported the Board's changes.

Finally, Ms. Carroll-Grant commented on changes to Regulation 5.0 dealing with supervision. Specifically, she questioned why Regulation 5.2 did not provide for the listed tasks to be under the direct supervision of a licensed pharmacist. Ms. Carroll-Grant commented that if she was reading the rule correctly, a pharmacy intern could be a third year pharmacy student who has never worked in a pharmacy and still sign up to be a pharmacy intern. She stated that that is not the equivalent to a student in the last year of a clerkship requirement. She questioned whether the intent of the regulation is to allow pharmacy interns to do the things listed in the rule. She commented that the pharmacy intern really does not know much more than a good technician at that point and that extra checks and balances are needed for technicians. Ms. Carroll-Grant stated that she would feel better if Regulation 5.2 included the "under the direct supervision of a licensed pharmacist language."

She questioned further with regard to this issue whether the intent of Regulation 5.2.3 is to not require the pharmacist supervising the intern to sign off and to instead allow the intern or student to have signing authority for what was done that day as being correct. Ms. Carroll-Grant pointed out that 5.3.1 does have the supervision language and stated that she believed 5.3.1 is more consistent with what she thought were the Board's concerns.

#### **Findings of Fact with Respect to the Evidence and Information Submitted**

1. The Board intends to use the term "prescriber" consistently in the Regulations to identify the person who writes a prescription. Changes will be made to Regulations 5.7.2.4 and 5.7.4. Similarly, Regulation 5.7.4 will be changed for consistency to include the pharmacy student as a person who, under supervision, can examine a patient's profile prior to dispensing. The revised text follows:

"5.7.2.4 The original date the medication is dispensed pursuant to the receipt of a ~~physician's~~ prescriber's prescription;

5.7.4 Upon receipt of a new prescription, a pharmacist, ~~or~~ pharmacy intern, or student participating in a College of Pharmacy practical experience program under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem with shall, if necessary, include consultation with the ~~physician~~ prescriber."

2. The Board deleted Regulation 1.6 regarding re-entry because of the lack of enabling legislation to support that provision. A person whose license expired less than 60 days prior to application must comply with the provisions in 24 **Del.C.** §2517(c). If the license is expired longer than 60 days, the applicant must reapply as provided in §§2514-2516. The Board currently has no authority to provide a grace period.

3. The Board does not believe that the term "employed by" as used in Regulation 1.2.3 would preclude a pharmacist who is not an employee of a College of Pharmacy from acting as a preceptor. The purpose of the amendment was to create a standard that is in place in other states to allow a student to be joined to a faculty member at a College of Pharmacy and who could be their preceptor. It does not say that a pharmacist in this state who is not employed by a College of Pharmacy cannot be a preceptor. However, for clarification and consistency purposes the

Board will change the words “employed by” to “affiliated with” to clarify that there is no requirement of an actual employment relationship with the college or university. The revised text follows:

~~1.2.4~~ 1.2.3 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. A pharmacist employed by affiliated with a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.

4. The Board is satisfied that the requirement to maintain continuing education records for six years as required by Regulation 1.5 is not unduly burdensome and that six years is a reasonable period for requiring pharmacists to maintain continuing education records. This order clarifies that audit relates to the biennial period subject to audit for renewal of licensure. The intent of the regulation is not to conduct a six year audit. The requirement of a six year retention period is to enable the Board to verify that the pharmacist is not submitting the same continuing education verification for multiple reporting periods.

5. The Board is persuaded by the public comment that Regulation 5.2 would be improved by clarifying that Regulation 5.2 and its subsections all require that the intern or student participating in an approved College of Pharmacy coordinated practical experience program must be acting “under the direct supervision of a pharmacist.” The Board finds that this is best achieved by deleting the period at the end of Regulation 5.2 and adding “under the direct supervision of a pharmacist” to the end of the sentence. The revised text follows:

5.2 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program: under the direct supervision of a pharmacist.

The Board determines that the changes are for clarification and consistency and are not substantive.

### **Text and Citation**

The text of the revised rules remains as published in *Register of Regulations* except for the modifications noted herein.

### **Decision and Effective Date**

The Board hereby adopts the changes to Regulation 1.0, 3.0, 5.0, 9.0, and 10.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**SO ORDERED** this 8th day of June, 2005.

### **STATE BOARD OF PHARMACY**

John E. Murphy, R.Ph., President  
Daniel Hauser, Pharm. D.  
Carolyn Calio  
Karen J. Key  
Carolyn Calio  
Karen J. Dey, R.Ph.  
Angelo Chiari, R.Ph.  
Nancy Weldin  
Don Holst, R.Ph.

### **2500 Board of Pharmacy**

#### **1.0 Pharmacist Licensure Requirements**

##### **1.1 Examination Requirements**

1.1.1 In order to be eligible for examination for licensure, an applicant must provide proof of completion of all requirements for graduation from an approved school or college. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

1.1.2 Candidates must obtain a passing grade as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist

Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) to be eligible for a license to practice. A candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person.

1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. The applicant shall be entitled to take a re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be.

1.1.4 The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.

## 1.2 Practical Experience Requirements

1.2.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.

1.2.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del.C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. ~~The total 1500 hours of internship may be acquired in the community or hospital settings.~~ A minimum of 1000 hours shall be obtained in the community or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government

Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

~~1.2.3 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Additional practical experience acquired in the State of Delaware must be submitted to the Board on the Affidavit of Intern Experience form provided by the Board of Pharmacy Office. Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.~~

1.2.4 1.2.3 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. A pharmacist [employed by affiliated with] a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.

1.2.4 Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

~~1.2.5 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change of preceptor. A change of preceptor affidavit must be completed and filed with the Board. The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Registration as an intern in this State is not required for school experience.~~



~~1.2.5~~ 1.2.6 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change or preceptor. A change of preceptor affidavit must be completed and filed with the Board.

### 1.3 Continuing Education Requirements

1.3.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

1.3.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.

1.3.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:

1.3.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of its decision.

1.3.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).

### 1.4 Continuing Professional Educational Programs

#### 1.4.1 Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

#### 1.4.2 Approved Provider

1.4.2.1 Any provider approved by ACPE.

1.4.2.2 In-state organization which meets criteria approved by the Board.

#### 1.4.3 Application for Delaware State Provider

1.4.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

1.4.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the

provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

1.4.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

#### 1.4.4.1 Administration and Organization

1.4.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

1.4.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

1.4.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.

1.4.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

1.4.4.1.5.1.1 Educational objectives.

1.4.4.1.5.1.2 The target audience.

1.4.4.1.5.1.3 The time schedule of the activities.

1.4.4.1.5.1.4 Cost to the participant/covered items.

1.4.4.1.5.1.5 Amount of C.E. credit which will be awarded.

1.4.4.1.5.1.6 Credentials of the faculty, presenters, and speakers.

1.4.4.1.5.1.7 Self-evaluation instruments.

1.4.4.1.5.2 Compliance with a quantitative measure for C.E. credit.

1.4.4.1.5.2.1 The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

1.4.4.1.5.2.2 In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

1.4.4.1.5.2.3 The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

1.4.4.1.5.2.4 The provider must provide the Board upon request with appropriate records of successful participation in previous continuing education activities.

1.4.4.1.5.2.5 The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

1.4.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

#### 1.4.4.3 Program Content Development

1.4.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

1.4.4.3.1.1 The social, economic, behavioral, and legal aspects of health care,

1.4.4.3.1.2 the properties and actions of drugs and drug dosage forms,

1.4.4.3.1.3 the etiology, characteristics, therapeutics and prevention of the disease state,

1.4.4.3.1.4 pharmaceutical monitoring and management of patients.

1.4.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.

1.4.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.

1.4.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

1.4.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

1.4.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

1.4.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

1.4.5 Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

1.4.5.1 In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

1.4.5.2 In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

1.4.5.3 Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

1.4.5.4 A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

#### 1.4.5.5 Credit for Instructors of Continuing Education

1.4.5.5.1 Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

1.4.5.5.2 Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

1.4.5.5.3 Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

1.4.5.5.4 A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

#### 1.4.5.6 Credit for On the Job Training:

1.4.5.6.1 The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

1.4.5.6.2 All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

1.4.5.6.3 No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

1.4.5.6.4 A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.5 The Verification of Continuing Education - ~~A pharmacist shall complete the required continuing education and submit the signed renewal form with appropriate fees to the Board of Pharmacy.~~ A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years.

Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 Del.C. §2518 (a)(1).

~~1.6 Re-Entry — A pharmacist may have his/her license reinstated by completing the following requirements:~~

~~1.6.1 Payment of any back fees;~~

~~1.6.2 Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;~~

~~1.6.3 Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.~~

#### 1.7 Reciprocal Requirements

1.7.1 An applicant for licensure by reciprocity shall be of good moral character and shall:

1.7.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;

1.7.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and

1.7.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation 1.1.

1.7.2 Reciprocity applicants who took examinations after June 1, 1979, must have passed the NAPLEX or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

1.7.3 Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

#### **Regulation 1.2 revised 10/11/96**

Regulation 1.3.2 revised 2/6/97

Regulation 1.3.2 deleted, 1.3.3.1 amended, 1.4 amended  
Effective date 10/11/98

**1 DE Reg. 1965 (6/1/98)**

**2 DE Reg. 683 (10/1/98)**

**4 DE Reg. 163 (7/1/00)**

**4 DE Reg. 1501 (3/1/01)**

**6 DE Reg. 488 (10/1/02)**

**7 DE Reg. 309 (9/1/03)**

### **3.0 Pharmacy Requirements**

#### 3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials. Each pharmacy shall have the following equipment and maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:

3.3.1 References:

3.3.1.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.

3.3.1.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.

3.3.1.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.

3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.

3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.3.2 Equipment

3.3.2.1 Prescription Scale, Class A

Set of Metric Weights if balance is used

3.3.2.2 Graduates, (must be glass) Metric

One of Each:

30 ml

60 ml

125 ml

500 ml

(or Set with both metric and Apothecary

Graduations may be used)

3.3.2.3 Mortars and Pestles

+ One 8 ounce glass

+ One 8 ounce wedgewood

3.3.2.4 Filter Paper

3.3.2.45 Prescription/physician Order Files

3.3.2.56 Two Spatulas

3.3.2.67 One Glass Funnel

3.3.2.78 One Glass Stirring Rod

3.3.2.89 Ointment Slab or Papers

3.3.2.910 ~~Purified~~ Distilled Water

Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.

All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between ~~59\*~~ and 86\* 59 degrees and 86 degrees Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained ~~at~~ within the USP/NF range:

Refrigerator - ~~36\* to 46\*~~ 36 degrees to 46 degrees Fahrenheit

Freezer - ~~plus 4° to minus 14°~~ Minus 13 degrees to plus 14 degrees Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:

3.5.1 The requirements listed in §2534(~~F~~)(1) through (4).

3.5.2 ~~A partitioned~~ An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. ~~The minimum requirement would be a 9 square foot partitioned area. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.~~

3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is ~~off duty~~ not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 **Del.C.** §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the

Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

**2 DE Reg. 683 (10/1/98)**

**6 DE Reg. 488 (10/1/02)**

**7 DE Reg. 309 (9/1/03)**

**7 DE Reg. 1666 (6/1/04)**

## 5.0 Dispensing

### 5.1 Definitions

**“Agent”** An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

**“Automated Data Processing System (ADP)”** A system utilizing computer software and hardware for the purposes of recordkeeping.

**“Cell”** Any container which holds the medication for automatic dispensing.

**“Common Data Base”** A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

**“Compounding”** The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCSA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

**“Computer”** Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

**“Controlled Substance”** Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

**“CRT”** Cathode Ray Tube used to impose visual information on a screen.

**“Delivery”** The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

**“Dispensing”** To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

**“Downtime”** That period of time when a computer is not operable.

**“Facsimile (FAX) Prescription”** A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

**“Final Container”** is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

**“New Medication”** A medication not previously dispensed by the pharmacy for the ultimate user.

**“Patient Counseling”** The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

**“Pertinent Patient Medication Information”** Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

**“Prescriber”** A practitioner authorized to prescribe and acting within the scope of this authorization.

**“Prescription”** An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.) A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

**“Printout”** A hard copy produced by computer that is readable without the aid of any special device.

**“Reduced to Writing”** For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.

**“Regulatory Agency”** Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

**“Stop Date”** A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

**“Supportive personnel”** A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

5.2 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program [~~under the direct supervision of a pharmacist.~~]

5.2.1 Receive oral prescriptions and reduce them immediately to writing;

5.2.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

5.2.3 ~~Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records)~~ The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the individual verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the individual.

### 5.3 Patient Counseling

5.3.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist, or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. ~~A pharmacist or pharmacy intern may conduct a~~ A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. ~~by the pharmacist or pharmacy intern in his/her professional judgment. Such~~ A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

5.3.2 ~~Except when a prescriber requests that information regarding a prescribed drug not be given to a~~

~~specific patient, a~~ A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- 5.3.2.1 the name and description of the prescribed drug;
- 5.3.2.2 the dosage and the dosage form;
- 5.3.2.3 the method and route of administration;
- 5.3.2.4 the duration of the prescribed drug therapy;
- 5.3.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- 5.3.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- 5.3.2.7 patient techniques for self-monitoring of the drug therapy;
- 5.3.2.8 proper storage;
- 5.3.2.9 prescription refill information;
- 5.3.2.10 the action to be taken in the event of a missed dose; and
- 5.3.2.11 current over-the-counter medication use.

5.3.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.3.4 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. ~~The record must indicate who made the offer to counsel.~~

5.3.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

~~5.3.6 The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.~~

~~5.3.7 The pharmacist who dispenses the original prescription shall hand sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand signed and dated by the pharmacist.~~

#### 5.4 Supportive personnel

##### 5.4.1 Qualifications and training

5.4.1.1 The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

5.4.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 5.4.1.2.1 general drug and dosage form knowledge
- 5.4.1.2.2 medical terminology
- 5.4.1.2.3 pharmaceutical calculations
- 5.4.1.2.4 prescription labeling requirements
- 5.4.1.2.5 general filling/dispensing responsibilities
- 5.4.1.2.6 patient profile record system requirements
- 5.4.1.2.7 requirements for patient counseling
- 5.4.1.2.8 confidentiality
- 5.4.1.2.9 safety practices
- 5.4.1.2.10 inventory functions
- 5.4.1.2.11 knowledge of applicable State and Federal Statutes and Regulations
- 5.4.1.2.12 other site-specific parameters

5.4.1.3 The general content of the training program must be maintained in the policy and procedure manual.

5.4.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

5.4.2 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

##### 5.4.3 Activities allowed

5.4.3.1 Supportive personnel will be allowed to perform only those duties permitted by this regulation.

5.4.3.2 Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

5.4.3.2.1 Obtaining the medication from stock.

5.4.3.2.2 Typing the label after the pharmacist has interpreted the directions.

5.4.3.2.3 Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

5.4.3.3 Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

5.4.3.3.1 The formulation is developed by the pharmacist before proceeding with the compounding.

5.4.3.3.2 The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

5.4.3.3.3 Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

5.4.3.3.4 The finished product is checked by the pharmacist before dispensing.

5.4.3.3.5 A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

5.4.3.4 Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

5.5 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

5.6 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific

authorization of the prescriber. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

#### 5.7 Mandatory Patient Profile Record System

5.7.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

5.7.2 The following information shall be recorded by a pharmacist or designee:

5.7.2.1 The family name and first name of the person for whom the medication is intended (the patient);

5.7.2.2 The address of the patient and phone number;

5.7.2.3 The patient's age, or date of birth, and gender;

5.7.2.4 The original date the medication is dispensed pursuant to the receipt of a **[physician's prescriber's]** prescription;

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

5.7.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;

5.7.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.7.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.7.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.7.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.7.4 Upon receipt of a new prescription, a pharmacist ~~or~~ pharmacy intern **[or student participating in a College of Pharmacy practical experience program]** under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or



interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the ~~physician~~ **prescriber.**]

5.7.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

5.8.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

5.8.1.1 The request comes from a registered pharmacist.

5.8.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.8.1.3 The prescription used for refills must be clearly identified as a copy.

5.8.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

5.8.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

5.8.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

5.8.3 Written copies of prescriptions are for information only and are not valid for refilling.

5.9 Automated Data Processing Systems

5.9.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.

5.9.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

5.9.2.1 Original dispensing date

5.9.2.2 Name and address of patient (patient location if in an institution)

5.9.2.3 Name of prescriber

5.9.2.4 DEA number of prescriber in the case of a controlled substance

5.9.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

5.9.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

5.9.3.1 Quantity dispensed

5.9.3.2 Date of dispensing

5.9.3.3 Serial Number (or equivalent if an institution)

5.9.3.4 The identification of the pharmacist responsible for dispensing

5.9.3.5 Record of renewals to date

5.9.3.6 Name and strength of medicine

5.9.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

5.9.4.1 Serial number of prescription (equivalent if an institution)

5.9.4.2 Date of processing

5.9.4.3 Quantity dispensed

5.9.4.4 The identification of the pharmacist responsible for dispensing

5.9.4.5 Medication dispensed

5.9.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

5.9.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

5.9.7 Transfer of Prescriptions via ADP. A pharmacist may transfer a prescription electronically (ADP)

for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section ~~1306.26~~ 1306.25. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

5.9.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

5.9.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

5.9.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

5.9.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

5.9.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription.

5.9.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

5.9.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

#### 5.10 Electronic Transmission Of Prescriptions

5.10.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:

5.10.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

5.10.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.10.1.3 be transmitted by an authorized Practitioner or his designated agent; and

5.10.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.10.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.10.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.10.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.10.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

5.10.6 Controlled substance prescriptions may only be electronically transmitted via a facsimile.

5.10.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.10.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.10.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.10.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.10.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.10.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

#### 5.11 Return of Medications and Supply

5.11.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

5.11.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used

products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section 5.4 revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

**1 DE Reg. 1965 (6/1/98)**

**3 DE Reg. 431 (9/1/99)**

**4 DE Reg. 163 (7/1/00)**

**4 DE Reg. 682 (10/1/00)**

## **9.0 Hospital Pharmacy**

### **9.1 Definition:**

A hospital pharmacy is defined as a pharmacy registered with the Board located in a hospital facility. "Hospital pharmacy" shall not include a pharmacy operated by a hospital facility at a location other than the site of a permanent facility at which in-patient care and medical services are rendered.

### **9.2 Personnel**

**9.2.1 Director of Pharmacy.** The storage, compounding, repackaging, dispensing and distribution of drugs by a hospital pharmacy shall be under the direction, supervision and responsibility of the pharmacist-in-charge, hereinafter referred to as the Director of Pharmacy, who shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations. Written policies and procedures will be established defining the operation and scope of services provided by the hospital pharmacy. The Manual shall include policy and procedures concerning:

**9.2.1.1 Preparation and sterilization of parenteral medications** if done within the hospital pharmacy.

**9.2.1.2 Establishment of specifications for procurement of drugs, chemicals and biologicals.** The procedures are subject to the approval of the appropriate committee of the hospital.

