
Delaware Register of Regulations



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IN THIS ISSUE

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

Calendar of Events/

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before May 15, 1998.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1835

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$100.00 from January - December. Single copies are available at a cost of \$9.00 per issue, including postage. For more information contact the **Division of Research at 302-739-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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.

INFORMATION ABOUT THE DELAWARE 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.

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
JULY 1	JUNE 15	4:30 P.M.
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.

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Cumulative Table of Regulations	1839
---------------------------------------	------

PROPOSED REGULATIONS

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Amend Ch. VII, Rule VI-M-14, Whipping	1848
---	------

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers	1850
Council on Real Estate Appraisers	1859
Board of Nursing	1878

DEPARTMENT OF EDUCATION

Middle Level Education Regulation	1899
Title I Complaint Process	1903
Safety	1905

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Regulations Governing Lead-Based Paint Hazards	1906
---	------

DIVISION OF SOCIAL SERVICES

DMAP 270.10, DMAP 301.25 & DMAP 307.60, Elibility Policy	1927
DMAP 301.25, Adult Expansion Population	1928
Long-Term Care, Home Health, Ground Ambulance & Hospice Provider Manuals	1930
Workfare participation	1932

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

1998 Amendments to Delaware Regulations Governing Hazardous Waste	1934
--	------

DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

Regulation No. 5.751.0013, Procedures Governing the Dissolution of a State Chartered Bank or Trust Company	1939
Regulation No. 5.852.0002, Application to Become a Delaware Bank Holding Company	1940
Regulation No. 5.1403.0001, Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch or Foreign Bank Agency	1942
Regulation No. 5.1403.0002, Application by a Foreign Bank for a Certificate of Authority to Establish a Foreign Bank Limited Purpose Branch or Foreign Bank Agency Pursuant to 5 Delaware Code, §1403	1942
Regulation No. 5.1403/1101.0003, Regulations Governing the Organization, Chartering, Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office	1955
Regulation No. 5.1422.0004, Application by a Foreign Bank for a License to Establish a Foreign Bank Representative Office Pursuant to Subchapter II, Chapter 14, Title 5, Delaware Code	1958
Regulation No. 5.3404.0001, Preneed Funeral Contracts Regulations Governing Irrevocable Trust Agreements,	1962
Regulation No. 5.853.0001P, Procedures Governing the Registration of Delaware Bank Holding Companies with the Bank Commissioner Pursuant to the Provision of Section 853 of Title 5, Delaware Code, Repeal of	1963

FINAL REGULATIONS

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Pharmacy	1965
-------------------------	------

TABLE OF CONTENTS

DEPARTMENT OF EDUCATION

The School Health Tuberculosis (TB) Control Program	1971
Repeal of Regulation for Reporting Cases of Child Abuse or Neglect	1973
Repeal of Regulation for Minors Consent to Diagnostic Procedures	1974
Guidelines for School Districts to Comply with the Gun Free Schools Act	1975

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Medicaid Outpatient Hospital Provider Specific Manual	1977
---	------

DEPARTMENT OF JUSTICE

Delaware Securities Act	1978
-------------------------------	------

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

Regulation 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart B	2003
---	------

GOVERNOR

Executive Order No. 52	2008
Executive Order No. 53	2009
Governor's Appointments	2011

CALENDAR OF EVENTS/HEARING NOTICES

Harness Racing Commission, notice of public comment period	2013
Board of Examiners of Speech Language Pathologists, Audiologists & Hearing Aid Dispensers, public hearing notice	2013

Council on Real Estate Appraisers, public hearing notice	2013
Board of Nursing, public hearing notice	2014
Dept. of Education, monthly meeting notice	2014
Public Health, public hearing notice, lead paint	2014
Dept. of Health & Social Services, notice of comment period, DMAP 207.1	2015
Dept. of Health & Social Services, notice of comment period, DMAP 301.25	2015
Dept. of Health & Social Services, notice of comment period, Long-term Care Provider Manual	2015
DNREC Regulations Governing Hazardous Waste, public hearing notice	2016
Delaware River Basin Commission, meeting notice ...	2016
Office of the State Banking Commissioner, public hearing notice, proposed amendments to several regulations	2016