**9.2.1.3 Maintaining readily available inventory of emergency drugs** both in the pharmacy and patient care areas. Current antidote information and telephone numbers of regional poison control centers must also be available.

**9.2.1.4 Participation in the development of a Formulary or drug list** for the hospital.

**9.2.1.5 The filling and labeling of all containers** from which drugs are to be administered in compliance with applicable Statutes and Regulations.

**9.2.1.6 The records of the transactions of the pharmacy** that are required by applicable law and that are necessary for accurate control and accountability. This should include procedures for wastage of controlled substances in all areas of the hospital.

**9.2.1.7 Policies and procedures** shall specify the duties to be performed by pharmacy personnel.

**9.2.1.8 Discontinued drug procedures** to insure that discontinued drugs and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition or disposal. All outdated products should be removed from all areas and stored in a separate section in the pharmacy for proper disposition or disposal.

**9.2.1.9 A recall procedure** that can be implemented to insure proper disposition of the recalled materials.

**9.2.1.10 A policy for drugs brought in by patients.**

**9.2.1.11 A policy for the proper handling of investigational drugs** must be in compliance with FDA and State requirements.

**9.2.1.12 The pharmacist shall be involved with the utilization review process** as it pertains to drug therapy.

**9.2.2 Registered Pharmacists.** The Director of Pharmacy may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws.

**9.2.3 Supportive Personnel.** Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons.

**9.3 Absence of Pharmacist.** When a pharmacist is not on duty, drugs may be provided for use by physicians and other authorized staff via night cabinets or other areas designated by the hospital, and in emergency circumstances by access to the pharmacy. A pharmacist shall be available to provide professional services.

### **9.4 Night Cabinets or Other Designated Areas**

**9.4.1 These drug storage areas** must be securely locked and substantially constructed in a manner which prevents easy entry.

**9.4.2 Access** must be limited to authorized personnel.

**9.4.3 Contents and use procedures** should be determined by the pharmacy and those departments with access to the night cabinet or other designated areas in accordance with the hospital's policies and procedures.

**9.4.4 Drugs** must be properly labeled and prepackaged in sufficient quantities as defined by the hospital.

**9.4.5 Accountability records** documenting withdrawal and replacement of controlled drugs must be readily available.

**9.4.6 The transaction** shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

**9.5 Access to Pharmacy.** When a pharmacist is not available and medications cannot be obtained immediately from any other source, authorized persons may enter the pharmacy and obtain drugs per procedures established by the

hospital. The procedures must include the following stipulations:

9.5.1 Entry shall be by two persons; registered nurse or physician with another nurse, physician, or security person present approved by the hospital.

9.5.2 Persons authorized to enter the pharmacy shall indicate the name and strength and amount of drug removed, the date, time and their signature, and the name and location of the patient. The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.6 Emergency Drugs. Emergency drugs must be available for use by authorized personnel at strategic locations throughout the hospital. The drugs must be available to authorized personnel and must be stored in a manner to preserve the integrity of the contents.

9.6.1 Emergency Drugs Defined - Emergency drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients.

9.6.2 Emergency drug supplies shall be clearly identified for emergencies. A list showing the contents and the strength and quantity of each item shall be attached to the exterior.

9.6.3 Removal of Drugs - Drugs shall be removed from an emergency drug supply only pursuant to a valid physician's order or by authorized personnel.

9.6.4 Notification - Whenever an emergency drug supply is accessed, the pharmacy or its designee shall be notified within 24 hours, and the pharmacy or its designee shall restock and reseal or replace the kit or cart within forty-eight hours.

9.7 Equipment and Texts. Each hospital pharmacy shall have the equipment and texts required by Board Regulation 3.0 and Regulation 10.0.

9.8 Drug Storage. Drugs must be stored in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

#### 9.9 Labeling

9.9.1 The drug dispensed for inpatient use shall contain a label, shall show the brand or established name and the strength of the medication. If the medication is prepacked, it must also show the source, lot number and expiration date, in compliance with the Board's prepacking regulation.

9.9.2 All drugs dispensed for outpatients must be labeled in compliance with the Pharmacy Statutes.

9.9.3 Admixtures in parenteral bags and bottles shall be labeled in accordance with Regulation 10.0.

9.10 Abbreviations. The hospital should establish a standard list of abbreviations to be used whenever medications are prescribed.

9.11 Outpatient Orders. Medication dispensed for outpatients via prescriptions are governed by applicable State and Federal Statutes Regulations. A patient profile must be maintained and counseling must be provided for each person according to Regulation 5.0.

9.12 Suspected Adverse Drug Reaction. When an adverse reaction is documented, the pharmacy department shall receive a copy.

9.13 Maintenance of Medication Orders. Patient Profile - A patient medication profile must be maintained for each inpatient whose medication is directly dispensed from the pharmacy. It must show the patient's name, location, age, allergies and diagnosis(es) as available. The profile must show the name, strength and quantity of the drug dispensed and appropriate directions and the initials of the dispenser. Prior to administration of the first dose, the pharmacist must examine the profile to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a significant potential for harm, the pharmacist should notify the prescriber and other appropriate persons. The profile must be retained and readily retrievable for 30 days after discharge.

9.14 Medication Error. Medication error as defined by the hospital shall be documented and reported immediately to the pharmacy. It should also be reported to the attending physician.

9.15 Monthly Inspections. A member of the pharmacy staff shall conduct monthly inspections of each nursing station and patient care areas where medications are dispensed, administered or stored. Such documented inspections shall verify that:

9.15.1 Disinfectants and drugs for external use are stored separately.

9.15.2 Drugs are stored under proper conditions.

9.15.3 No outdated drugs are present.

9.15.4 Distribution, administration, and disposition of controlled substances audits indicates proper recordkeeping and administration.

9.15.5 Emergency drug supplies and floor stock drug levels are properly maintained.

9.15.6 Drugs are properly secured.

9.16 Hospital Operating with an Off-site Pharmacy Provider.

9.16.1 Definition. A hospital operating with an off-site pharmacy is one that obtains pharmacy services from another hospital, community pharmacy, or infusion pharmacy that can provide services as necessary for operation.

9.16.2 Personnel.

9.16.2.1 There must be a Director of Pharmacy or Consultant Pharmacist available on an on-call procedure 24 hours per day. The storage, compounding, repackaging, dispensing and distribution of drugs by an off-site Provider Pharmacy shall be under the direction, supervision and responsibility of a Pharmacist-in-Charge or Director of

Pharmacy. This person shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations.

9.16.2.2 The Director of Pharmacy or Pharmacist-in-Charge may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws. Any of these registered pharmacists may act as the Consultant Pharmacist for the institution if he/she is licensed to practice pharmacy in the State of Delaware. Additional supportive personnel may be utilized as required.

9.16.2.3 The Director of Pharmacy or Pharmacist-in-Charge must provide written policies and procedures establishing the operation and scope of services provided by the off-site Pharmacy Provider. The Policy and Procedure Manual shall include all items as outlined in "B." 9.2 of this section. In addition, the manual shall include a written statement of pharmaceutical services provided and the responsibilities of the off-site Provider Pharmacy.

9.16.3 Monthly Inspections. The Director of Pharmacy or Consultant Pharmacist must perform monthly medication area inspections as outlined in "C" 9.15 of this section.

#### 9.16.4 Storage

9.16.4.1 Drugs must be stored at the off-site Pharmacy Provider in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.16.4.2 The Pharmacy Provider must also provide any special handling and/or packaging and/or storage conditions for compounded sterile preparations when delivering from the pharmacy to the institution as necessary to maintain the sterility and stability of the preparation. This includes any product that is frozen or that requires refrigeration.

9.16.5 Patient Profiles. The off-site Pharmacy Provider must maintain complete patient profiles as outlined in Regulation 5.0.

#### 9.16.6 Medication Errors or Adverse Reactions

9.16.6.1 Any medication errors or adverse drug reactions, as defined by the hospital, shall be documented and reported to the off-site Pharmacy Provider.

9.16.6.2 This information shall also be reported to the Director of Pharmacy, Pharmacist-in-Charge, or Consultant Pharmacist for their review and documentation for the patient profile.

#### 9.16.7 Emergency Medications

~~9.16.7.1 All legend drugs not dispensed in patient name shall be approved by the Board of Pharmacy in order for those emergency medications to be kept as "stock" at the institution.~~

~~9.16.7.2 The procedure for approval of emergency medications must be followed as outlined in Regulation 11.3.~~

#### 9.16.7 Emergency Use Medications

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

9.16.7.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

9.16.7.3 Accountability for emergency use medications.

9.16.7.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

9.16.7.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

9.16.7.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

9.16.7.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.

## 10.0 Sterile Pharmaceuticals and Antineoplastic Agents

This regulation contains minimum pharmacy practices for the preparation, compounding and dispensing of sterile preparations and antineoplastic agents by licensed pharmacies.

10.1 Definitions. As used in this part, the following terms shall have the meanings specified:

**"Admixture"** A solution for parenteral administration to which one or more additional drugs have been added.

**"Antineoplastic Agent"** A drug used to treat various forms of cancer.

**"Aseptic Technique"** A procedure for compounding sterile preparations designed to minimize/prevent contamination during the compounding procedure.

**"Class 100"** A classification of an airflow unit capable of producing an environment containing no more than 100 airborne particles of a size 0.5 micron and larger per cubic foot (3.5 particles/liter) of air.

**“Enteral Nutrition”** The administration into the gastro-intestinal tract of calories, nitrogen, and/or other nutrients to achieve tissue synthesis and anabolism for patients requiring medically prescribed, defined formula, liquid diets.

**“HEPA”** (High-efficiency particulate air) Filter - A filter that provides a minimum-efficiency of 99.97% in removal of particles 0.3 micron or larger from the effluent air.

**“Laminar Airflow”** An entire body of air moving with uniform velocity along parallel flow lines.

**“Parenteral”** A sterile preparation intended for injection and used in the diagnosis, cure, mitigation, or treatment of disease or modification of physiological functions in human beings, but not including blood or blood products or as otherwise defined in the current United States Pharmacopeia.

**“Sterile Pharmaceutical”** A dosage form free from living microorganisms.

**“Total Parenteral Nutrition”** The intravenous administration of calories, nitrogen, and other to achieve tissue synthesis and anabolism.

10.2 General Requirements. A licensed pharmacy in the State of Delaware desiring to compound and dispense prescriptions or physician's orders for sterile pharmaceuticals and antineoplastic agents shall meet the following requirements:

#### 10.2.1 Facilities and Equipment

10.2.1.1 The environment for the preparation of such prescriptions shall be set in a low traffic area, clean and free of contaminants and dust, and equipped to permit controlled aseptic/antineoplastic compounding.

10.2.1.2 The area for preparing sterile/antineoplastic prescriptions shall be segregated from general non-aseptic work and storage areas and shall be used solely for sterile pharmaceutical/anti-neoplastic compounding. The area shall be maintained at controlled room temperatures as defined by the United States Pharmacopeia.

10.2.1.3 The area(s) shall provide space for a minimum of one class 100 environment. Additionally, the space shall be of a size to accommodate equipment as required herein and sufficient space to allow personnel working therein to safely and accurately fulfill their duties.

10.2.1.4 Minimum requirements for equipment, supplies and publications are as follows:

10.2.1.4.1 Minimally, a class 100 air flow unit

10.2.1.4.1.1 The air flow unit must be in compliance with recommendations from OSHA guidelines.

10.2.1.4.2 Refrigerator

10.2.1.4.3 Sink and wash area easily accessible to the sterile preparation/antineoplastic compounding area(s)

10.2.1.4.4 Appropriate waste containers

for:

10.2.1.4.4.1 Used needles and

syringes

10.2.1.4.4.2 All antineoplastic wastes including apparel used in their preparation

10.2.1.4.5 Supplies:

10.2.1.4.5.1 Disposable needles and syringes and other supplies needed for sterile pharmaceutical/antineoplastic compounding

10.2.1.4.5.2 Disinfectant cleaning

agents

10.2.1.4.5.3 Single-use lint free

towels or air-driers

10.2.1.4.5.4 Handwashing materials with bactericidal action

10.2.1.4.5.5 Equipment and materials for cleaning antineoplastic agent spills

10.2.1.4.6 References: In addition to compliance with the reference requirements as set forth in Delaware Board Regulation 3.0, the pharmacy must have the following texts (~~items b and e required~~ if chemotherapy agents are prepared):

~~10.2.1.4.6.1 Handbook of Injectable Drugs by the American Society of Hospital Pharmacists.~~

10.2.1.4.6.2 1 Procedures for handling Antineoplastic Drugs Technical Bulletin - most current edition published by the American Society of ~~Hospital Health Systems~~ Pharmacists.

10.2.1.4.6.3 2 Most current edition of OSHA Guidelines for the handling of antineoplastic agents.

~~10.2.1.4.6.4 The Policy and Procedures Manual prepared under Section F of this Regulation.~~

10.2.1.4.7 Drug Components: All drug components that are received, stored, or used in compounding prescriptions shall meet official compendial requirements. If this cannot be met, pharmacists shall use their professional judgment to procure alternatives.

#### 10.3 Personnel

10.3.1 The compounding of sterile pharmaceuticals/anti-neoplastic agents shall be under the control and supervision of a licensed pharmacist. The licensed pharmacist-in-charge or licensed pharmacist designee shall be on duty and on premises during all hours of operation of said pharmacy.

10.3.2 A pharmacist shall be accessible by telephone 24 hours a day to answer questions and to provide consultation regarding the dispensed preparation.

10.3.3 Supportive Personnel: The pharmacist managing the section of the pharmacy providing sterile/anti-neoplastic product pharmacy services may be assisted by supportive personnel. These personnel must have specialized training in this field, and shall work under the

supervision of a licensed pharmacist. The training provided to these personnel must be described in writing in a training manual. The duties and responsibilities of these personnel must be consistent with their training and experience.

#### 10.4 Storage, Preparation, Dispensing, and Handling

10.4.1 A pharmacy shall provide any special handling and/or packaging and/or storage conditions for compounded sterile/antineoplastic preparations when delivering from the pharmacy to the patient or institution as necessary to maintain sterility and stability of the preparation.

10.4.2 Each pharmacy shall develop product sampling plans and shall have the ability to determine or know where to readily procure services to assure the quality of the products compounded or prepared.

10.4.3 Delivery service. The pharmacist managing the section of the pharmacy providing sterile/antineoplastic product pharmacy services is responsible for the environmental control of all products shipped. Therefore, any compounded, sterile parenteral product or antineoplastic agent that is frozen, or that requires refrigeration, must be shipped or delivered to a patient in appropriate coolers and stored appropriately in the patient's home.

#### 10.5 Labeling

10.5.1 Each compounded preparation shall bear a label indicating the date beyond which it should no longer be administered and the temperature or conditions under which it should be stored.

10.5.2 If the preparation is an antineoplastic product, it must be labeled with a warning label clearly identifying the product as such.

10.5.3 The following "beyond use" dates shall be used: Admixtures in parenteral bags and bottles shall be labeled with a distinctive supplementary label, indicating the name and amount of the drug added, date, expiration date of the container and name or initials of the person preparing the solution.

10.5.3.1 Admixtures: Maximum of seventy-two hours when stored under refrigerated conditions from the time of compounding unless the manufacturer's recommendation is to store at room temperature and/or longer storage times can be substantiated with documentation.

10.5.3.2 If medications with expiration periods of less than forty-eight hours are added to a parenteral solution, or if the manufacturer indicates an expiration period of less than forty-eight hours, the "beyond use" date of the solution shall be the shorter expiration period and shall appear on the label.

#### 10.6 Policy and Procedures Manual

10.6.1 A Policy and Procedures Manual shall be prepared and be available at each pharmacy site where sterile

pharmaceuticals/antineoplastic agents are prepared for inspection by authorized agents of the Board of Pharmacy. The Policy and Procedures Manual shall contain the objectives, operational guidelines and standard operating procedures of the pharmacy pertaining to sterile products/antineoplastic agents. A procedure shall be included that addresses how a contaminated product is detected, recall measures and follow up.

10.6.2 The manual shall include procedures to be used by the pharmacy to prevent contamination of the products during preparation, storage, and dispensing.

10.6.3 The manual shall include written policies and procedures for cleaning and maintenance of the sterile pharmaceutical compounding/antineoplastic agent area(s) with records kept in the pharmacy department for one year.

10.6.4 Documentation of the following shall be included:

10.6.4.1 Replacement of filters and prefilters.

10.6.4.2 Certification of clean air source by an outside agency at least once a year.

10.6.4.3 Cleaning and maintenance of the equipment.

10.6.5 If antineoplastic agents are compounded in the pharmacy, protection shall be provided for its personnel by utilizing the proper equipment and protective garb and having a Policy and Procedures Manual for said antineoplastic agents. The Manual shall include, among the other requirements, the following special requirements outlined in sections 10.2 - 10.5 the following special requirements:

10.6.5.1 Procedures for disposal of all unused drugs and materials used in the preparation of antineoplastic agents in accordance with accepted professional standards, such as the most current OSHA Guidelines, regarding the handling of antineoplastic agents.

10.6.5.2 Safety standards which stress proper technique in handling antineoplastic agents and which include:

10.6.5.2.1 A certified vertical laminar air flow hood.

10.6.5.2.2 Protective garb, i.e., gloves, face and eye protection, and gowns.

10.6.5.3 In the event that antineoplastic agents and other parenterals are prepared within the same air flow unit, procedures shall be provided for a thorough scrub down and air purge of at least twenty minutes after compounding of the antineoplastic agent(s).

10.6.6 The Policy and Procedures Manual shall be maintained on a current basis. It shall be reviewed at least annually and changes shall show the effective date.

Revised Effective Date: April 14, 1997 (10.2 General Requirements revised)

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

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

### DIVISION OF PROFESSIONAL REGULATION

5200 Board of Nursing Home Administrators  
Statutory Authority: 24 Delaware Code,  
Section 5204(1) (24 Del.C. §5204(1))  
24 DE Admin. Code 5200

### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 11, 2005 at a scheduled meeting of the Delaware Board of Examiners of Nursing Home Administrators to receive comments regarding proposed Regulation 24.0. The proposed regulation identifies crimes substantially related to the practice of nursing home administration as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

As the result of the comments received on January 11, 2005, the Board decided to review the proposed regulation further. A revised list of related crimes was developed at subsequent Board meetings held on January 31, 2005 and February 11, 2005. The Board approved its revised list for publication at its March 31, 2005 meeting. The revised list of crimes includes substantive deletions and clarifications from the proposal originally published in the *Register of Regulations*, Vol. 8, Issue 6, on December 1, 2004.

After due notice in the *Register of Regulations* and two Delaware newspapers, a second public hearing was held on June 14, 2005 at a scheduled meeting of the Delaware Board of Nursing Home Administrators to receive comments regarding proposed Regulation 24.0. The revised regulation was published in the *Register of Regulations*, Vol. 8, Issue 11, May 1, 2005.

### Background

Under Title 24, Chapter 52, as amended by SB 229, the Board of Nursing Home Administrators is mandated to “promulgate regulations specifically identifying those crimes, which are substantially related to nursing home administration.” In addition, “the license of a provisional nursing home administrator may be revoked or suspended, or such licensee may be reprimanded, censured or otherwise

disciplined” upon “proof that such licensee has been convicted in a court of competent jurisdiction, either within or without this State, of a crime that is substantially related to nursing home administration.” 24 Del.C. §5212(a)(4).

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related nursing home administration.” 24 Del.C. § 5201(4).

### Summary of the Evidence and Information Submitted

An e-mail from Yrene E. Waldron, NHA, Executive Director of the Delaware Healthcare Association, dated January 7, 2005 was marked as an exhibit to the January 11, 2005 public hearing. In the e-mail Ms. Waldron questioned “what having a tattoo or playing a game of craps have to do with being an NHA.” Specifically, she questioned the inclusion of issuing a bad check, body piercing, tattooing or branding, tongue piercing, keeping drugs in original containers, driving a vehicle under the influence and failure to make reports of persons who are subject to loss of consciousness. Ms. Waldron also attended the public hearing and repeated the issues she raised in her e-mail. Ms. Waldron expressed her opinion that some of the Board’s selections went against the intent of the legislation. She asked the Board to revisit its list of crimes.

As a result of the public comment the Board reviewed and revised its list.

No written comments were received at the second public hearing on June 14, 2005 with regard to the revised list published on May 1, 2005. No members of the public attended the hearing.

### Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was the safety of public. The “primary objective of the Board Examiners of Nursing Home Administrators, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are the direct recipients of the services regulated by this chapter) from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 Del.C. §5200.

The duties and responsibilities of a nursing home administrator include the oversight and governing of facilities in which the residents are often extremely vulnerable to undue influence or other forms of abuse. In addition, and the nursing home administrator is responsible for the safety of the employees of the facility.



Nursing home administrators have access to confidential patient records, employee records, and billing and health insurance records. They have a duty to keep accurate and reliable records. Nursing home administration also involves responsibility for, and access to, drugs within the facility. A nursing home administrator is also responsible for the fiscal operation of the facility and compliance with governmental regulations. To that end, nursing home administrators work and interact with member of government including state surveyors and inspectors and must maintain the highest level of integrity in those interactions.

In addition, a nursing home administrator is charged with ensuring that the rights of patients are not violated including the right to privacy and security in their property and persons. Nursing home administrators interact not only with the elderly but may have responsibility for long term care facilities and group homes for children.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of a nursing home administrator in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; offenses against public administration including but not limited to bribery and perjury; offenses against public health, order and decency; offenses which evidence a lack of appropriate concern for the safety and well being of another person or persons in general demonstrating a lack of fitness to run the operations of a health care facility; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

#### **Decision and Effective Date**

The Board hereby adopts the changes to Regulation 24.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

#### **Text and Citation**

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 11, May 1, 2005, without any changes and as attached hereto as Exhibit A.

**SO ORDERED** this 14th day of June, 2005.

#### **STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

Linda Jones, Healthcare Profession Member, President  
Michael Bundek, Public Member, Vice-President

Elizabeth Happholdt, Public Member, Secretary  
Carolyn Cotter, Public Member  
Lillie Mae Johnson, Public Member  
Alonzo Kieffer, Professional Member  
Patricia McLaughlin, Professional Member

**\* Please note that no changes were made to the regulation as originally proposed and published in the December 2004 issue of the Register at page 790 (8 DE Reg. 790). Therefore, the final regulation is not being republished. Please refer to the December 2004 issue of the Register or contact the Board of Nursing Home Administrators**

**A complete set of the rules and regulations for the Board of Nursing Home Administrators available at: <http://dpr.delaware.gov/boards/nursinghomeadmin/index.shtml>**

---

### **PUBLIC SERVICE COMMISSION**

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

In the Matter of the Adoption of Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission Opened February 22, 2005)		PSC Regulation Docket No. 55
---	--	---------------------------------------

#### **ORDER NO. 6661**

**AND NOW**, to-wit, this 21<sup>st</sup> day of June, 2005, 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 given all interested persons and companies an opportunity to be heard and to participate, and after due consideration of the testimony of the Commission Staff and there being no exceptions to said Findings and Recommendations;

**AND WHEREAS**, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission*, 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 *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission*, 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 the *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* to the Registrar of Regulations for publication on July 1, 2005.

4. That the effective date of this Order shall be the later of July 10, 2005, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*.

5. That the Commission Staff shall closely monitor the companies during their implementation of these Regulations and report to the Commission in 120 days after enactment of the Regulations concerning the companies' compliance with the Regulations.

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

**BY ORDER OF THE COMMISSION:**

Chair Arnetta McRae  
Commissioner Joann T. Conaway  
Commissioner Dallas Winslow  
Commissioner Jaymes B. Lester

ATTEST:

Secretary Karen J. Nickerson

**EXHIBIT "A"  
FINDINGS AND RECOMMENDATIONS OF THE  
HEARING EXAMINER**

DATED: June 10, 2005

Ruth Ann Price, Hearing Examiner

Ruth Ann Price, duly appointed Hearing Examiner in this docket pursuant to 26 Del.C. §502 and 29 Del.C. ch. 101, by Commission Order No. 6581, dated February 22, 2005, reports to the Commission as follows:

**I. APPEARANCES**

On behalf of the Public Service Commission Staff ("Staff"):

MURPHY, SPADARO & LANDON  
BY: FRANCIS J. MURPHY, ESQUIRE  
PHILIP T. EDWARDS, ESQUIRE.

**II. BACKGROUND**

1. On July 6, 2004, the Delaware General Assembly, enacted legislation, found at 74 Delaware Laws, Chapter 317, which granted the Delaware Public Service Commission ("the Commission") jurisdiction to regulate nongovernmental Wastewater Utilities having fifty (50) or more customers (hereinafter collectively "Wastewater Utilities"). 26 Del.C. §203D(a). The legislation also conferred on the Commission the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCNs") and to super rates and terms and conditions of service.

2. In order to implement the new law, the Commission promulgated regulations entitled, *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission* ("the Regulations" or "the proposed Regulations"). The proposed Regulations provide minimum standards for service provided by wastewater utilities.

3. In accordance with PSC Order No. 6581, on March 9, 2005, the Commission solicited comments on the proposed Regulations by publishing notice in *The News Journal* and the *Delaware State News*.<sup>1</sup> Notice requesting public comment was also published in the *Delaware Register* on April 1, 2005. All written public comments on the Regulations were due on or before May 5, 2005.

4. On Thursday, April 28, 2005, the Commission published notice in *The News Journal* and the *Delaware State News* of an evidentiary hearing to be held on May 23, 2005.

5. I have considered all of the record evidence and, based thereon, I submit for the Commission's consideration these findings and recommendations.

1. The affidavits of publication of notice from *The News Journal* and the *Delaware State News* are included in the record as Exhibits 1 and 2, respectively. Exhibits will be cited as "Ex. \_\_\_" and references to the hearing transcript will be cited as "Tr. \_\_\_."

### III. SUMMARY OF THE EVIDENCE

6. **Commission Staff's Direct Testimony.** On May 13, 2005, with its proposed Regulations, the Commission Staff pre-filed the testimony of one witness, Heidi L. Wagner.<sup>1</sup> (Ex.3.) Ms. Wagner, a Public Utility Analyst for the Commission, provided the reasons the Commission Staff considered the proposed Regulations to be in the public interest.

7. Ms. Wagner explained that the purpose of the Regulations was to provide a consistent set of minimum rules and regulations for all Wastewater Companies. (Ex.3 at 2.)

8. The proposed Regulations are designed to provide a uniform basis under which all regulated wastewater systems must operate and to ensure that the service these companies provide is safe, adequate and efficient. (Ex.3 at 4.)

9. In developing the proposed Regulations, Commission Staff reviewed a broad sample of the rules and regulations currently enacted in other jurisdictions, including West Virginia, New Hampshire, Pennsylvania, New Mexico, Florida, Nevada and Arizona.

10. The Commission Staff also compared the proposed Regulations with the regulations for water utilities to ensure there was consistency where appropriate. (Ex.3 at 3.)

11. Ms. Wagner testified that the proposed Regulations serve a different purpose than the companies' individual tariffs. She explained that a tariff contains terms and conditions that a specific utility offers its customers. (Ex.3 at 4.) In contrast, the proposed Regulations are designed to govern the operations of all wastewater utilities subject to the Commission's jurisdiction. *Id.*

12. **Proposed Regulations.** The proposed Regulations are designed to provide minimum standards for all nongovernmental wastewater utilities serving at least fifty customers. 26 **Del.C.** §203D(a). They are grouped into categories applicable to general conditions and definitions (Ex. 3, Exhibit A., Section I), records and reporting requirements (Ex. 3, Exhibit A., Section II), engineering standards (Ex. 3, Exhibit A., Section III), operations (Ex. 3, Exhibit A., Section IV), customer relations (Ex. 3, Exhibit A., Section V) and front end capital contributions (Ex. 3, Exhibit A., Section VI).

---

1. The Commission Staff served its prefiled testimony on ten (10) wastewater utilities who may be subject to the Regulations after enactment. Those companies are: Chapel Green Homeowners Association, Inc., Oak Crest Farms, Excel Property Management, Inland Bays Preservation Company, Moore Grant Sanitation, Inc., Utility Systems, Inc., YMG Corporation, Bass Properties, Inc., Artesian Wastewater Management, Inc., Woods Community Wastewater System.

13. The Regulations require that all wastewater companies must keep their books and records in accordance with the Uniform System of Accounts promulgated in 1996 by the National Association of Regulatory Commissions. (Ex.3, Exhibit A, §2.3.1.)

14. The Regulations require all wastewater systems to notify the Commission of serious accidents and service interruptions. (Ex.3, Exhibit A, §2.4.5-§2.4.6.) Wastewater companies are required to file an annual financial statement with the Commission. (Ex.3, Exhibit A, §2.4.7.)

15. The Regulations provide a mechanism for receiving customer complaints and resolving disputes. (Ex.3, Exhibit A, §2.5.)

16. The Regulations require customers to be billed for services in either of two ways: a flat rate per Equivalent Dwelling Unit (EDU) or by volume measured by water meters. (Ex.3, Exhibit A, §2.6.)

17. Wastewater companies are required to obtain a Certificate of Public Convenience and Necessity before beginning construction. Further, the proposed Regulations mandate compliance with the Department of Natural Resources and Environmental Control (DNREC Reg. 4.06) (Ex.3, Exhibit A, §2.6.) for approval of construction projects.

18. The Regulations mandate that companies include in their tariffs the terms under which they collect contributions in-aid-of construction and refundable advances. (Ex.3, Exhibit A, §3.1.)

19. Plant for wastewater companies must comply with and be maintained pursuant to current engineering practices and companies must file a copy of their inspection programs with the Commission. (Ex.3, Exhibit A, §§3.2,3.3.)

20. The Regulations specify procedures for companies to notify customers of rates, changes in rates and the application of customer deposits. (Ex.3, Exhibit A, §§5.1.2-5.1.6.)

### IV. DISCUSSION

21. The record reveals that there were no intervenors in this case. Further, the Commission did not receive any written comments from members of the public. Tr. 6, 8.

22. Although notice of the proposed Regulations was published in two newspapers of general circulation and the Commission Staff sent copies to several wastewater companies who may be subject to the Regulations, Staff did not receive any comments. *Id.*

23. Staff's witness, Heidi Wagner, testified that there are approximately thirteen developments and eight utilities who will be subject to the Regulations. Tr. 8. These entities will have to conform their operations to meet the requirements of the Regulations because they are not currently operating in the manner envisioned by the

Regulations. *Id.* Therefore, these companies will undergo a period of transition which the Commission's Staff should closely monitor.

24. It is clear that the Regulations do not impose an undue burden on wastewater companies in Delaware. Rather, they are designed to impose only the minimum requirements to ensure that customers receive safe, efficient service on a basis that is consistent for all regulated wastewater systems and that the companies' physical plants are maintained in good operating order.

## V. LEGAL STANDARD

25. Under 26 **Del.C.** §209 the Commission, after hearing, may order wastewater companies to fix just and reasonable standards, classifications, regulations, practices, measurements or services. 26 **Del.C.** §209(a)(1). The Commission is also empowered to require utilities under its jurisdiction to provide safe, adequate and proper service and to adequately maintain its plant and equipment. *Id.* at §209(a)(2).

26. Further, under the Delaware Administrative Procedures Act, 29 **Del.C.** §§1011 *et seq.*, in the interests of the public welfare, administrative agencies are authorized to promulgate regulations concerning the agency.

## VI. RECOMMENDATIONS

27. In summary, and for the reasons stated herein, I recommend that the Commission adopt Staff's proposed Regulations entitled, *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission* (Ex.3, Exhibit A) as "just and reasonable." A proposed form of Order implementing the above recommendation is appended, as Attachment "A," for the Commission's convenience.

Respectfully submitted,

Ruth Ann Price, Hearing Examiner

Dated: June 10, 2005

## EXHIBIT "B"

### **PROPOSED REGULATIONS GOVERNING THE MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WASTEWATER UTILITIES SUBJECT TO THE JURISDICTION OF THE DELAWARE PUBLIC SERVICE COMMISSION**

#### **1.0 General**

**1.1 Authorization For Regulations.** Title 26 of the Delaware Code vests in the Delaware Public Service Commission the authority to formulate standards for such

wastewater services and facilities as it deems necessary to carry out the provisions of this law. (26 **Del.C.** § 209)

**1.2 Application Of Regulations.** These regulations shall apply to any public wastewater utility operating within the State of Delaware, under the jurisdiction of the Delaware Public Service Commission. These regulations shall become effective ninety (90) days after adoption by the Commission.

**1.2.1 Purpose.** These regulations are intended to insure adequate service to the public, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both utilities and customers.

**1.2.2 Duties Under Other Statutes.** These regulations shall in no way relieve any utility from any of its duties under the laws of this State or regulations promulgated by other State or Federal agencies or authorities.

**1.2.3 Exemption.** If the application of these regulations will cause a utility unreasonable hardship, or if unreasonable difficulty is involved in compliance, the utility may apply to the Commission for a temporary or permanent exemption, provided that the utility shall submit with such application a full and complete statement of the reasons for the application. Applications for exemptions will be determined by the Commission upon due notice to the affected customers and after a hearing.

**1.2.4 Modification.** The adoption of these regulations shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility, from altering or amending them, in whole or in part, or from requiring any other or additional equipment, facility, or standard, or from making such modifications with respect to the utility's application as may be necessary to meet exceptional conditions. Any modification of these regulations shall be subject to the provisions of 29 **Del.C.** Ch. 64.

**1.3 Definitions.** The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

**"Collection System"**. Consists of service lines, mains, manholes, customer facilities such as service lines, pump stations, lift stations, and appurtenances, owned and operated by the utility that conveys wastewater from customers to the treatment facilities.

**"Commission"**. The Public Service Commission of Delaware.

**"Complaint"**. A complaint shall mean any specific objection to charges on the utility billing statement, facilities, practices, or services of a utility.

**"Customer"**. Any person, including any individual, corporation, partnership, firm, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any

kind, or any government agency or entity served by a wastewater utility.

**“Dwelling Unit”.** One or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

**“Equivalent Dwelling Unit EDU”.** Is a measurement of the volume of wastewater for a single dwelling unit and is used as a means to compare wastewater flows from customers for other classes of wastewater service.

**“Main”.** Any wastewater pipe, owned, operated, or maintained by a wastewater utility, which is used for the collection or conveyance of wastewater, excluding service lines.

**“Meter”.** Without other qualifications, any device or instrument which is used by the utility in measuring the quantity of wastewater discharged from a customer or service area for recording or billing purposes.

**“Premises”.** A tract of land or real estate, including buildings and other appurtenances thereon.

**“Service Line”.** The pipe that runs from the main to the customer's premises.

**“Shall”.** The use of the word "shall" in these regulations expresses a mandatory requirement.

**“Should”.** The use of the word "should" in these regulations expresses suggestion or guidance and is not mandatory.

**“Utility”.** Any person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any kind, that provides wastewater services, including collection, transport, or treatment of wastewater, and is subject to regulation by the Commission.

**“Wastewater Plant”.** Equipment, stations, and property owned or operated by a utility, used in its business operations to render wastewater service to its customers.

## **2.0 Records And Reports**

**2.1 Availability Of Records.** All documents, including books, accounts, papers, records, computer files, electronic data, maps of service area indicating location of mains, pumping stations, and treatment facilities, and memoranda required by these regulations or necessary for the administration thereof, shall be open and available for examination by the Commission or its authorized representatives at all times.

**2.2 Retention Of Records.** All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be preserved for a minimum period of five (5) years.

**2.3 Location.** All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be kept

in an office within this State, and shall not be removed from this State, except upon such terms and conditions as may be prescribed by the Commission. This provision shall not apply if the utility is engaged in interstate commerce, and its accounts are kept at its principal office outside this State. However, such utility, when requested by the Commission, shall furnish to the Commission, certified copies of all documents, including its books, accounts, papers, records, computer files, electronic data, and memoranda relating to the business done by such public utility.

**2.3.1** All wastewater utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in 1996 by the National Association of Regulatory Commissions.

**2.3.2** Observance of the system of accounts applicable to the utility by appropriate class is obligatory upon all persons having direct charge of the books and accounts of the utility. For the purpose of securing uniformity in the applications of this system, all questions of doubtful interpretation of accounting rules are to be submitted to the Commission for consideration and decision.

**2.4 Information To Be Filed With The Commission.** Each utility shall file with the Commission, and keep current, a copy of its approved tariff.

**2.4.1 Rates.** The tariff shall include each schedule of rates for service.

**2.4.2 Rules.** The tariff shall include the utility's rules and regulations, or terms and conditions describing the utility's policies and practices in rendering service, and in its relations with customers or prospective customers.

**2.4.3 Bill Forms.** Each utility shall file with the Commission a sample of each type of customer billing statement, which shall include the information normally shown on a customer's bill for service.

**2.4.4 Persons to Contact.** Each utility shall file with the Commission and shall notify its customers, upon request, of the name, title, business address, and telephone number of the person(s) who should be contacted in connection with the following areas of operation:

**2.4.4.1** management;

**2.4.4.2** customer relations (complaints and billing inquiries);

**2.4.4.3** engineering; and

**2.4.4.4** emergencies during non-office hours and regular hours; and shall notify the Commission promptly of any changes.