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

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

Attorney General's Office

Opinion No. 97-IB01, FOIA Complaint against the Town of Laurel	1:1	Del.R.	74
Opinion No. 97-IB02, FOIA Inquiry	1:1	Del.R.	75
Opinion No. 97-IB03, FOIA Complaint against Woodbridge School District	1:1	Del.R.	76
Opinion No. 97-IB04, Access to DELJIS	1:1	Del.R.	77
Opinion No. 97-IB05, FOIA Complaint against the Town of Laurel	1:1	Del.R.	79
Opinion No. 97-IB06, FOIA Complaint Against Appoquinimink School District	1:9	Del.R.	1438
Opinion No. 97-IB07, FOIA Complaint Against Colonial School District	1:9	Del.R.	1441
Opinion No. 97-IB08, FOIA Complaint Against Sussex County	1:9	Del.R.	1442
Opinion No. 97-IB09, Status of Public Member of the Board of Medical Practice	1:9	Del.R.	1443
Opinion No. 97-IB10, Criminal History Information Relating to Child Care Personnel and foster And Adoptive Parents	1:9	Del.R.	1445
Opinion No. 97-IB11, Effect of Pending Criminal Charges On the Licensing of Veterinarians	1:9	Del.R.	1446
Opinion No. 97-IB12, Twenty-four <u>Del.C.</u> §3519(e)- Exemption of Licensure	1:9	Del.R.	1451
Opinion No. 97-IB13, FOIA Complaint Against City of Lewes	1:9	Del.R.	1452
Opinion No. 97-IB14, FOIA Complaint Against Red Clay Consolidated School District Board of Education	1:9	Del.R.	1456
Opinion No. 97-IB15, FOIA Complaint Against Caesar Rodney School District	1:9	Del.R.	1461
Opinion No. 97-IB16, Twenty-four <u>Del.C.</u> §3520	1:9	Del.R.	1463
Opinion No. 97-IB17, FOIA Complaint Against City of New Castle	1:9	Del.R.	1464
Opinion No. 97-IB18, FOIA Complaint Against Town of Bridgeville	1:9	Del.R.	1466
Opinion No. 97-IB19, FOIA Complaint Against Milford City Council	1:9	Del.R.	1467
Opinion No. 97-IB20, FOIA Complaint Against Cape Henlopen School District	1:9	Del.R.	1469
Opinion No. 97-IB21, Mailing of Absentee Ballots	1:9	Del.R.	1470
Opinion No. 97-IB22, FOIA Complaint Against City of Wilmington	1:9	Del.R.	1471
Opinion No. 97-IB23, FOIA Complaint Against Woodbridge School District	1:9	Del.R.	1473
Opinion No. 98-IB01, FOIA Complaint Against City of Newark	1:11	Del.R.	1825
Opinion No. 98-IB02, FOIA Complaint Against City of Middletown	1:11	Del.R.	1827
Opinion No. 98-IB01A, Supplemental, FOIA Complaint Against City of Newark	1:11	Del.R.	1829

Delaware State Fire Prevention Commission

1997 State Fire Prevention Regulations	1:2	Del.R.	197 (Final)
Ambulance Service Regulations	1:1	Del.R.	35 (Prop.)
Minimum Requirements for Dispatch Centers	1:11	Del.R.	1679 (Prop.)

Department of Administrative Services

Division of Professional Regulation

Board of Chiropractic	1:1	Del.R.	45 (Final)
Board of Dental Examiners	1:5	Del.R.	543 (Prop.)
	1:7	Del.R.	852 (Final)

CUMULATIVE TABLES

Board of Electrical Examiners	1:7	Del.R.	795	(Prop.)
Board of Examiners in Optometry	1:7	Del.R.	820	(Prop.)
	1:10	Del.R.	1494	(Prop.)
Board of Examiners of Psychologists	1:8	Del.R.	1009	(Prop.)
Board of Funeral Services	1:10	Del.R.	1500	(Prop.)
Board of Nursing, Advanced Practice Nurse	1:1	Del.R.	15	(Prop.)
Board of Nursing	1:2	Del.R.	146	(Final)
Board of Pharmacy	1:4	Del.R.	428	(Prop.)
Board of Physical Therapy	1:2	Del.R.	101	(Prop.)
	1:6	Del.R.	714	(Final)
Board of Professional Counselors of Mental Health	1:9	Del.R.	1308	(Prop.)
Board of Veterinary Medicine	1:7	Del.R.	805	(Prop.)
	1:10	Del.R.	1573	(Final)
Nursing Home Administrators	1:2	Del.R.	141	(Final)
Council on Real Estate Appraisers	1:8	Del.R.	1172	(Prop.)
Real Estate Commission	1:8	Del.R.	1015	(Prop.)
	1:11	Del.R.	1755	(Final)
Respiratory Care Practice Advisory Council	1:8	Del.R.	1022	(Prop.)
	1:11	Del.R.	1746	(Final)
Department of Agriculture				
Aquaculture Regulations	1:4	Del.R.	309	(Prop.)
Delaware Harness Racing Commission	1:2	Del.R.	92	(Prop.)
	1:5	Del.R.	498	(Final)
	1:5	Del.R.	541	(Prop.)
Whips & Blood Gases	1:7	Del.R.	921	(Final)
Delaware Thoroughbred Racing Commission	1:2	Del.R.	100	(Prop.)
	1:3	Del.R.	248	(Prop.)
	1:5	Del.R.	508	(Final)
	1:6	Del.R.	649	(Prop.)
	1:6	Del.R.	713	(Final)
Bleeder Program	1:8	Del.C.	1183	(Final)
Claimed Horses	1:9	Del.R.	1312	(Prop.)
Department of Education				
Accident Reporting	1:9	Del.R.	1312	(Prop.)
	1:11	Del.R.	1801	(Final)
Administration of Non-Traditional Remedies	1:9	Del.R.	1328	(Prop.)
Agriscience Education Framework	1:2	Del.R.	154	(Final)
Cooperative Education Programs	1:11	Del.R.	1729	(Prop.)
Comprehensive School Discipline Improvement Program	1:11	Del.R.	1733	(Prop.)
Constitution & Bylaws of DSSAA	1:11	Del.R.	1740	(Prop.)
Daily Log	1:9	Del.R.	1313	(Prop.)
	1:11	Del.R.	1800	(Final)
Delaware Administrator Standards	1:6	Del.R.	650	(Prop.)
	1:8	Del.R.	1184	(Final)
Delaware Emergency Treatment Card	1:9	Del.R.	1317	(Prop.)
	1:11	Del.R.	1799	(Final)
Delaware School Health Record Card	1:9	Del.R.	1319	(Prop.)
	1:11	Del.R.	1798	(Final)
Delaware Teaching Standards	1:6	Del.R.	654	(Prop.)
	1:8	Del.R.	1188	(Final)
Diversified Occupations Programs	1:11	Del.R.	1731	(Prop.)