**2.4.5 Accident Notification.** In the event of a fatal or serious accident, prompt notice shall be given to the Commission by telephone or such other means of communication designed to assure prompt notice to the Commission, followed by a full written report of such accident. A full written report is also required when the utility suffers any serious property damage. These reports shall be treated confidentially pursuant to 26 Del.C. §213(b).

2.4.6 Reports of Service Interruption. Each utility shall file with the Commission a report of any system failures or service interruption within ten (10) days after such an event has occurred. Reports shall include:

2.4.6.1 location and time of failure or interruption;

2.4.6.2 time that failure or interruption was remedied;

2.4.6.3 estimated number of customers affected; and

2.4.6.4 cause of the failure or interruption. Utilities shall make all possible efforts to re-establish service in the shortest time practicable with due regard to safety.

When service is interrupted for scheduled repairs or maintenance, such work should be done at a time that will cause the least inconvenience to customers. The customers who would be affected shall be notified prior to the scheduled interruption.

2.4.7 Annual Reports. Each utility shall file an annual financial statement based upon the accounts set out in the Uniform System of Accounts, or such other requirement as prescribed by the Commission. This annual report shall be filed with the Commission on or before April 30<sup>th</sup> of the following year.

### 2.5 Complaints.

2.5.1 Each utility shall keep a record of each complaint received. The complaint record shall contain:

2.5.1.1 complainant's name, address, and telephone number;

2.5.1.2 nature of the complaint;

2.5.1.3 date complaint was received;

2.5.1.4 when, how, and by whom the complaint was handled; and

2.5.1.5 disposition and findings of the complaint.

2.5.2 Resolution. All complaints should be handled promptly, courteously, and include a full investigation prior to any conclusion.

2.5.3 Disputes. After the Commission or the Company have completed an investigation of a customer's complaint concerning a bill, and when the issue is resolved in favor of the utility, the customer shall be afforded a reasonable time, not less than twenty (20) days, to pay the bill as finally determined.

2.6 Customer Billing. Billing for wastewater service may be based on the following:

2.6.1 Flat rate per EDU; and

2.6.2 Volume measured by water meters serving customer premises. In cases where a significant volume of water does not enter the sanitary sewer, or where water from another source enters the sanitary sewer, the measured water meter volume may be adjusted to more accurately reflect the volume of wastewater discharged. Any such adjustment is to

be based on meter readings associated with increased or decreased billable volume. Any supplemental meters are to be provided at the expense of the customers and to be maintained in good operating condition subject to testing by the utility.

Wastewater flow measuring devices shall be maintained in good working order.

In cases where water meters are used as a basis for billing wastewater service, the terms and conditions for testing meters and billing adjustments shall be as provided in PSC Order No. 2076, relating to service governing water utilities.

### 3.0 Engineering

3.1 Authorization For Operation Or Construction. No person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company or association, or other form of business enterprise or legal entity of any kind shall commence any construction of a wastewater system for public use without having been granted a Certificate of Public Convenience and Necessity, and such other permits as may be required by law. System expansion, even within the certificated area, shall not commence without approval of the plans by the Department of Natural Resources and Environmental Control (DNREC Reg. 4.06).

If the construction of an extension involves the acquisition of a private right-of-way, then the prospective customer or developer shall attempt to secure the right-of-way and deliver it to the utility free of cost before construction of the extension is started. If, however, it is not reasonably possible for the prospective customer or developer to secure the right-of-way, and the construction of the extension involves the utility's incurring expenses for right-of-way easements, such costs shall be added to the total cost of the extension.

Utilities are required to incorporate the terms and conditions applicable to contributions in-aid-of construction and refundable advances in their tariff rules and regulations.

3.2 Wastewater Plant Operation. The utility's wastewater plant shall be constructed, installed, maintained, and operated in accordance with current engineering practices in the wastewater industry, to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property, in compliance with relevant DNREC and Health Department regulations and policies.

3.3 Wastewater Plant Inspection. Each utility must adopt and file with the Commission a program of inspection of its wastewater plant in order to develop a capital improvement plan. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

**4.0 Operation**

4.1 System Safety Program. Each utility shall exercise reasonable care to reduce the hazards to which its employees, customers, and the general public may be subjected. A safety program should be adopted by each utility, fitted to the size and type of its operations.

4.1.1 "Miss Utility". All wastewater utilities are required to belong to and participate in the "Miss Utility" program to minimize third-party damage to other utilities as well as their own.

4.1.2 Promote Safe Work Methods. Each utility shall require its employees to use suitable tools and equipment in order that they may perform their work in a safe manner. The utility's employees who are subject to the hazards of asphyxiation, chemical handling, electrical shock, or drowning in the course of performing their work shall be properly instructed in the accepted methods of artificial respiration, including CPR (cardio-pulmonary resuscitation).

**5.0 Customer Relations****5.1 Application For Service.**

5.1.1 Rate Schedules. If applicable, each utility shall assist the customer or applicant in selecting the most economical rate schedule. If, after the selection of a service line diameter, the customer determines that a different size service is needed, the full cost of the new service or other facilities requested by the customer will be the responsibility of the customer.

5.1.2 Customer Notification. Customers affected by a change in rates or service schedule classification shall be notified by the utility.

5.1.3 Tariff Notice. Each utility shall keep in each office of the utility where applications are received, a copy of its currently approved tariff available for public inspection at any reasonable time.

5.1.4 Meter Reading. Every customer served by a wastewater utility shall be informed of the method of meter reading if meters are in place for billing purposes.

5.1.5 Interest on Deposits. When a utility's tariff requires or permits the collection of a deposit from customers, the utility shall pay interest on all such deposits at the rate of six percent (6%) annual simple interest. Interest shall be computed from the date of receipt of the deposit by the utility.

5.1.5.1 Interest on deposits shall be credited to the account of the depositor annually, at the time the deposit is returned, or when service is terminated, whichever is sooner; and

5.1.5.2 Deposits shall cease to draw interest on the date service is terminated, on the date the deposit is returned, or on the date that notice is sent to the depositor's last known address that the deposit is no longer required.

5.2 Billing Statement Adjustment. If wastewater service is billed on the basis of metered water usage, billing

adjustments shall be calculated on the premise that the meter should be 100% accurate. For the purpose of a billing adjustment, the error in registration of the meter shall be calculated and applied as specified in the meter test rules of the wastewater utility tariff or PSC Order No. 2076 governing minimum service standards provided by public water companies.

**6.0 Front-end Capital Contributions**

Front-end capital contributions shall be required from all new connections to recover, at least in part, the cost of constructing conveyance, treatment, and disposal facilities incurred by the utility where applicable.

---

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 29 Delaware Code

Section 4815(b)(3)b.2.D

(29 Del.C. §4815(b)(3)b.2.D

**3 DE Admin. Code 502****ORDER****502 Delaware Standardbred Breeders Fund Regulations****I. Nature of Proceedings**

Pursuant to its authority under 29 Del.C. §4815(b)(3)b.2.D and 10115, the State of Delaware Department of Agriculture Standardbred Breeder's Fund ("the Fund") proposed to amend its regulations. The Fund's purpose in proposing these amendments was to clarify existing regulations 2.0 and 13.7. This amended regulation 2.0 redefines "Delaware Sire" so as to permit a wider participation by stallions than heretofore while a new definition of "satisfactory performance line" elaborates the meaning of this term as it appears in regulation 13.7.

Notice of a public comment period of thirty (30) days on the Fund's proposed amendments was published in the *Delaware Register of Regulations* for April 1, 2005 as well in two Delaware newspapers of general circulation in accordance with 29 Del.C. §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

**II. Public Comments**

The Fund received no public comments in response to the notice of intention to adopt the proposed amended regulations.

### III. Findings and Conclusions

The public was given the required notice of the Fund's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

### IV. Order

AND NOW this 8th day of June, 2005, it is hereby ordered that:

1. The proposed amendment to the Fund's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. 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(e); and
4. The Fund reserves unto itself the authority to issue such other and further orders in this matter as may be just and proper.

IT IS SO ORDER this 8th day of June, 2005.

### 502 Delaware Standardbred Breeders Fund Regulations

#### 2.0 Definitions.

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

"Breeder" means the owner of the dam at the time of breeding through foaling.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

"Delaware-bred Horse" means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

"Delaware Resident" means a person as defined in 3 Del.C. §10032.

"Delaware Sire" means a Standardbred stallion that regularly stands for a breeding season in Delaware; ~~does not compete for purses during that period;~~ and is registered with the Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a lease filed with the Administrator of the Program at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and a non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

"Satisfactory Performance Line" means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

6 DE Reg. 1497 (5/1/03)

8 DE Reg. 336 (8/1/04)

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

**<http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>**



**DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 764**

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

**REGULATORY IMPLEMENTING ORDER**

**764 Credentials for an Interpreter/Tutor for the Deaf and Hard of Hearing**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 364 Certification Interpreter/Tutor for the Hearing Impaired. The amendments change Certification to a Permit and add sections on Definitions, Application Procedures, Criminal Conviction History and the Denial of and the Revocation of the Permit. The number of the regulation is changed to 764 and it will be included in the 700 Section of the 14 **DE Admin. Code of Regulations**. The title is also changed to Credentials for an Interpreter/Tutor for the Deaf and Hard of Hearing.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. Concerns included the criminal background check, the definition of Morality and the expiration period for the permit.

The Department cannot designate the failure to disclose one's criminal conviction history as a crime through regulation. All new employees including interpreter tutors must undergo a criminal background check as per 14 **DE Admin. Code** 745 Criminal Background Check for Public School Employees and 11 **Del.C.** Ch.85 Subchapter VI.

The Definition of morality and unfit are consistent with regulations adopted by the Professional Standards Board and approved by the State Board of Education in 14 **DE Admin. Code** 1513 and 1514.

The Department does not intend to place an expiration date on the permit. If an individual leaves employment and comes back to work years later the provisions of 11 **Del.C.** Ch.85 Subchapter VI will apply.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 364 to change the Certification to a Permit and add sections on Definitions, Application Procedures, Criminal Conviction History and the Denial of and the Revocation of the Permit.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 364. Therefore, pursuant to 14 **Del.C.** Ch 31, 14 **DE Admin. Code** 364 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 764 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 764 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 764 in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.31 on June 16, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16th day of June 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education  
Approved this 16<sup>th</sup> day of June 2005

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Barbara Rutt, Esquire  
Dennis J. Savage  
Dr. Claibourne D. Smith

~~**364 Certification Interpreter/Tutor for the Hearing Impaired**~~

~~Effective July 1, 1976~~

- ~~1.0 The following shall be required for the Standard License~~
- ~~1.1 High school or college graduate and,~~
- ~~1.2 Registered member of Interpreters of the Deaf (National) and/or Licensed as a teacher for the deaf and,~~
- ~~1.3 Adequate competency in the language of signs and finger spelling receptively and expressively as determined~~

by an agency authorized by the Delaware Department of Education.

2.0 The License that may be issued for this position is the Standard License.

## **764 Credentials for an Interpreter/Tutor for the Deaf and Hard of Hearing**

### **1.0 Content.**

1.1 This regulation shall apply to the requirements for a permit, pursuant to 14 **Del.C.** §1331(b), for Interpreter/Tutor for the Deaf and Hard of Hearing.

### **2.0 Definitions**

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

“**Permit**” means a document issued by the Department of Education that verifies an individual’s qualifications and training to serve as an Interpreter Tutor for the Deaf and Hard of Hearing.

“**Department**” means the Delaware Department of Education.

“**Immorality**” means conduct which is inconsistent with the rules and principles of morality expected of the interpreter/tutor and may reasonably be found to impair an individual’s effectiveness by reason of his or her unfitness or otherwise.

~~“**NAD**” means the National Association of the Deaf.~~

“**RID**” means the National Registry of Interpreters for the Deaf.

“**Secretary**” means the Secretary of the Delaware Department of Education

“**Unfit**” means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

### **3.0 The Department shall issue a Permit as an Interpreter/Tutor for the Deaf and Hard of Hearing to an individual who has:**

3.1 A minimum of a Bachelor’s degree in any field from a regionally accredited college or university; and ~~[maintains national certification is nationally certified]~~ as an Interpreter for the Deaf and Hard of Hearing by ~~[either NAD or]~~ RID, or;

3.2 ~~[Maintains a A]~~ current and valid license and is certified as a Teacher of the Hearing Impaired.

### **4.0 Application Procedures.**

4.1 Applicants for a Permit as an Interpreter/Tutor for the Deaf and Hard of Hearing shall submit to the Department:

4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

4.1.2 Evidence of national certification as an Interpreter for the Deaf and Hard of Hearing from ~~[either NAD or]~~ RID.

### **5.0 Criminal Conviction History**

5.1 An applicant shall disclose his or her criminal conviction history upon application for the Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Permit.

6.0 An applicant may be denied a Permit for an Interpreter/Tutor for the Deaf and Hard of Hearing upon a finding that the applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in this State.

6.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary’s decision shall be final.

6.2 Notwithstanding any other provision stated herein, no Permit shall be issued to an applicant if:

6.2.1 There is legal evidence that the applicant is not of good moral character;

6.2.2 The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

7.0 A Permit issued under the provisions of this regulation may be revoked upon a finding of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials and must be revoked upon finding that the permit holder made a materially false or misleading statement in his or her permit application.

7.1 The Secretary shall give written notice to the permit holder of the proposed revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary, or his or her designee, within 10 days of the receipt of the notice of denial. The Secretary’s decision shall be final.

8.0 This regulation shall be effective immediately. Notwithstanding this provision, the Department shall recognize a Certification Interpreter/Tutor for the Hearing Impaired that is otherwise valid if issued prior to July 11, 2005, provided that the Certificate holder is employed as an interpreter/tutor as of July 11, 2005. If a holder of a Certification Interpreter/Tutor for the Hearing Impaired

issued prior to July 11, 2005, should leave employment as an interpreter/tutor, such individual shall meet the then-in-effect permit requirements upon reapplication.

---

**DEPARTMENT OF EDUCATION****14 DE Admin. Code 365**

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

**REGULATORY IMPLEMENTING ORDER****765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code 365** Certification Resident Advisor (Houseparent). The amendments change Certification to a Permit and add sections on Definitions, Application Procedures, Criminal Conviction History, Denial and the Revocation of the Permit. The number of the regulation is changed to 765 and it will be in the 700 Section of the 14 **DE Admin. Code of Regulations**. The title is also changed to Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. Concerns included the criminal background check, the definition of Morality and the expiration period for the permit and requiring proficiency in communications with the deaf (if employed at the Sterck school) as a condition of receiving the permit.

The Department cannot designate the failure to disclose one's criminal conviction history as a crime through regulation. All new employees including resident advisors must undergo a criminal background check as per 14 **DE Admin. Code 745** Criminal Background Check for Public School Employees and 11 **Del.C. Ch.85** Subchapter VI.

The Definition of morality and unfit are consistent with regulations adopted by the Professional Standards Board and approved by the State Board of Education in 14 **DE Admin. Code 1513** and 1514.

The Department does not intend to place an expiration date on the permit. If an individual leaves employment and comes back to work years later the provisions of 11 **Del.C. Ch.85** Subchapter VI will apply.

The Department declines to add the requirement for proficiency in communications with the deaf (if employed at the Sterck School) as a condition of receiving the permit since the district can add this as a condition of employment. In addition the Director of State-Wide Services for Deaf and Hard of Hearing requested that we not include the requirement in the credentials for the permit.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code 365** in order to change Certification to a Permit and add sections on Definitions, Application Procedures, Criminal Conviction History, Denial and the Revocation of the Permit.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code 365**. Therefore, pursuant to 14 **Del.C. Ch.31**, 14 **DE Admin. Code 365** attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C. §122(e)**, 14 **DE Admin. Code 765** hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code 765** amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 765** in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C. §122** on June 16, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16th day of June 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education  
Approved this 16<sup>th</sup> day of June 2005

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Barbara Rutt, Esquire  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

### **365 Certification Resident Advisor (Houseparent)**

Effective July 1 1993

1.0 The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and;

1.2 Demonstrated competency in manual communications as determined by employer and;

1.3 Professional Education

1.3.1 Completion of a program in teacher education in any area or;

1.3.2 A Minimum of 18 semester hours from at least 4 of the following areas: Survey/Introduction/Psychology/Education of Exceptional Children Child Growth and Development/Human Development Behavior Problems/Behavior Management/Behavior Disorders/Behavior Modification Educational Psychology/Psychology of Learning/Learning Theory/Child Psychology/Psychology of Adolescence Interpersonal Relationships/Functioning Principles and Practices of Guidance/Guidance in the Classroom/Tools and Techniques of Counseling/Group Counseling Alternative Communications Audiology Manual Communications Course(s) in any specific disability of Exceptional Children

2.0 The following shall be required for the Limited Standard License (not renewable)

2.1 This License may be issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a Resident Advisor to allow for the completion of the requirements for the Standard License in 1.0:

2.1.1 Requirements of 1.1 and;

2.1.2 Completion of minimum nine semester hours as listed in 1.3.1.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### **765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing**

#### **1.0 Content**

1.1 This regulation shall apply to the requirements for a Permit for Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing

#### **2.0 Definitions**

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

**"Permit"** means a document issued by the Department of Education that verifies an individual's qualifications and training to serve as a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing.

**"Department"** means the Delaware Department of Education.

**"Immorality"** means conduct which is inconsistent with the rules and principals of morality expected of a resident advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing and may reasonably be found to impair an individual's effectiveness by reason of his or her unfitness or otherwise.

**"Secretary"** means the Secretary of the Delaware Department of Education.

**"Unfit"** means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

3.0 The Department shall issue a Permit as a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing to an applicant who has a minimum of a Bachelor's degree in any field from a regionally accredited college or university.

#### **4.0 Application Procedures**

4.1 Applicants for a Permit as a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing shall submit to the Department official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

#### **5.0 Criminal Conviction History**

5.1 An applicant shall disclose his or her criminal conviction history upon application for the Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Permit.

6.0 An applicant may be denied a permit for Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing upon a finding that the applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in this State.

6.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of receipt of the notice of denial. The Secretary's decision shall be final.

6.2 Notwithstanding any other provision stated herein, no Permit shall be issued to an applicant if:

6.2.1 There is legal evidence that the applicant is not of good moral character;

6.2.2 The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

**7.0** A Permit issued under the provisions of this regulation may be revoked upon a finding of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.

7.1 The Secretary shall give written notice to the permit holder of the proposed revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary, or his or her designee, within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

---

## **DEPARTMENT OF EDUCATION**

14 **DE Admin. Code** 1006

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

### **REGULATORY IMPLEMENTING ORDER**

#### **1006 Delaware Interscholastic Athletic Association (DIAA)**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin Code** 1006 Delaware Interscholastic Athletic Association (DIAA) by changing 7.2.1 so that all protests involving game competition that are allowable as defined in the National Federation of High School Sports (NFHS) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three person protest panel. The other amendment adds section 7.2.2 to say that all protests other than those involving game competition and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday

April 21, 2005, in the form hereto attached as *Exhibit "A"*. No Comments were received.

#### **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1006 in order to change 7.2.1 so that all protests involving game competition that are allowable as defined in the National Federation of High School Sports (NFHS) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three person protest panel. The Secretary also finds that it is appropriate to amend 14 **DE Admin. Code** 1006 to add section 7.2.2 to say that all protests other than those involving game competition and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1006. Therefore, pursuant to 14 **Del.C.** § Ch.3, 14 **DE Admin. Code** 1006 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1006 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 1006 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1006 in the *Administrative Code of Regulations* for the Department of Education.

#### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.3, on June 16, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16th day of June 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of June 2005

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Barbara Rutt, Esquire  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

**1006 Delaware Interscholastic Athletic Association  
 (DIAA)**

**1.0 Organization Name and Purpose.**

The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

**2.0 Membership in DIAA**

2.1 Full Member Schools: Any secondary school including private, public, vocational-technical, and charter schools, as authorized by 14 Del.C. Ch. 5, may become a full member school of DIAA by payment of dues and a signed affirmation of the obligations of membership.

2.1.1 A full member school is a non-voting member of DIAA and does not participate in its day-to-day governance. A full-member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

2.2.1 The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA

sanctioned tournaments/meets in cross country, indoor track, wrestling (except dual-team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 \$400 for middle schools.

2.3.2 \$600 for high schools with enrollments of 499 or less.

2.3.3 \$800 for high schools with enrollments of 999 or less.

2.3.4 \$1,000 for high schools with enrollments of 1,499 or less.

2.3.5 \$1,200 for high schools with enrollments of 1,999 or less.

2.3.6 \$1,400 for high schools with enrollments of 2,000 or more.

2.3.7 Membership dues shall be paid each year by August 1. Full member and associate member schools which fail to comply may be subject to penalties as determined by the DIAA Board of Directors.

2.4 Participation in State Championship Tournaments/Meets: Any member high school in good standing, is sponsoring a team in a given sport, and is in compliance with all applicable DIAA Rules and Regulations shall be eligible for the DIAA approved state championship tournament/meet in that sport.

2.5 Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.

**3.0 DIAA Board of Directors**

3.1 Conflict of Interest: Any member of the Board of Directors who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.

3.2 Committees of the DIAA Board of Directors

3.2.1 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.

3.2.1.1 The committee for each DIAA recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.

### 3.3 Committee Membership

3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be ex-officio members of all committees. Committee membership shall be geographically representative and committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.

3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.

3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.

## 4.0 Responsibilities of the Executive Director

4.1 Interpret the rules and regulations and grant waivers of rules and regulations: Any waiver granted shall be temporary and shall be subject to review and approval by the DIAA Board at a subsequent or special meeting. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.

4.2 Decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.

4.3 Carry on the business of the DIAA Board and DIAA between meetings: Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day-to-day operation of the organization.

## 5.0 Responsibilities, Powers, and Duties of the Administrative Head of School

### 5.1 Responsibilities of Administrative Head of School

5.1.1 The administrative head of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individuals and teams. The administrative head may delegate his or her authority, but such delegation will not negate the responsibility for a violation of the DIAA Regulations by his/her school.

### 5.2 Powers and Duties of Administrative Head of School

5.2.1 The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include but are not limited to the following:

5.2.1.1 Sanctioning all interscholastic athletic contests in which his/her school participates.

5.2.1.2 Excluding any contestant because of improper conduct.

5.2.1.3 Excluding any contestant whose physical health would be jeopardized by such participation, because of illness or injury suffered, until such time as the contestant is declared physically fit by the school or attending physician.

5.2.1.4 Protecting the well-being of all visitors and officials attending interscholastic athletic contests conducted by his/her school. Administrative heads of member schools shall be expected to provide adequate security and, in the absence of such provisions, penalties may be imposed.

5.2.1.4.1 When a contest is conducted at a neutral site, the administrative heads of the participating schools shall be held jointly responsible for the protection and well-being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.

5.2.1.5 Protecting the well-being of the school's participants by providing them with safe and suitable uniforms and equipment.

5.2.1.6 Ensuring that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.

5.2.1.7 Designating a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager.

5.2.1.8 Ensuring that an authorized representative accompanies the school's teams to all contests.

5.2.1.9 Certifying in writing the eligibility of his/her school's contestants in accordance with the Regulations of the Department of Education.

5.2.1.10 Exercising such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the Regulations of the Department of Education.

5.2.1.11 Urging all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.

## 6.0 Amendments to Department of Education Regulations

6.1 The DIAA Board, The Secretary of Education, the Executive Director of DIAA or any member school may propose changes, additions or deletions to the Department of Education regulations.

6.1.1 Proposed changes shall be submitted in writing by a member school(s) to the Executive Director and these proposed changes and any other changes submitted by the Secretary of Education or the Executive Director of DIAA or the DIAA Board of Directors shall be reviewed by the Rules and Regulations Committee.

6.1.2 Any proposed changes to the Regulations along with comments received from the Rules and Regulations Committee, shall be considered at a scheduled meeting of the DIAA Board. Proposed changes adopted by the Board shall thereafter be submitted to the Secretary of Education who will place them on the State Board of Education agenda for review and final approval.

6.1.2.1 All member schools shall then be advised in writing of any proposed changes. The member schools and the public shall have an opportunity to review and comment on the proposed changes during the thirty day period that the regulations are advertised in the *Register of Regulations* (as per the Administrative Procedures Act).

## 7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA

7.1 Reporting violations of Department of Education regulations

7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.

7.1.1.1 Additional penalties may be imposed for repeat offences or as deemed necessary to assure proper conduct of interscholastic athletics.

### 7.2 Reporting Protests and Complaints

~~7.2.1 All protests and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.~~

7.2.1 All protests involving game competition that are allowable as defined in the NFHS (name of sport) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three person protest panel. This panel will include the DIAA Executive Director, the DIAA Chairman or Vice Chairman of the Board and the State Tournament Director of the given sport. Protests must be submitted in writing within 48 hours of the conclusion of the contest or earlier if required by NFHS rules. The decisions of the DIAA protest panel may not be appealed.

7.2.2 All protests other than those involving game competition and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

## 8.0 DIAA Board of Directors Investigative Procedure

8.1 The following investigative procedure shall be followed when the DIAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DIAA.

8.1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

8.1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members and each person interviewed shall be informed of the nature of the investigation.

8.1.3 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

8.1.4 When immediate punitive action by the Executive Director is necessary, the action taken shall be stated in writing.

8.1.5 When charges are to be presented to the DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

## 9.0 Waiver of DIAA Rules and Regulation

### 9.1 General

9.1.1 The DIAA Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:

9.1.1.1 In the case of eligibility waiver requests, there exists a hard ship as defined by 9.2.1;



9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the Rule;

9.1.1.3 The spirit of the rule being waived will not be offended or compromised;

9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and

9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.

9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.

9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It is not the duty of the Executive Director or the DIAA Board to produce or collect information.

9.1.4 Waiver requests would be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.

9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.

9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.

9.1.5.1 The DIAA Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

9.1.5.2 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

9.1.5.3 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.

9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.

9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.

9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.

9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

## 9.2 Eligibility Rule Waiver Request

9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principle or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school's position on the waiver request when rendering its decision.

9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student's:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;

9.2.2.2.2 Attendance records for the last two (2) years;

9.2.2.2.3 A letter from the Principal or Headmaster either supporting or not supporting the waiver request;

9.2.2.2.4 Medical records (if applicable);

9.2.2.2.5 Legal documentation (if applicable);

9.2.2.2.6 IEP's (if applicable); and

9.2.2.2.7 Any documentation/evidence to substantiate a hardship or extenuating circumstance exists.

9.2.3 An appearance by the student and his or her parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.

### 9.3 Waiver Requests of Non-eligibility Rules

9.3.1 The Principal or Headmaster of a member school, or any other individual may request a waiver of a rule, regulation, guideline, policy or procedure of DIAA not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule.

9.3.2 All requests for non-eligibility waivers must be in writing, signed by the Principal or Headmaster.

9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.

9.3.4 If the waiver requested would affect more than one member school, the waiver applicant shall provide the position of the other affected member schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

## 10.0 Appeal Procedure to the DIAA Board of Directors

10.1 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

### 10.1.1 Initiation of an Appeal to the DIAA Board

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1007.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the on the next meeting agenda of DIAA.

### 10.1.2 Record of Prior Proceedings

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meetings(s) at which a disputed action was

taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten (10) days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

### 10.1.3 DIAA Board Hearing Procedures for Appeals

#### 10.1.3.1 Record Review

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) days after the notice was filed.

10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) days before the consideration date, unless otherwise directed.

10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.

#### 10.1.3.2 Evidentiary Hearings

10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.

10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such

objections. Objections with regard to the form of question will not be considered.

10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.

10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.

10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.

10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.

10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.

10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

**11.0 Appeal to the State Board of Education:** Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education).

**1 DE Reg. 725 (12/1/97)**

6 DE Reg. 280 (9/1/02)  
7 DE Reg. 1692 (6/1/2004)

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 1008

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

### REGULATORY IMPLEMENTING ORDER

#### 1008 DIAA Junior High/Middle School Interscholastic Athletics

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 *DE Admin. Code* 1008 DIAA Junior High/Middle School Interscholastic Athletics in order to remove 4.3.1 the chart on Maximum Game Schedules and Designated Sports Seasons allowing the maximum game schedules and designated sports seasons to be designated by the DIAA Board of Directors. The first words of 4.3.2 "The preceding game limitations" have also been adjusted to read simply "Game limitations" in order to reflect the deletion of the chart.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 21, 2005, in the form hereto attached as *Exhibit "A"*. No comments were received.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 *DE Admin. Code* 1008 in order to remove 4.3.1 the chart on Maximum Game Schedules and Designated Sports Seasons allowing the maximum game schedules and designated sports seasons to be designated by the DIAA Board of Directors.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1008. Therefore, pursuant to 14 **Del.C.** Ch.3, 14 **DE Admin. Code** 1008 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1008 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1008 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1008 in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.3 on June 16, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16th day of June 2005.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education  
Approved this 16<sup>th</sup> day of June 2005

#### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Barbara Rutt, Esquire  
Dennis J. Savage  
Dr. Claibourne D. Smith

#### 4.0 Sports Seasons, Practice Sessions and Maximum Game Schedules and designated Sports Seasons

##### 4.1 Sports Seasons

4.1.1 The fall sports season shall begin on August 25 and end not later than December 1. Practice for any fall sport shall not begin earlier than August 25.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays on "air", practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament." Organized football" or "organized football practice" shall be

defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December

4.1.3 The spring sports season shall begin on March 1 and end not later than the last school day. Practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which conducts practice prior to the first allowable date shall pay a \$100.00 fine per each illegal practice day and a school which participates in a game prior to the first allowable date shall be required to forfeit the contest and pay a \$100.00 fine.

4.1.5 No member school shall participate in a post season contest without the written approval of the Executive Director.

**4.2 Practice Sessions**

4.2.1 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, chalkboard sessions, warm-up and cool down exercises, drills, and mandatory strength training, etc. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the

school's coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the individual schools and conferences. However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if an eighth grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

**4.3 Maximum Game Schedules and Designated Sports Seasons:**

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their ~~designated sports~~ season shall be as follows: designated by the DIAA Board of Directors.

**Team Limitations**

**Individual Limitations**

Sport	Season	Week	Week	Day
<b>Fall</b>				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates	2 competition dates	2 competition dates	
	of which one date may			
	involve more than			
	2 teams			
<b>Winter</b>				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	* 12 contests	2 competition dates	2 competition dates	5 matches
<b>Spring</b>				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	

<del>Outdoor Track (boys and girls)</del>	<del>+10 competition dates</del>	<del>+2 competition dates</del>	<del>+2 competition dates</del>	
Tennis (boys and girls)	+2 contests	2 contests	2 contests	2 halves
Outdoor Track (boys and girls)	+10 competition dates +	2 competition dates	+2 competition dates	

~~+ A team may not participate in two different cross country or outdoor track meets on the same day.~~

~~\*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.~~

~~Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.~~

4.3.2 ~~[The preceding game Game]~~ limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/ competition dates in a week.

4.3.3 A student shall participate in a particular sport for only one season during each academic year.

4.3.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

4.3.5 A school which exceeds the weekly contest limitation shall forfeit the contest and pay a \$100.00 fine.

4.3.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 2.10.

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

<http://www.state.de.us/research/AdminCode/title14/>

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 1009

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

### REGULATORY IMPLEMENTING ORDER

#### 1009 DIAA Senior High School Interscholastic Athletics

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1009 DIAA Senior High School Interscholastic Athletics. The amendments include adding a phrase to 2.2.1.7 concerning students who reach the age of majority that reads, shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance "on or after their 18<sup>th</sup> birthday". The second amendment removes 4.3.1 the chart on Maximum Game Schedules and Designated Sports Seasons allowing the maximum game schedules and designated sports seasons to be designated by the DIAA Board of Directors.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 21, 2005, in the form hereto attached as *Exhibit "A"*. No comments were received.

#### II. Findings Of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 1009 in order to removes 4.3.1 the chart on Maximum Game Schedules and Designated Sports Seasons allowing the maximum game schedules and designated sports seasons to be designated by the DIAA Board of Directors. The Secretary also finds that it is appropriate to amend 14 DE Admin. Code 1009 in order to add a phrase to 2.2.1.7 concerning students who reach the age of majority that reads, shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance "on or after their 18<sup>th</sup> birthday"

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 1009. Therefore, pursuant to 14 Del.C. Ch.3, 14 DE Admin. Code

1009 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code**1009 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### **IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 1009 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code**1009 in the *Administrative Code of Regulations* for the Department of Education.

#### **V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.3 on June 16, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16th day of June 2005.

#### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of June 2005

#### **STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Barbara Rutt, Esquire

Dennis J. Savage

Dr. Claibourne D. Smith

#### **1009 DIAA Senior High School Interscholastic Athletics**

**2.0 Eligibility: No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:**

##### **2.1 Eligibility, Age**

2.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, non-scoring basis in non-contact or non-collision sports

##### **2.2 Eligibility, Residence**

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (see 2.2.1.7), in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.5 A student who is a non-resident of Delaware shall be eligible to attend a public school, charter school or career-technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent or court appointed legal guardian or Relative Caregiver is a full-time employee of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or vocational-technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance on or after their 18<sup>th</sup> birthday. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

### 2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

2.3.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 Students with disabilities who are placed in special schools or programs

#### 2.3.3.1 Definitions:

**"Campus"** means a contiguous land area containing one or more school buildings.

**"Special School or Program"** means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

**"Student With a Disability"** means a "child with a disability" as that term is defined in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.3.2 A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:

2.3.3.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.3.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular high school for all or part of the school day, the student shall be eligible only at that regular high school.

2.3.3.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular high school, the student shall be eligible only at the regular high school on the same campus.

2.3.3.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular high school, the student shall be eligible only at the regular high school designated to serve the special school's or program's students.

2.3.3.2.4.1 School districts or charter schools which administer special schools or programs and have multiple high schools shall decide which of its regular high schools shall be designated to serve special school or program students in these circumstances.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.



2.3.6 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

#### 2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district.

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 2.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with the student being placed with a Relative Caregiver as per 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full-time care)

but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

or

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

2.4.3 **Transfer Because of Promotion or Administrative Assignment:** Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4 **Transfer Because of a Change in the Program of Study or Financial Hardship:** If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.4.1 Documentation for change in the program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

- 2.4.4.1.1 The student's schedule;
- 2.4.4.1.2 The student's transcript;
- 2.4.4.1.3 Current course descriptions

from both the sending and receiving schools;

2.4.4.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.4.1.5 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.4.2 **Documentation for Financial Hardship:** Documentation for financial hardship shall include:

2.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses; and

2.4.4.2.2 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.5 **Transfer Because of Custody Change:** In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action

imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 Del.C. Ch.4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.4.8 A student who transfers from a school of choice to either a private school, career-technical school or, after completing his/her two-year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

## 2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an

instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic. Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

## 2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 **“Hardship”** shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the

local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for senior high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

#### 2.7.4 Participation of Postgraduates

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized senior high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

#### 2.8 Eligibility of Foreign Exchange Students and International Students

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

#### 2.9 Student Eligibility Report Forms

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

#### 2.10 Use of an Ineligible Athlete:

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and/or individual awards shall be returned

to the event sponsor and team and/or individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any

DIAA member school for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 **DE Admin. Code** 1006.11.

#### **4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons**

##### **4.1 Sports Seasons**

4.1.1 The fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. Organized football" or "organized football practice" shall be

defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of \$100.00 per illegal practice day.

4.1.6 No member school shall participate in a post-season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in

the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency and/or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their sports season shall be designated by the DIAA Board of Directors, and is as follows:

**Team Limitations**

**Individual Limitations**

Sport	Season	Week	Week	Day
-------	--------	------	------	-----

<b>Fall</b>				
-------------	--	--	--	--

<del>Cross Country (boys and girls)</del>	<del>+6 competition dates</del>	<del>+3 competition dates</del>	<del>+3 competition dates</del>	
<del>Field Hockey (girls)</del>	<del>+6 contests</del>	<del>3 contest</del>	<del>3 Competition dates</del>	<del>2 halves</del>
<del>Football (boys)</del>	<del>+10 contests</del>	<del>1 contest</del>	<del>4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level</del>	
<del>Soccer (boys)</del>	<del>+6 Contests</del>	<del>3 contests</del>	<del>3 competition dates</del>	<del>2 halves</del>

<del>Volleyball (girls)</del>	<del>16 competition dates of which 1 date may involve more than 2 teams</del>	<del>3 competition dates</del>	<del>3 competition dates</del>	
<del>Winter</del>				
<del>Basketball (boys and girls)</del>	<del>22 contests</del>	<del>3 contests</del>	<del>3 competition dates</del>	<del>4 quarters</del>
<del>Swimming and Diving (boys and girls)</del>	<del>0</del>	<del>3 contests</del>	<del>3 contests</del>	
<del>Indoor Track (boys and girls)</del>	<del>12 contests</del>	<del>+ 3 contests</del>	<del>+ 3 contests</del>	
<del>Wrestling (boys)</del>	<del>* 18 contests</del>	<del>3 competition dates</del>	<del>3 competition dates</del>	<del>5 matches</del>
<del>Spring</del>				
<del>Baseball (boys)</del>	<del>20 contests</del>	<del>3 contests</del>	<del>3 contests</del>	
<del>Softball (girls)</del>	<del>20 contests</del>	<del>3 contests</del>	<del>3 contests</del>	
<del>Golf (boys)</del>	<del>16 competition dates</del>	<del>3 competition dates</del>	<del>3 competition dates</del>	
<del>Tennis (boys and girls)</del>	<del>16 contests</del>	<del>3 contests</del>	<del>3 contests</del>	
<del>Outdoor Track (boys and girls)</del>	<del>18 competition dates</del>	<del>+ 3 competition dates</del>	<del>+ 3 competition dates</del>	
<del>Lacross (boys and girls)</del>	<del>16 contests</del>	<del>3 contests</del>	<del>3 competition dates</del>	<del>4 quarters (boys) or 2 halves (girls)</del>
<del>Soccer (girls)</del>	<del>16 contests</del>	<del>3 contests</del>	<del>3 competition dates</del>	<del>2 halves</del>

~~The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.~~

~~A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.~~

~~Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.~~

4.3.2 The third contest/competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

4.3.2.1 A team shall not participate in two different cross country, indoor track or outdoor track meets on the same day.