CUMULATIVE TABLES

1841

Driver Education	1:5	Del.R.	559	(Prop.)
	1:7	Del.R.	964	(Final)
DSSAA Requirements	1:2	Del.R.	172	(Final)
Education of Homeless Children & Youth	1:5	Del.R.	556	(Prop.)
	1:7	Del.R.	962	(Final)
Extended Illness	1:10	Del.R.	1510	(Prop.)
Foreign Language Content Standards	1:2	Del.R.	156	(Final)
Glossary of Terms, Manual for Certification of Professional School Personnel	1:2	Del.R.	158	(Final)
Guidelines for Approval of School Improvement Grants	1:7	Del.R.	815	(Prop.)
	1:9	Del.R.	1400	(Final)
Guidelines for the Administration of Non-Prescription Drugs	1:9	Del.R.	1326	(Prop.)
	1:11	Del.R.	1803	(Final)
Guidelines for the Schoold Districts to Comply with the Gun Free Schools Act	1:10	Del.R.	1511	(Prop.)
Hearing Screening Procedures	1:9	Del.R.	1321	(Prop.)
	1:11	Del.R.	1797	(Final)
High School Diploma & the Record of Performance	1:5	Del.R.	554	(Prop.)
	1:7	Del.R.	960	(Final)
Immunization Rules of the State Board of Education	1:9	Del.R.	1324	(Prop.)
	1:11	Del.R.	1808	(Final)
Interscholastic Athletics	1:4	Del.R.	361	(Prop.)
	1:6	Del.R.	724	(Final)
Manual for Certification of Professional School Personnel	1:2	Del.R.	163	(Final)
Membership in Fraternities & Sororities	1:4	Del.R.	363	(Prop.)
	1:6	Del.R.	723	(Final)
Orthopedic Screening	1:9	Del.R.	1329	(Prop.)
	1:11	Del.R.	1812	(Final)
Parental Request to have Prescription Medications Administered in Schools	1:9	Del.R.	1331	(Prop.)
	1:11	Del.R.	1802	(Final)
Physical Examinations	1:9	Del.R.	1332	(Prop.)
	1:11	Del.R.	1811	(Final)
Policy for Providing Education to Students with HIV Infection	1:9	Del.R.	1323	(Prop.)
	1:11	Del.R.	1810	(Final)
Policy for School Districts on the Possession, Use & Distribution of Drugs & Alcohol	1:9	Del.R.	1314	(Prop.)
Policy on the School Nurse & the Handicapped Child & Policy for Providing Care to the Child with Special Health Needs	1:9	Del.R.	1334	(Prop.)
	1:11	Del.R.	1804	(Final)
Regulations on School/Police Relations	1:3	Del.R.	256	(Prop.)
	1:5	Del.R.	510	(Final)
Repeal of certain parts of section V, Vocational Technical Education Programs	1:6	Del.R.	664	(Rep.)
	1:8	Del.R.	1199	(Final)
Repeal of certain regulations concerning Student Activities	1:4	Del.R.	365	(Rep.)
	1:6	Del.R.	726	(Final)
Repeal of Minimum-Maximum Program Assignment, Experimentation and Modification	1:7	Del.R.	817	(Rep.)
	1:11	Del.R.	1813	(Final)
Repeal of Regulation for Minors Consent to Diagnostic Procedures	1:10	Del.R.	1513	(Rep.)
Repeal of Regulation for Reporting Cases of Child Abuse or Neglect	1:10	Del.R.	1513	(Rep.)
Repeal of six Regulations that are in the Delaware Code	1:7	Del.R.	817	(Rep.)
	1:9	Del.R.	1396	(Final)
Repeal of Section B.1.a, Discipline Powers & Responsibilities of Superintendents	1:3	Del.R.	263	(Rep.)
	1:5	Del.R.	517	(Final)