4.3.2.2 Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2.3 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football.

A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

4.3.3.1 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/ competition dates in a week.

4.3.4 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

4.3.5 A student shall participate in a particular sport for only one season during each academic year.

4.3.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$100.00 fine.

4.3.6.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Department of Education are available at <http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>**

### PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1565

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

### REGULATORY IMPLEMENTING ORDER

#### 1565 Standard Certificate School-To-Work Transition Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 381 Standard Certificate School to Work Transition Teacher. It is necessary to amend this regulation to align it with changes in statute regarding the licensure and certification of educators. The requirement for completion of an approved program in School to Work Transition Studies has been eliminated as there is no approved program in Delaware. Jobs for Delaware Graduates teachers have been removed from the requirements of this regulation, as these teachers are not employed by public school districts or charter schools. The regulation will be renumbered 1565 to reflect its movement to the Professional Standards Board section of the Department of Education regulations.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on April 26, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

#### II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

#### III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 1565 of the *Administrative Code of Regulations* of the Department of Education.

#### V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF JUNE, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

#### FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

#### IT IS SO ORDERED THIS 16TH DAY OF JUNE, 2005

#### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire



Barbara Rutt  
Dennis J. Savage  
Dr. Claibourne D. Smith

**381 1565 Standard Certificate ion School-To-Work  
Transition Teacher**

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for grades 9-12 for individuals who provide work transition training, counseling and assistance to students who will be placed into full-time positions in the private sector upon graduation:~~

~~1.1 Bachelor's degree from a regionally accredited college and~~

~~1.2 Professional Education~~

~~1.2.1 Eighteen (18) semester hours of course work in education, to include a one-semester course in each of the following areas:~~

~~1.2.1.1 Educational Psychology/ Human Growth and Development/Adolescent Psychology, Tools and~~  
~~1.2.1.2 Techniques in Counseling, Methods of Teaching School-to-Work Transition Students, Job Development Training, Career Guidance and Information, Occupational and Educational Information or;~~

~~1.2.2 Completion of an approved program in School-to-Work Transition studies~~

~~1.2.3 Experience of a minimum of two years of continuous, full-time work experience in trade, business, or industry; or experience comparable to school-to-work transition.~~

**1.0 Content**

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School to Work Transition Teacher. School to Work Transition Teachers, including Jobs for Delaware Graduates teachers, provide work transition training, counseling and assistance to students in grades 9-12.~~

**2.0 Definitions**

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

~~“Department” means the Delaware Department of Education.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~**3.0** In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a School to Work Transition Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Educational Requirements.~~

~~3.1.1 Bachelor's degree from a regionally accredited college or university; and~~

~~3.1.2 Eighteen (18) semester hours of course work in education, to include three semester hours in each of the following areas:~~

~~3.1.2.1 Educational Psychology/Human Growth and Development/Adolescent Psychology;~~

~~3.1.2.2 Tools and Techniques in Counseling;~~

~~3.1.2.3 Methods of Teaching School-to-Work Transition Students;~~

~~3.1.2.4 Job Development Training;~~

~~3.1.2.5 Career Guidance and Information;~~

~~and~~  
~~3.1.2.6 Occupational and Educational Information.~~

~~3.2 Experience Requirements.~~

~~3.2.1 A minimum of two years of continuous, full-time work experience in trade, business, or industry; or experience comparable to school-to-work transition.~~

~~**2.0 The following shall be required for the Limited Standard License:**~~

~~2.1 Bachelor's degree and,~~

~~2.2 A minimum of two years of work experience as stated in 1.2.3 and~~

~~2.3 Course work in the areas of Methods of Teaching School-to-Work Transition students, Educational Psychology/Human Growth and Development/Adolescent Psychology and Career Guidance Information.~~

~~3.0 Present Jobs for Delaware Graduates Employees~~

~~3.1 No “grandfathering” will be permitted. All individuals presently employed in these positions shall meet full certification requirements within three years of the approval of these standards, unless they hold a Standard Trade and Industry Introduction to Vocations License.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

**PROFESSIONAL STANDARDS BOARD**14 **DE Admin. Code** 1513Statutory Authority: 14 Delaware Code,  
Section 122(D) (14 **Del.C.** §122(D))**REGULATORY IMPLEMENTING ORDER****1513 Denial Of Licenses****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1513 Denial of Licenses. It is necessary to amend this regulation to add "Certificates" to the title and to the content of the regulation, as an educator must have both a license and a certificate to be employed in a Delaware public school. It is further being amended to clarify that the Department may refuse to issue a license or certificate to an applicant who fails to meet the prerequisites for a license or certificate. The number of days an individual has to request a hearing has been reduced from 30 to 10 to facilitate speedy resolution of disputes.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on April 26, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

**II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

**III. Decision to Adopt the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1513 of the *Administrative Code of Regulations* of the Department of Education.

**V. Effective Date of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF JUNE, 2005**

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

**FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 16TH DAY OF JUNE, 2005**

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Barbara Rutt  
Dennis J. Savage  
Dr. Claibourne D. Smith

**1513 Denial of Licenses and Certificates****1.0 Content:**

This regulation shall apply to the denial of an Initial License, Continuing License and/or Advanced License for educators pursuant to 14 **Del.C.** §1210, 1211, 1212, 1213, 1214, and 1217; and to the denial of a Standard or Emergency Certificate pursuant to 14 **Del.C.** §§1220 and 1221.

**2.0 Definitions:**

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

"**Advanced License**" means a license issued as part of the three-tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

“**Continuing License**” means a license issued as part of the three-tiered licensure system set forth in 14 Del.C. §1211 and §1212.

“**Department**” means the Delaware Department of Education.

“**Educator**” means a public school employee who holds a license issued under the provisions of 14 Del.C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del.C., §1203, but does not include substitute teachers.

“**Good Moral Character**” means conduct which is consistent with the rules and principles of morality expected of an educator.

“**Immorality**” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

“**Initial License**” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. §1210.

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Standard Certificate**” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“**Standards Board**” means the Professional Standards Board established pursuant to 14 Del.C. §1205.

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

“**Unfit**” means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials.

**3.0** The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate to an applicant upon a finding that the applicant fails to meet the statutory or regulatory requirements for a license or certificate.

**43.0** Upon a finding that an applicant is unfit to be licensed or certified in the State, the Department may refuse to issue an Initial License, Continuing License or an Advanced License or a Standard or Emergency Certificate to an applicant who otherwise meets the requirements set forth in 14 DE Admin. Code 1510, 1511, ~~and~~ 1512, 1515 and 1516.

**5.0 4-0** Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license or certificate shall be issued to an applicant for an Initial, Continuing or Advanced License or Standard or Emergency Certificate if:

~~5.1 4-1~~ There is legal evidence that the applicant is not of good moral character; or

~~5.2 4-2~~ The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

~~6.0 3-1~~ The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within ten (10) ~~thirty (30)~~ days.

~~6.1 3-2~~ An applicant who is denied an Initial, Continuing, or Advanced License or a Standard or Emergency Certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

**7 DE Reg. 161 (8/1/03)**

---

## PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1584

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

### REGULATORY IMPLEMENTING ORDER

#### 1584 Permits Paraeducators

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1584 Permits Paraeducators.. It is necessary to amend this regulation to remove bus aides from the paraeducator permit, as their qualifications are addressed in 14 DE Admin. Code 1105. It is also necessary to amend this regulation to revise the denial and revocation procedures for paraeducators.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on April 26, 2005, in the form hereto attached as Exhibit “A”. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

## III. DECISION TO ADOPT THE REGULATION

## 1584 Permits Paraeducators

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1584 of the *Administrative Code of Regulations* of the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

## APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF JUNE, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

## FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

## IT IS SO ORDERED THIS 16TH DAY OF JUNE, 2005

## STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

## 1.0 Content:

Pursuant to 14 **Del.C.** §1205(b) this regulation shall apply to the qualifications required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full-time or part-time, in support positions in public schools.

## 2.0 Definitions:

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

**"Associate's or Higher Degree"** means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

**"Completed at Least 2 Years of Study at an Institution of Higher Education"** means the satisfactory completion of a minimum of 60 semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two years of full-time study as the successful completion of a minimum of 48 semester hours, and provides documentation of such definition.

**"Department"** means the Delaware Department of Education.

**"Instructional Paraeducator"** means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

**"Paraeducator"**, as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202 (6).

**"Permit"** means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, instructional or service paraeducator.

**"Secretary"** means the Secretary of the Delaware Department of Education.

“**Service Paraeducator**” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (See 14 **DE Admin. Code** 1105).

“**Standards Board**” means the Professional Standards Board of the State of Delaware as established in response to 14 **Del. C.** §1205.

“**State Board**” means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

“**Title I Paraeducator**” means a public school employee who provides one-on-one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I paraeducators are all instructional paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home-school liaison.

**3.0 Title I Paraeducators. A Title I paraeducator must hold a Title I paraeducator permit.**

3.1 The Department shall issue a permit to a Title I paraeducator applicant who submits evidence to his/her district, charter school, or other employing authority of:

3.1.1 completion of at least two years of study in general or educational studies at an institution of higher education; or

3.1.2 receipt of an associate’s or higher degree; or

3.1.3 evidence of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.3.1.2 Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:

3.1.3.1.2.1 Mathematics: greater than or equal to a total right score of 94 on arithmetic.

3.1.3.1.2.2 English: greater than or equal to a total right score of 87.

3.1.3.1.2.3 Reading: greater than or equal to a total right score

of 78.

3.1.3.1.3 Such alternative as may be established by the Standards Board, with the approval of the State Board.

3.2 Pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.

3.3 Notwithstanding the above, and pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until January 8, 2006 to meet the requirements of 3.1.

3.3.1 Accordingly, Title I paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I paraeducator permit which shall expire on January 8, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to January 8, 2006, the permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.

3.4 Application Procedures.

3.4.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of 3.0.

3.4.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

**4.0** All instructional paraeducators and service paraeducators must hold the appropriate permit. The Department shall issue a permit to an instructional paraeducator applicant or a service paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.1 Notwithstanding the above, instructional paraeducators and service paraeducators hired before

February 11, 2004 and who do not have a high school diploma may be issued the applicable permit which shall expire January 8, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to January 8, 2006, the permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0

**5.0** Unless stated otherwise herein, a Title I, instructional, or service paraeducator permit shall be valid for five years from the date of issuance. The Department shall renew a paraeducator permit, valid for an additional five years, to a paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of 15 clock hours of professional development.

5.1 Fifteen clock hours of professional development is required to be completed during the term of validity of the paraeducator permit.

5.2 Options for Renewal: The following professional development activities are approved options for the renewal of a paraeducator permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

5.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass/fail course (1 semester hour equals 15 clock hours).

5.2.2 Planned school professional development day (maximum 6 clock hours per day).

5.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).

5.2.4 Participation on school, district, or state-sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

**6.0** An applicant shall disclose his or her criminal conviction history upon application for any paraeducator permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a paraeducator permit as specified in 14 **Del.C.** §1219.

**7.0** A Paraeducator Permit may be denied an applicant upon a finding that an applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State. ~~In accordance with 14 DE Admin. Code 1513 or A Paraeducator Permit may be~~ revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a

materially false or misleading statement in his or her permit application ~~in accordance with 14 DE Admin. Code 1514.~~ A Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the Secretary within ten (10) days of receipt of the notice of denial or revocation. The Secretary's decision shall be final.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. This proposal gives direction on *Couples Cases* for the eligibility process. 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 May 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed New Rule

##### Citation

- State Medicaid Manual, Section 3597
- DSSM 20810 - Treatment of Couples in Medical Institutions: Adds a new rule that clarifies when a couple is considered a *Couples Case* and gives direction for the eligibility process. This action incorporates current policy into a rule.

#### Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized comment:

GACEC and SCPD endorse the concept of the proposed regulations since it appears DSS includes a provision suggesting that, in deciding whether to apply the "Couple Case" financial limits to a couple, DSS would adopt the approach most favorable to the individuals.

**Agency Response:** DSS thanks you for your endorsement.

#### **Findings of Fact**

The Department finds that the proposed changes as set forth in the May 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the policies for the Long Term Care Program related to treatment of couples in medical institutions is adopted and shall be final effective July 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 6/15/2005

#### **DSS FINAL ORDER REGULATION #05-30 NEW:**

#### **DSSM 20810 Treatment of Couples in Medical Assistance**

A legally married husband and wife who have continuously shared a room in a hospital, nursing home, skilled nursing facility or intermediate care facility for a period of at least 6 months, may be considered a Couples Case and the Couples Case income and resource limits would apply to them. Should a married couple be determined a Couples Case, then spousal rules will not apply. The decision to treat a married couple as a Couples Case or as 2 individuals should be based on the couple's best interests in regard to the income and resource limits. See DSSM 20100.5.5 and 20300.

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER SIXTY-EIGHT**

**RE: ESTABLISHING THE HEALTH  
DISPARITIES TASK FORCE**

**WHEREAS**, the “*Stronger Together*” Minority Health Disparity Conference, sponsored by Lt. Governor John Carney and the Metropolitan Wilmington Urban League, was the first statewide conference to focus on racial and ethnic disparities, and highlighted the concerns of Health Disparities in Delaware; and

**WHEREAS**, a report from that conference has further outlined the problem in Delaware, and recommends the creation of a Task Force to build a framework for addressing health disparities; and

**WHEREAS**, the data compiled by the University of Delaware as part of the “*Stronger Together*” conference and report shows that disparities exist among racial and ethnic groups and indicates higher incidence and mortality rates for most chronic conditions; and

**WHEREAS**, that research has identified such factors as access to health care, environmental and behavioral components as contributors to health disparities; and

**WHEREAS**, improving health status in all communities requires effective programs of prevention, education and health promotion; and

**WHEREAS**, certain health indicators were identified that outline the degree of disparity that exists;

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Health Disparities Task Force is established. Two-Co-Chairpersons, one a representative of a governmental agency, and one from a non-governmental, community-based organization, shall be appointed by the Governor. The terms of all members shall terminate at the time the Task Force tenders its report to the Governor.

2. The Commission shall consist of 23 members, four of whom shall be appointed by the General Assembly, with the remainder appointed by the Governor, as follows:

a. Two members appointed by the House of Representatives (one appointed by the Speaker and one appointed by the Minority Leader);

b. Two members appointed by the Senate (one appointed by the President Pro Tempore and one appointed by the Minority Leader);

c. The Director of the Division of Public Health;

d. The Director of the Office of Minority Health;

e. One representative of the medical community;

f. One representative from the healthcare insurance industry;

g. The Director of the Division of Substance Abuse and Mental Health;

h. Two representatives of organizations that serve the minority community;

i. Two representatives from institutions of higher education;

j. One representative from the Delaware Health Care Commission;

k. Two representatives of Federally Qualified Health Centers;

l. One representative of a Delaware hospital;

m. The President of the National Medical Association, Delaware Chapter;

n. One representative from the Delaware State Chamber of Commerce; and

o. Four representatives from the community-at-large representing racial or ethnic groups (one from each County, and the City of Wilmington).

3. The Health Disparities Task Force shall advise the Governor, through the Division of Public Health and the Department of Health and Social Services, of strategies to reduce health disparities in Delaware. The Task Force shall develop broad-based recommendations for the reduction of health disparities in Delaware, which are based upon scientific evidence, defined partnerships, expected contributions, timelines, review and evaluation. These recommendations should encompass but not be limited to charges to business, community, education, communities of faith, providers, hospitals, insurers and government.

4. The Task Force shall issue its final report within one year of the date of this Order.

5. The goals of the Health Disparities Task Force shall include, but shall not be limited to:

a. Defining the health disparities status of Delaware as compared to the nation and the region;

b. Documenting the disparities among racial and ethnic groups related to specific conditions and the reasons for the gaps;

c. Identifying best practices for prevention and intervention;

d. Increasing awareness of the scope of the problem among government officials, medical professionals and the public;

e. Improving coordination between and among the public and private sector; and

f. Identifying areas requiring additional research and education.

6. The Health Disparities Task Force may establish sub-committees under the leadership of its members to conduct the activities of the Task Force.



7. The Division of Public Health shall provide staffing for the Task Force.

8. The Division of Public Health shall collaborate with its community partners to utilize the final recommendations to develop a comprehensive multidisciplinary Health Disparity reduction plan for the State of Delaware.