CUMULATIVE TABLES

Repeal of Fire & Emergency Preparedness	1:8	Del.R. 1030	(Prop.)
	1:11	Del.R. 1805	(Final)
Repeal of Title IX of the Educational Amendments of 1972 Concerning Physical Ed... ..	1:8	Del.R. 1031	(Prop.)
	1:11	Del.R. 1806	(Final)
Requirements for Vocational Technical Education Programs	1:6	Del.R. 662	(Prop.)
	1:8	Del.R. 1196	(Final)
Satellite School Agreements	1:2	Del.R. 170	(Final)
School Bus Regulations	1:2	Del.R. 87	(Prop.)
	1:5	Del.R. 473	(Final)
Smoking Regulations	1:8	Del.R. 1029	(Prop.)
	1:11	Del.R. 1807	(Final)
State Content Standards	1:2	Del.R. 151	(Final)
The School Health Tuberculosis (TB) Control Program	1:9	Del.R. 1336	(Prop.)
Vision Screening	1:9	Del.R. 1338	(Prop.)
	1:11	Del.R. 1797	(Final)
Visual & Performing Arts Content Standards	1:2	Del.R. 90	(Prop.)
	1:6	Del.R. 729	(Final)
Visual & Performing Arts Graduation Requirements	1:2	Del.R. 88	(Prop.)
Department of Finance			
Division of Revenue			
Technical Information Memo. 97-6	1:6	Del.R. 712	(Prop.)
Technical Memo. 98-1, Check Boxes	1:8	Del.R. 1033	(Prop.)
	1:11	Del.R. 1817	(Final)
Div. of Revenue, Delaware State Lottery Office,			
Background Investigation Requirements for Lottery Employees	1:8	Del.R. 1032	(Prop.)
Regulations dealing with Americans with Disabilities Act	1:7	Del.R. 826	(Prop.)
	1:9	Del.R. 1341	(Prop.)
	1:11	Del.R. 1763	(Final)
Video Lottery Employee Organization and Lottery Employee			
Regulations	1:3	Del.R. 243	(Prop.)
	1:8	Del.R. 1202	(Final)
	1:10	Del.R. 1575	(Final)
Video Lottery Reg., Operations Employees, License Renewal, etc.	1:11	Del.R. 1681	(Prop.)
Department of Health & Social Services			
Division of Public Health,			
Adult Day Care Facilities, Regulations	1:10	Del.R. 1521	(Prop.)
Licensing & Registration of Operators of Public Water Supply Systems	1:1	Del.R. 28	(Prop.)
	1:7	Del.R. 932	(Final)
Plumbing Code Regulations	1:7	Del.R. 830	(Final)
Practice of Midwifery, Rules & Regulations	1:9	Del.R. 1349	(Prop.)
Public Pools	1:2	Del.R. 174	(Final)
Trauma System Rules	1:2	Del.R. 110	(Prop.)
	1:7	Del.R. 891	(Final)
Prehospital Trauma Triage Scheme, ALS & BLS (Errata)	1:3	Del.R. 213	(Prop.)
Division of Services for Aging & Adults with Physical Disabilities			
Adult Abuse Registry	1:7	Del.R. 803	(Prop.)
	1:9	Del.R. 1405	(Final)
Division of Social Services			
A Better Chance/Food Stamp Program	1:10	Del.R. 1514	(Prop.)
Amendments to Medicaid Provider Manuals, General Policy Manual,			
Long-Term Care Provider Manual, and others	1:8	Del.R. 1035	(Prop.)
	1:10	Del.R. 1577	(Final)

CUMULATIVE TABLES

1843

Ambulance Provider Policy Manual, Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility	1:4	Del.R. 394 (Prop.)
	1:8	Del.R. 1214 (Final)
Assisted Living Agencies, Regulations for	1:4	Del.R. 300 (Prop.)
	1:7	Del.R. 951 (Final)
Dental Reimbursement	1:9	Del.R. 1307 (Emer.)
DHS revision of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, Se. 403, 8 USC 1613, the 1993 Mickey Leland Childhood Hunger Relief Act, the Food, Agriculture, Conservation and Trade Act Amendments of 1991Public Law 104-203, Title 38, USC, and DSSM Sec. 4006 & 4012	1:4	Del.R. 313 (Prop.)
	1:9	Del.R. 1401 (Final)
DMAP, Amendments to Medicaid Eligibility Policy Manual	1:8	Del.R. 1058 (Prop.)
	1:10	Del.R. 1600 (Final)
DMAP Sec. 301.25, Composition of Budget Unit	1:10	Del.R. 1532 (Prop.)
DMAP Sec. 410.15, Vehicles	1:4	Del.R. 368 (Prop.)
	1:8	Del.R. 1211 (Final)
DMAP Sec. 420 Personal Needs Allowance	1:4	Del.R. 369 (Prop.)
	1:7	Del.R. 921 (Final)
	1:8	Del.R. 1212 (Final)
DSSM Section 3002.7, Reapplication for Benefits	1:11	Del.R. 1684 (Prop.)
DSSM Section 8000, A Better Chance Program	1:4	Del.R. 297 (Prop.)
Durable Medical Equipment Manual	1:5	Del.R. 563 (Prop.)
	1:8	Del.R. 1213 (Final)
Durable Medical Equipment Manual, EPSDT & Practitioner Provider Manuals	1:11	Del.R. 1685 (Prop.)
Inpatient Hospital Provider Manual	1:4	Del.R. 370 (Prop.)
Long-Term Care Provider Manual, Billing of Third Party Payer	1:4	Del.R. 394 (Prop.)
Long-Term Care Provider Manual, Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility	1:4	Del.R. 394 (Prop.)
Medicaid Outpatient Hospital Provider Specific Manual	1:10	Del.R. 1516 (Prop.)
Outpatient Hospital Provider Manual	1:4	Del.R. 383 (Prop.)
Revision of Regulation of the Medicaid/Medical Assistance Program Contained in DMAP Sec. 420	1:3	Del.R. 214 (Emer.)
	1:7	Del.R. 858 (Final)
Revision of Regulation Contained in DSSM 8201	1:5	Del.R. 456 (Emer.)
	1:6	Del.R. 711 (Prop.)
Revision of Regulation Contained in DSSM 8301.3	1:3	Del.R. 215 (Emer.)
Revision of Regulation DSSM 8205.2, 8304 & 8305	1:6	Del.R. 709 (Prop.)
Revision of Regulation Contained in DSSM 9910, Simplified Food Stamp Workfare	1:9	Del.R. 1303 (Emer.)
Simplified Food Stamp Program, ABC Benefits	1:9	Del.R. 1347 (Prop.)
Surety Bonds, Requirement for Home Health Agencies	1:9	Del.R. 1346 (Prop.)
Department of Justice, Delaware Securities Act	1:8	Del.R. 1078 (Prop.)
Department of Labor		
Div. of Employment & Training Apprenticeship Programs	1:1	Del.R. 21 (Prop.)
Governor's Advisory Council on Apprenticeship & Training	1:8	Del.R. 1116 (Prop.)
Division of Industrial Affairs		
Prevailing Wage Regulations	1:5	Del.R. 519 (Prop.)
Procedures of Equal Employment Review Board	1:5	Del.R. 537 (Prop.)
	1:8	Del.R. 1215 (Final)