APPROVED: May 24, 2005

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

---

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SIXTY-NINE**

**RE: ESTABLISHING A COMMITTEE TO  
RECOMMEND OPTIONS FOR PROVIDING  
ADDITIONAL FUNDING TO, AND  
ACCELERATING THE CONSTRUCTION OF,  
NEEDED IMPROVEMENTS OVERSEEN BY  
THE DELAWARE DEPARTMENT OF  
TRANSPORTATION**

WHEREAS, the Delaware Department of Transportation ("DeIDOT") has identified significant shortfalls of funding for the Transportation Trust Fund ("TTF") occasioned by, among other things: i) increasing demands on the State's transportation system due to unprecedented traffic growth; ii) limited resources for the design and construction of necessary projects to improve safety and provide needed mobility; iii) substantial increases in the costs of land acquisition, labor, and raw materials required to construct and maintain a wide variety of transportation improvements; and iv) cost increasing project delays caused by layers of state and federal regulations; and

WHEREAS, predictable and sustainable funding for critical transportation projects in the State is vital to maintaining the quality of life for the State's citizens, promoting responsible development without undue damage to environmental, historic, and cultural resources, and ensuring the State's economic competitiveness and vitality; and

WHEREAS, in the absence of the development of increased resources for the TTF, the State will be unable to provide on a timely basis the key projects identified in DeIDOT's long-range transportation plan, including but not limited to: i) accelerated completion of safety and capacity improvements along, and connecting to, the state's limited access highways (Routes 1, I-95, I-295, I-495); ii) provision of alternate service roads and the purchase of development moderating easements along the state's major arterial network (e.g., Routes 1, 13, and 113); iii) revitalization of older residential, commercial and industrial neighborhoods, especially those adjacent to the waterways and rail lines which were the transportation precursors to the existing highway network; and iv) improvements to the quality, variety, and frequency of alternative transportation services by bus, rail, vanpool, rideshare and other methods; and

WHEREAS, it is essential for DeIDOT to maintain its current excellent credit rating by not subjecting the TTF to increased leverage through excessive borrowings; and

WHEREAS, the state has previously adopted legislation permitting DeIDOT to enter into a variety of public-private partnerships to design and/or build transportation facilities in the state; and

WHEREAS, the Federal Highway Administration (FHWA) has established both legislative authority and a pool of funds available for competitive application by states pursuing innovative financing and construction techniques, and has made these programs a high priority for the U.S. DOT program for federal reauthorization; and

WHEREAS, DeIDOT has identified and analyzed several potential options for increasing both short- and long-term resources to the TTF for the purposes of meeting the demands of DeIDOT's long-range plan, including changes to the toll structures on two limited access highways, changes in the allocation of monies from the State's General Fund, and construction in whole, or in part, of needed improvements to I-95, SR1, and U.S. Route 301 by private sector owners/lessees; and

WHEREAS, it is appropriate and in the best interests of the State that the resource needs of DeIDOT and options to undertake key transportation development initiatives be thoroughly explored, examined and evaluated, and it is appropriate that these options be studied by a small group of knowledgeable individuals capable of making comprehensive recommendations in time to permit the Governor and the General Assembly to evaluate and, if desirable, include them into DeIDOT's financial plan for FY 2007 and beyond;

NOW, THEREFORE, I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER AND DECLARE AS FOLLOWS:

1. A Transportation Development and Funding Options Committee ("Committee") is established. The Committee shall consist of fifteen (15) members, as follows:

a. The Secretary of the Department of Transportation, who shall serve as Chairman of the Committee, or his designee;

b. The State Budget Director, or her designee;

c. The Secretary of Finance, or his designee;

d. The State Treasurer, or his designee;

e. The Co-Chairs of the Joint Committee on Capital Improvements;

f. One member selected by the President Pro Tempore of the Senate;

g. One member selected by the Minority Leader of the Senate;

h. One member selected by the Speaker of the House of Representatives;

i. One member selected by the Minority Leader of the House of Representatives;

j. One member of the Governor's staff, appointed by the Governor;

k. A registered professional engineer, appointed by the Governor;

l. A representative of the Delaware Contractors' Association, appointed by the Governor; and

m. Two (2) additional members of the public (who shall not be employed by the State, or conduct any business with the State involving the TTF), appointed by the Governor.

2. The Committee shall examine proposals for increasing both short- and long-term resources for the TTF for Fiscal Year 2007 and future years, so as to assure the continued timely planning, development and construction of the critical projects identified in DelDOT's long-range transportation plan. Without limitation of the foregoing, the Committee is authorized and directed to consider whether and to what extent the State should pursue: i) changes in toll structures for any of the State's toll roads; ii) the construction and/or operation of any public highway or bridge under DelDOT's control by private entities, subject to the necessary oversight of the state; and/or iii) the creation of new, or adjustments to existing, taxes and fees that are directed to the TTF.

3. Staff from, or qualified consultants to, DelDOT, the Department of Finance and/or the State Budget Office shall provide support to the Committee, as needed.

4. The Committee shall meet on a regular basis, with its first meeting to occur not later than June 30, 2005.

5. The Committee shall issue a report of its recommendations to the Governor and the General Assembly not later than November 30, 2005.

APPROVED: June 1, 2005

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

---

---

**GOVERNOR'S APPOINTMENTS**

147

---

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Tidal Finfisheries	Mr. Vernon D. Giuttari	5/12/2010
Board of Medical Practice	Mr. Raymond L. Moore, Sr. Ms. Margaret R. Prouse	7/14/2007 9/27/2007
Cash Management Policy Board, Chair	John V. Flynn, Jr., Ph.D.	5/5/2008
Child Protection Accountability Commission	Colonel Thomas F. MacLeish Colonel David F. McAllister	Pleasure of the Governor Pleasure of the Governor
City of Newark, Alderman	Mr. Anthony N. Forcina, Jr.	Commencing 6/24/2005
City of Newark, Deputy Alderman	Mr. Larry D. Sullivan	Commencing 6/24/2005
Council on Manufactured Housing	Ms. Patricia A. Weyl	9/27/2006
Delaware Civic Center Corporation	The Honorable Richard S. Cordrey	Pleasure of the Governor
Delaware Commission of Veterans' Affairs	Mr. John A. Endres	5/16/2007
Education Commission of the States	Ms. Lisa Blunt-Bradley Ms. Cynthia L. DiPinto Mr. James A. Wolfe The Honorable Valerie A. Woodruff	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor
Interagency Coordinating Council	Ms. Doris Gonzalez	5/6/2008
Kent County, Justice of the Peace	Ms. Cathleen M. Hutchison	5/4/2009
State Board of Education	Mr. Barbara B. Rutt	6/15/2005
University of Delaware Board of Trustees, Trustee	Patricia A. DeLeon, Ph.D.	5/5/2011

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch.60)

**Secretary's Order No. 2005-A-0017**

Date of Issuance: **March 8, 2005**  
Effective Date: **March 8, 2005**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control under 29 Del. C. §§8001 *et seq.*, the following findings and conclusions are entered as an Order of the Secretary:

1. Based on the record developed, as reviewed in the Hearing Officer's Report ("Report"), dated March 7, 2005, and appended hereto and incorporated herein, I find and conclude that the record supports approval in final form of the proposed "Amendments to Delaware Phase II Attainment Demonstration: Mid-Course Review on Progress Toward Attainment of the 1 hour Ozone National Ambient Air Quality Standard" (hereinafter "MCR"). The proposed MCR was prepared by the Department's Air Quality Management ("AQM") Section within the Division of Air and Waste Management.

2. The record supports the Department's approval of the proposed MCR as the final MCR. The MCR demonstrates that Delaware's measures to control VOC and NO<sub>x</sub> emissions have been adequate to meet the federal one-hour ozone standard. In addition, when supplemented by additional control measures to go into effect in 2005 and by those to be developed and implemented in the future years, Delaware should be able to meet the more stringent 8-hour standard by 2010, particularly if the federal government or other states also take steps to reduce the ozone and precursors that are produced in other states and then transported by the wind into Delaware.

3. The MCR approved by this Order shows that New Castle and Kent Counties will reduce VOC and/or NO<sub>x</sub> emissions by the required 42% target amount based upon the existing control measures and those to be implemented in 2005.

4. In order to meet the current 2010 standards, the MCR shows that Delaware will need 1) additional state control measures to be implemented before 2010, and 2) federal regulation to control ozone and ozone precursor transported into Delaware.

5. The draft MCR, as published in the November 2004 *Delaware Register of Regulations*, should be adopted as the

Department's final action, and be published as a Notice in the *Delaware Register of Regulations* in the next available issue.

6. The Department provided adequate notice of the public hearing in a manner required by the applicable law and regulations.

7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

John A. Hughes, Secretary

**Final  
DELAWARE PHASE II ATTAINMENT  
DEMONSTRATION FOR THE PHILADELPHIA-  
WILMINGTON-TRENTON OZONE NON-  
ATTAINMENT AREA**

**Mid-Course Review on Progress toward Attainment of  
the 1-Hour Ozone National Ambient Air Quality  
Standard**

**Delaware Department Of Natural Resources And  
Environmental Control Dover, Delaware**

**April 2005**

**Acronym List**

AQM	Air Quality Management Section of DNREC
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DAWM	Division of Air and Waste Management of DNREC
DNREC	Delaware Department of Natural Resources and Environmental Control
EPA	United States Environmental Protection Agency
FMVCP	Federal Motor Vehicle Control Program
I/M	Inspection and Maintenance
LEV	Low Emission Vehicle
MCD	Milestone Compliance Demonstration
MCR	Mid-Course Review
NAA	Nonattainment Area
NAAQS	National Ambient Air Quality Standard
NLEV	National Low Emission Vehicle
NO <sub>x</sub>	Oxides of Nitrogen
OAQPS	Office of Air Quality Planning and Standards of EPA
OTAG	Ozone Transport Assessment Group
OTC	Ozone Transport Commission
OTR	Ozone Transport Region
PCP	Planning and Community Protection Branch of

	DNREC
PEI	Periodic Emission Inventory
RACT	Reasonably Available Control Technology
RPP	Rate-of-Progress Plan
RVP	Reid Vapor Pressure
SIP	State Implementation Plan
TPD	Tons per day
TPY	Tons per year
VOC	Volatile Organic Compound

### Summary

This document fulfills Delaware's commitments to conduct a mid-course review (MCR), by December 31, 2004, to assess adequacy of its emission control measures and progress toward attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS).

Under the requirements of sections 182(b)(1) and 182(d) of the Clean Air Act Amendments of 1990 (CAAA) regarding the 1-hour ozone NAAQS, Delaware has implemented and committed to implement a comprehensive list of control measures to reduce emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in its two severe nonattainment counties, i.e., Kent and New Castle Counties. Those measures include federal and state rules and controls that cover a large variety of emission sources, including point, area, on-road mobile and off-road mobile sources. This document show that (1) Delaware's control measures have produced significant and consistent VOC and NO<sub>x</sub> emission reductions since 1990, (2) as a result of those emission reductions, the ambient air quality regarding ozone has been significantly improved toward attainment of the 1-hour ozone standard in 2005, and (3) therefore, Delaware's current control framework is adequate and no additional controls will be needed before EPA revokes the 1-hour ozone standard in June of 2005. However, it must be noted that ozone and ozone precursor transport continues to negatively impact Delaware's air quality, and that EPA should cause such transport to be mitigated prior to Delaware's 8-hour ozone attainment date of 2010.

## 1.0 Introduction

### 1.1 Background

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone (Reference 1). The CAAA requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard will be attained by 2005 in these two counties with necessary and adequate control measures to reduce emissions of volatile organic

compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>). That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003 (Reference 2).

In order to settle a complaint filed by six environmental groups in U.S. District Court, EPA required, as a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, that a mid-course review (MCR) be conducted to evaluate the progress being made toward attainment of the 1-hour ozone standard (Reference 3). The results of the MCR were required to be submitted to EPA by December 31, 2003, and would be used to determine if any additional controls would be necessary to ensure the attainment by 2005. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform an MCR by December 31, 2003. This MCR requirement was also imposed on other states with severe non-attainment areas with respect to the 1-hour ozone standard.

Following the above, an order of the U.S. Court of Appeals for D.C. Circuit delayed the implementation of EPA's NO<sub>x</sub> Transport SIP Call from 2003 to 2004. The NO<sub>x</sub> Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy. In response to this court order, EPA allowed states to revise the MCR due date to a date after May 31, 2004. The later MCR date is believed to better serve the MCR purpose (i.e., to enable states to evaluate the adequacy of their attainment strategy, and to facilitate initiation of additional control measures if necessary). Many states affected by the NO<sub>x</sub> SIP Call emission reductions, including those in the Ozone Transport Region (OTR), have revised their commitment to conduct and submit the MCR on a schedule later than May 31, 2004 (Reference 4). In its June 2003 amendments to the Phase II Attainment demonstration SIP revision, Delaware also changed its original MCR completion date from December 31, 2003 to December 31, 2004.

This document fulfills Delaware's commitments in its January 2002 and June 2003 amendments to the Phase II Attainment Demonstration SIP revision to conduct a MCR by December 31, 2004.

### 1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for Delaware's air quality management planning falls within the Planning and Community

Protection (PCP) Branch of AQM Section, under the management of Raymond H. Malenfant, Program Manager and Ronald A. Amirikian, Planning Supervisor. Frank F. Gao, Environmental Engineer in the Airshed Evaluation and Planning Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to F. Gao, (302)323-4542, AQM, 715 Grantham Lane, New Castle, DE 19720, or be e-mailed to [Frank.Gao@state.de.us](mailto:Frank.Gao@state.de.us).

## 2.0 Emission Reduction Requirements and Control Strategies

### 2.1 Rate-of-Progress Requirements

In order for the severe nonattainment areas (NAA) to attain the 1-hour ozone standard by 2005, Sections 182(b)(1) and 182(d) set forth the following specific rate-of-progress emission reduction requirements: (1) to achieve by 1996 an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and (2) to achieve an additional 3% per year VOC and/or NOx emission reductions from the 1990 emission levels between 1997 and 2005.

Delaware developed its 1990 Base Year Emission Inventory in May 1994, and approved by EPA in March 1996 (Reference 5). This 1990 base year emission inventory is used as the basis for Delaware to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard in 2005. A summary of VOC and NOx emissions from all anthropogenic sources in Kent and New Castle Counties in the 1990 Base Year Inventory is presented in Table 1.

**Table 1. Summary of VOC and NOx Emissions (in TPD) in 1990 Base Year Inventory\***

1990 Base Year Anthropogenic Source	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
<b>Total Emissions (TPD)</b>	<b>32.59</b>	<b>25.84</b>	<b>113.26</b>	<b>137.00</b>	<b>145.84</b>	<b>162.85</b>

\*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 5).

To meet the rate-of-progress emission reduction requirements, Delaware has developed the following four rate-of-progress plans (RPP) for its two severe nonattainment counties (i.e., Kent and New Castle Counties): the 1996 RPP, the 1999 RPP, the 2002 RPP and the 2005 RPP. The 1996 RPP specifies Delaware's control strategies to achieve the required 15% VOC emission reduction. The 1999 RPP, the 2002 RPP and the 2005 RPP describe Delaware's emission control strategies to achieve an additional 9% VOC and/or NOx reductions in the 3-year

periods of 1997-1999, 2000-2002, and 2003-2005, respectively. By meeting the rate-of-progress emission reduction requirements, these RPPs set forth VOC and/or NOx emission targets for 1996, 1999, 2002, and 2005, which are defined as rate-of-progress milestone years. A summary of VOC and /or NOx emission targets for individual milestone years are presented in Table 2. Details of how to estimate emission reductions and emission targets can be found in References 6, 7, 8, 9, 10, and 11.

**Table 2. Delaware VOC and/or NOx Emission Targets for Individual Milestone Years.**

Emission Targets (TPD)	1996 Milestone Year	1999 Milestone Year	2002 Milestone Year	2005 Milestone Year
VOC	115.82	110.21	101.54	95.41
NOx	*	148.96	143.12	135.37

\*NOx reduction was not required for the 1996 milestone year.

As mentioned above, from 1990 base year to 2005 attainment year, Delaware is required to achieve a total of 42% emission reduction from the 1990 base year level, in which 15% reduction must be obtained from VOC emissions between 1990 and 1996. To achieve this 42% emission reduction goal by 2005, Delaware has implemented and/or proposed numerous control measures. These control measures include federal mandatory rules and Delaware state regulations being promulgated prior to the peak ozone season of 2005. These rules and regulations cover a large variety of VOC and NOx emission sources in all anthropogenic source sectors in Kent and New Castle Counties. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations can be found in Delaware 2005 RPP (Reference 10), and Delaware Regulations Governing Control of Air Pollution (Reference 12).

**Table 3. Control Measures for VOC and NOx Emissions in 2005 RPP.**

Control Measures and Regulations	Creditability	Emission Controlled	Effective Date
<b>Point Source Controls</b>			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	Creditable	VOC	31-May-95
Surface Coating of Metal Furniture	Creditable	VOC	31-May-95

Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	Creditable	VOC	31-May-95
New RACT Regulations: Bulk Gas. Marine Tank Vessel Loading Facil.	Creditable	VOC	31-Dec-95
SOCMI Reactor Proc. and Distillation Operat.	Creditable	VOC	01-Apr-96
Batch Processing Operations	Creditable	VOC	01-Apr-96
Offset Lithography	Creditable	VOC	01-Apr-96
Aerospace Coatings Industrial Cleaning Solvents	Creditable	VOC	29-Nov-94
Non-CTG RACT	Creditable	VOC	31-May-95
Delaware NOx RACT	Creditable	NOx	31-May-95
Regional Control: Federal NOx SIP Call	Creditable	NOx	01-Jun-04
Federal Benzene Waste Rule	Creditable	VOC	Spring 1995
Sanitary Landfills Irreversible Process	Creditable	VOC	09-Oct-93
Changes	Creditable	VOC	01-Jan-96
<b>Stationary Area Source Controls</b>			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	Creditable	VOC	31-May-95
Cutback Asphalt	Creditable	VOC	31-May-95
New RACT Regulations: Stage I Vapor Recovery-Gas. Dispensing Facil.	Creditable	VOC	15-Nov-94
Emulsified Asphalt Motor Vehicle Refinishing	Creditable	VOC	31-May-95
Offset Lithography	Creditable	VOC	01-Apr-96
Aerospace Coatings Stage II Vapor Recovery	Creditable	VOC	01-Apr-96
Delaware Open Burning Rule	Creditable	VOC, NOx	15-Nov-94
08-Feb-95			
<b>Off-Road Mobile Source Controls</b>			
Reformulated Fuel	Creditable	VOC	01-Jan-95

<b>New Emission Standards</b>			
Spark Ignition Engines	Creditable	VOC, NOx	Court-Ordered
Compression Ignition Engines	Creditable	VOC, NOx	Court-Ordered
Marine Engines	Creditable	VOC	31-Dec-Ordered
Locomotives	Creditable	NOx	01
<b>On-Road Mobile Source Controls</b>			
FMVCP and RVP	Noncreditable	VOC, NOx	Pre-1990 Model Yr
Tier I Vehicle Emissions Standards	Creditable	VOC, NOx	1994
Basic I/M for Kent County	Creditable	VOC, NOx	01-Jan-91
ATP and Pressure Test for Kent County	Creditable	VOC, NOx	01-Jan-95
ATP and Pressure Test for New Castle County	Creditable	VOC, NOx	01-Jan-95
Reformulated Fuel Phase II	Creditable	VOC	01-Jan-95
LEV Program	Creditable	VOC, NOx	01-Nov-99
Heavy Duty Diesel Engines	Creditable	VOC, NOx	Model Yr 2004
Tier II Emissions Standards and Low Sulfur Fuel	Creditable	VOC, NOx	01-Jan-04

## 2.2 Attainment Demonstration Requirements on Emission Reductions

As mentioned earlier, Delaware submitted to EPA its original Phase II Attainment Demonstration SIP revision for the Delaware part of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area in 1998, and amended it several times thereafter. In this Phase II Attainment Demonstration SIP revision, Delaware uses results from comprehensive photochemical models, which incorporate all emission control measures in Table 3, to demonstrate Delaware's capability of attaining the 1-hour ozone standard in 2005. In December 1999, however, EPA decided that VOC and NOx emission reductions from all control measures being contained in all involved states' 2005 RPPs would not be enough to guarantee the entire Philadelphia-Wilmington-Trenton Ozone Nonattainment Area to attain the 1-hour ozone standard in 2005, and therefore the states in this entire nonattainment area must implement additional emission controls to offset the emission reduction shortfalls (Reference 13).

To meet EPA's requirements regarding the emission reduction shortfalls, Delaware, along with other states in the Ozone Transport Region (OTR), developed some new or more stringent controls or rules to achieve additional VOC and NOx emission reductions. Delaware submitted to EPA

in October 2001 its amendments to the Phase II Attainment Demonstration SIP revision, which specified those promulgated rules to achieve these additional emission reductions (Reference 13). A summary of these rules is presented in Table 4.

**Table 4. Additional Controls and Rules to Address Emission Reduction Shortfalls.**

Control Measures and Regulations Addressing "Shortfalls"	Credibility	Emission	Effective
		Controlled	Date
Control of NOx Emissions from Industrial Boilers	Creditable	NOx	1-May-05
Consumer Products	Creditable	VOC	1-May-05
Portable Fuel Containers	Creditable	VOC	1-May-05
Architect. & Industrial Maintenance Coatings	Creditable	VOC	1-May-05
Mobile Equipment Repair and Refinishing	Creditable	VOC	1-May-05
Solvent Cleaning and Drying	Creditable	VOC	1-May-05

### 3.0 Demonstration of Adequate Progress toward Attainment

#### 3.1 Emission Trends from 1990 to 2002

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. These periodic emission inventories cover all sources included in Delaware's 1990 Base Year Emission Inventory and serve to monitor the overall effectiveness of control measures specified in individual rate-of-progress plans as described in the previous section. Delaware submitted to EPA its 1993 periodic emission inventory (PEI) in January 1998, its 1996 PEI in November 1999, its 1999 PEI in June 2002, and its 2002 PEI in June 2004. For the purpose of demonstrating emission trends, a summary of VOC and NOx emissions (in the unit of TPD) in the 1993 PEI, 1996 PEI, 1999 PEI and 2002 PEI is presented in Table 5.

**Table 5. Summary of Delaware 1993, 1996, 1999 and 2002 Emission Inventories.**

All Source	1993 PEI		1996 PEI		1999 PEI		2002 PEI	
	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx
Total Emissions	135.80	172.80	101.87	121.55	88.69	117.68	78.12	144.49

Comparison of the emission targets in Table 2 and

the PEI emissions in Table 5 indicates that (1) VOC emissions in Delaware's two nonattainment counties are well below the targets since 1996, and in 2002 the PEI VOC emission is 23.42 TPD below the target, (2) NOx emission is below the 1999 target (the first year when the NOx target is required), but exceeds the 2002 target by 1.37 TPD. It should be pointed out that this over-target NOx emission of 1.37 TPD is equivalent to a VOC emission of 1.15 TPD, as explained in Delaware's 2002 Milestone Compliance Demonstration document (Reference 14). In other words, the overall or net emission in 2002, if expressed as a VOC equivalent emission, is still 22.27 TPD (i.e., 23.42 - 1.15 = 22.27) below the required target. Therefore, it can be concluded that, with all controls and rules in Delaware's RPPs being implemented, the overall VOC and NOx emission trend from 1990 to 2002 in Delaware's NAA is dramatically decreasing and well below the milestone year emission targets required by CAAA.

At the present time (i.e., when this MCR document is being developed), a comparison of the 2005 actual emissions with the 2005 RPP emission targets is not possible because the 2005 emission inventory is not available. However, Delaware believes that with additional controls and rules being implemented in the 2003-2005 period, such as the Federal NOx Transport SIP Call and those specified in Delaware's Phase II Shortfalls SIP, the decreasing VOC/NOx emission trends in Delaware will continue and be well below the 2005 emission targets under the 1-hour ozone standard.

#### 3.2 Monitored Ambient Ozone Data under the 1-Hour Standard

As pointed out in the previous subsection, the overall VOC and NOx emissions in Delaware's NAA has been continuously decreasing since 1990 due to timely implementation of effective control measures over a large variety of emission sources. As a result, the ambient air quality in Delaware regarding ozone has been continuously improved since 1996, the first rate-of-progress milestone year.

The improvement in ozone ambient air quality in Delaware's NAA can be demonstrated by changes in the number of exceedances of the 1-hour ozone standard. A summary of the monitored exceedances since 1997 is presented in Table 6 (the 1996 data were missed). Table 6 indicates that, by the attainment definition of the CAAA, Kent County has been in attainment of the 1-hour ozone standard since 2002. For New Castle County, there has been only one extra exceedance that keeps it in the nonattainment status since 2002.



**Table 6. Delaware NAA's 1-Hour Ozone Standard Exceedances after 1996.**

County	1996	1997	1998	1999	2000	2001	2002	2003	2004
Kent	*	1	3	1	2	1	0	1	0
New Castle	*	4	3	4	1	0	3	1	0

\* The 1996 data were missed.

The improvement in ozone air quality can be also seen from the design value data. A summary of the 1-hour ozone design values for the two nonattainment counties after 1996 is present in Table 7. The design values are based on the ambient ozone concentrations monitored in the 1996-2004 period. These monitored data indicate that the 1-hour ozone design value in Kent County has been below the 1-hour ozone standard in the past three 3-year periods. The 1-hour ozone design value in New Castle County has been slightly above the 1-hour ozone standard, but below the truncation margin (i.e., 0.124 ppm), in the past two 3-year periods. According to CAAA's attainment/nonattainment designation standards and procedures, both Kent and New Castle Counties could be currently given an attainment status.

**Table 7. Delaware NAA's 1-Hour Ozone Design Values (ppm).**

County	1996-98	1997-99	19982000	19992001	2000-02	2001-03	2002-04
Kent	*	0.124	0.126	0.126	0.117	0.117	0.112
New Castle	*	0.141	0.132	0.130	0.133	0.122	0.122

\* The 1996 data were missed.

In summary, the ambient ozone data in Table 6 and 7 have shown that Delaware's NAA has maintained a consistent and adequate progress toward attainment of the 1-hour ozone standard in 2005. With some upcoming controls and rules, especially the Federal NOx SIP Call, it can be reasonably assumed that this adequate progress will continue into 2005 toward the attainment goal of the 1-hour ozone standard. However, it should be noted that while Delaware is on track to attain compliance with the 1-hour ozone standard, and that Delaware is now moving forward with additional reductions to meet the 8-hour ozone standard, significant negative impact from upwind states will prevent Delaware from attainment of the 8-hour ozone standard by 2010. The EPA must mitigate this impact prior to Delaware's 2010 8-hour ozone attainment date.

**3.3 Monitored Ambient Ozone Data under the 8-Hour Standard**

In April 2004, all three Delaware counties were designated as moderate nonattainment areas under the 8-hour ozone standard (Reference 15). In its final rule for

implementing the 8-hour ozone standard, EPA indicates that states can use the mid-course-reviews to ensure that progress is being made consistent with needs for the 8-hour NAAQS (Reference 16). To this end, a summary of the 8-hour ozone design values for Delaware's three counties is presented in Table 8.

**Table 8. Delaware NAA's 8-Hour Ozone Design Values (ppm).**

County	1996-98	1997-99	1998-2000	1999-2001	2000-02	2001-03	2002-04
Kent	0.096	0.099	0.097	0.093	0.093	0.089	0.084
New Castle	0.096	0.099	0.097	0.097	0.097	0.094	0.089
Sussex	0.097	0.099	0.098	0.095	0.094	0.091	0.085

From Table 8, it can be seen that the 8-hour ozone design values in all three counties exhibit a clear decreasing trend toward attaining the 8-hour standard. This trend is in fact in parallel to the 1-hour ozone design value trend exhibited in Table 7. This fact indicates that the control measures being implemented under the 1-hour ozone standard, and being reviewed in this document (Table 3 and Table 4), have already initiated a progress that is consistent with the needs toward attaining the 8-hour ozone standard.

**3.4 Summary and Concluding Remarks**

3.4.1 Since 1996, Delaware has implemented numerous control measures over a large variety of VOC and NOx emission sources to meet the CAAA requirements for attaining the 1-hour ozone standard. Those control measures have led to consistent and significant VOC and NOx emission reductions.

3.4.2 Since 1996, as a result of the above emission reductions, Delaware's ambient air quality regarding the 1-hour ozone standard has been continuously improved, and the progress toward attaining the 1-hour ozone standard appears to be adequate.

3.4.3 The control measures under the 1-hour ozone standard have ensured a beginning of adequate progress toward attaining of the 8-hour ozone standard. However, to maintain this progress and ensure attainment of the 8-hour ozone standard, additional control measures are needed in Delaware, and the EPA must cause both the ozone and ozone precursor transport into Delaware, to be mitigated from upwind states before the attainment year of 2010.

3.4.4 The analyses in this document shows that Delaware's control framework, including control measures being implemented and those promulgated but not yet in effect, is adequate under the CAAA requirements toward attaining the 1-hour ozone standard, and provide an adequate basis for the transition to planning for attainment of the 8-hour ozone standard.

**4.0 References**

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.
2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, July 2001, and June 2003.
3. *Notice of Proposed Action on Attainment Demonstrations for the 1-Hour National Ambient Air Quality Standard for Ozone*. Federal Register Vol. 64, No. 241, pp 70317-70319, December 16, 1999.
4. *Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration*. Guidance Memorandum from L.N. Wegman, Director, Air Quality Strategies and Standard Division, and J.D. Mobley, Acting Director, Emission Monitoring and Analysis Division, Office of Air Quality Planning and Standards, US EPA, March 28, 2002.
5. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.
6. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
7. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.
8. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.
9. *The Delaware 2002 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000, as amended in December 2000.
10. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.
11. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, Ozone/Carbon Monoxide Branch*, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, February 18, 1994.
12. *Regulations Governing the Control of Air Pollution*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware.
13. *Measures to Meet EPA Identified Shortfalls in the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, October, 2001.
14. *Delaware 2002 Milestone Compliance Demonstration for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, proposed in November 2004.
15. *Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standard, US EPA*. Federal Register Vol. 69, No. 84, pp 23858-23951, April 30, 2004.
16. *Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 1, US EPA*. Federal Register Vol. 69, No. 84, pp 23951-24000, April 30, 2004.

**DELAWARE RIVER BASIN  
COMMISSION****NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, July 20, 2005 at 10:00 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more informations contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

---

**DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY****NOTICE OF PUBLIC HEARING**

The State of Delaware, Department of Agriculture, proposes these regulations pursuant to 3 Del.C. §§101 and 302. The proposed regulations contain the following general sections: Authority, Purpose, Scope, Construction, Definitions, Registration, License/permits, Operator qualifications, Labeling, Supervision, Washing of hands, Physical plant characteristics, Program administration, Violations and hearing procedures, Appeals, Civil penalties. These regulations are intended to allow on-farm home processing of non-potentially hazardous foods and clearly define the role of DDA in on-farm home processing of non-potentially hazardous foods.

The On-Farm Home Food Processing Program will exempt certain small food processors, who process and produce specified non-potentially hazardous food products, from the statutory requirements of Title 16 **Delaware Code**, Chapter 1, §122 and §134, and from the regulatory requirements of State of Delaware Food Code as it relates to the specified non-potentially hazardous food products; and the program will ensure protection of the public health through processor compliance with regulatory requirements of the **On-Farm Home Food Processing Program**.

The proposed regulations will be considered at a public hearing scheduled for August 1, 2005 at the Delaware Department of Agriculture building conference room #1 located at 2320 S. Dupont Hwy, Dover, DE. The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed on-farm home processing regulations under 3 Del.C. §§101 and 302. The hearing will be conducted in accordance with Title 29, Chapter 101, and the Administrative Procedures Act.

Copies of the proposed regulations may be obtained from the Department of Agriculture by calling the 1-800-

282-8685; by writing the Delaware Department of Agriculture, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the Register of Regulations site at: <http://www.delregs.state.de.us/index.html>. Public comments may be submitted in writing to Mark Davis, Executive Assistant to the Secretary of the Department of Agriculture on or before 1:00 p.m. on August 1, 2005 and/ or in person at the public hearing.

---

**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, June 21, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

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

These proposed regulations, "Regulations Governing Public Drinking Water Systems," will replace by revision the current "Regulations Governing Public Drinking Water Systems," previously adopted May 14, 1971 and most recently amended July 10, 2003.

The Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." The public hearing will be held on July 26, 2005 at 1:00 p.m. in room 107, University of Delaware Paradee Center, 69 Transportation Circle, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 Bay Road  
Dover, DE 19901  
Telephone: (302) 741-8630

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by July 25, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by July 31, 2005 to:

David Walton, Hearing Officer  
 Division of Public Health  
 PO Box 637  
 Dover, DE 19903  
 Fax 302-739-6659

submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

---

### **DIVISION OF SOCIAL SERVICES**

#### **NOTICE OF PUBLIC COMMENT PERIOD** **Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to income exclusions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

---

### **DIVISION OF SOCIAL SERVICES**

#### **NOTICE OF PUBLIC COMMENT PERIOD** **Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Title XIX Medicaid State Plan and the rules in the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal reduces the minimum community spouse resource allowance to the federal standard.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must

---

### **DIVISION OF SOCIAL SERVICES**

#### **NOTICE OF PUBLIC COMMENT PERIOD** **Pharmaceutical Services Program**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan with respect to the Pharmaceutical Services Program: 1) to implement a prior authorization process with a preferred drug list (PDL); 2) to revise the prescription quantity and duration provisions; and, 3) to seek supplemental drug rebates from pharmaceutical manufacturers. 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 agency published this state plan amendment as a notification in the April register. As a result of the changes recommended by the CMS, the originally published plan has changed significantly. The agency is publishing the revised state plan as emergency order APA 05-35, effective 4/1/05 and also as proposed regulation, APA 05-35a, in order to solicit public comment prior to establishing a final order.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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

---

---

---

# SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

## THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$135.00 PER YEAR**

-----  
YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$135/YEAR.  
**You will be billed upon receipt of your order.** Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$11 per issue. Back issues are available at \$12 per issue. Subscription fees are non refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_


PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please clip and return to: **REGISTRAR OF REGULATIONS  
LEGISLATIVE HALL, DOVER, DELAWARE 19903  
FAX: 302-739-3895**

---

---

# Visit The Delaware General Assembly On The Web!

<a href="#">Home</a> <a href="#">Bill Tracking</a> <a href="#">Contact Info</a> <a href="#">House</a> <a href="#">Joint</a> <a href="#">Committees</a> <a href="#">Legislative Divisions</a> <a href="#">Legislative Info</a> <a href="#">Meeting Schedules</a> <a href="#">Online Publications</a> <a href="#">Regulations</a> <a href="#">Schedule</a> <a href="#">Senate</a> <a href="#">Virtual Tour</a> <a href="#">Who's my Legislator</a>  <b>Bill Search:</b>  Session <input type="text"/> Bill Type <input type="text"/> No. <input type="text"/> OR	<b>143rd Delaware General Assembly</b> The Legislature is currently in session. <a href="#">Click here for Schedule</a>  <b>Senate</b> <a href="#">Agenda(s)</a> <a href="#">Committees</a> <a href="#">Members</a> <a href="#">Ready List</a> <a href="#">...more items</a>  <b>House</b> <a href="#">Agenda(s)</a> <a href="#">Committees</a> <a href="#">Members</a> <a href="#">Ready List</a> <a href="#">...more items</a>  <b>Items of Interest / Quick Links</b> <a href="#">Legislative Process</a> <a href="#">Grants-In-Aid Application</a> <a href="#">Delaware Code</a> <a href="#">Admin Code</a> <a href="#">Regulations</a> <a href="#">CSG</a> <a href="#">NCSL</a> <a href="#">Current Appropriation Bills</a>  <b>What is Happening Today?</b>  Legislature is in Session	<b>WHAT'S NEW</b>  <b>SB 6</b> Status: Out of Committee TO AMEND CHAPTER 1 VOLUME 57, LAWS OF AS AMENDED, ENTIRE  <b>COMMITTEE HEARINGS</b>  <a href="#">House Business/Corporations/C</a> <a href="#">House Majority Hearing R</a> 01/27/2005 12:00:00 PM  <b>myLIS</b> <a href="#">Register</a> <a href="#">Login</a>  <b>LEGISLATIVE</b> <a href="#">Actions Notice</a> <a href="#">Subscribe/Manage</a>  <b>Find my Legislator</b> <input type="text"/>
--	---	---

## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access to the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

**<http://www.legis.state.de.us>**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
<b>One copy of all legislation introduced:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all legislation signed by the Governor:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$215.00
<b>One copy of House and Senate calendars:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all Governor's Advisories:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$30.00
<b>Daily Legislative Agendas and weekly Standing Committee Notices:</b>	
<input type="checkbox"/> Via Fax - - - - -	\$135.00

\* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at [jeffrey.hague@state.de.us](mailto:jeffrey.hague@state.de.us). Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

---

---

# ACCESS THE DELAWARE CODE ON-LINE!



## Online Delaware Code

- [The Delaware Constitution](#)
- [Title 1 - General Provisions](#)
- [Title 2 - Transportation](#)
- [Title 3 - Agriculture](#)
- [Title 4 - Alcoholic Liquors](#)
- [Title 5 - Banking](#)
- [Title 6 - Commerce and Trade](#)
- [Title 7 - Conservation](#)
- [Title 8 - Corporations](#)
- [Title 9 - Counties](#)
- [Title 10 - Courts and Judicial Procedures](#)
- [Title 11 - Crimes and Criminal Procedure](#)
- [Title 12 - Decedents' Estates and Fiduciary Relations](#)
- [Title 13 - Domestic Relations](#)
- [Title 14 - Education](#)
- [Title 15 - Elections](#)
- [Title 16 - Health and Safety](#)
- [Title 17 - Highways](#)
- [Title 18 - Insurance Code](#)
- [Title 19 - Labor](#)
- [Title 20 - Military and Civil Defense](#)
- [Title 21 - Motor Vehicles](#)
- [Title 22 - Municipalities](#)
- [Title 23 - Navigation and Waters](#)
- [Title 24 - Professions and Occupations](#)
- [Title 25 - Property](#)
- [Title 26 - Public Utilities](#)
- [Title 27 - Religion](#)
- [Title 28 - Sports and Amusements](#)
- [Title 29 - State Government](#)
- [Title 30 - State Taxes](#)
- [Title 31 - Welfare](#)

Find  in the section label

- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

**Visit the Delaware Code On-Line at:**

**<http://www.delcode.state.de.us/>**