CUMULATIVE TABLES

Industrial Accident Board	1:5	Del.R.	548	(Prop.)
	1:7	Del.R.	938	(Final)
Proposed Amendments, Rules 8, 9, 30 & 31	1:8	Del.R.	1153	(Prop.)
	1:10	Del.R.	1621	(Final)
Special Employment Practices relating to Health Care & Child Care Facilities & Adult Abuse Registry Check	1:5	Del.R.	533	(Prop.)
	1:8	Del.R.	1216	(Final)
	1:9	Del.R.	1269	(Errata)
Department of Natural Resources & Environmental Control				
Division of Air & Waste Management				
Motor Vehicle Inspection & Maintenance, Regs. 26, 31, 33	1:11	Del.R.	1699	(Prop.)
Regulations Governing Hazardous Waste	1:3	Del.R.	278	(Final)
Regulation 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart A	1:9	Del.R.	1373	(Prop.)
	1:11	Del.R.	1788	(Final)
Regulation 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart A	1:10	Del.R.	1534	(Prop.)
Division of Air & Waste Management, Air Quality Management Section, Development of the Phase II Ozone Attainment Demonstration for Kent & New Castle Counties as a Revision to the State Implementation Plan	1:10	Del.R.	1538	(Prop.)
NO _x Budget Program	1:5	Del.R.	564	(Prop.)
	1:8	Del.R.	1220	(Final)
	1:9	Del.R.	1275	(Errata)
Regulation No. 2	1:1	Del.R.	48	(Final)
Reg. No. 20, Sec. No. 28, Standards for Performance for Municipal Solid Waste Landfills	1:4	Del.R.	330	(Prop.)
	1:10	Del.R.	1653	(Final)
Transportation Conformity Regulation No. 32	1:8	Del.R.	1125	(Prop.)
	1:10	Del.R.	1625	(Final)
Division of Fish & Wildlife,				
Boating Regulations	1:9	Del.R.	1357	(Prop.)
	1:11	Del.R.	1772	(Final)
Shellfish Reg., Horseshoe Crab	1:7	Del.R.	807	(Prop.)
	1:9	Del.R.	1411	(Final)
Shellfish Reg. No. S-41, Growing Areas Closed to Harvesting Clams, Mussels & Oysters	1:4	Del.R.	354	(Prop.)
	1:7	Del.R.	835	(Final)
Shellfish Regulation No. S-48. Conch Minimum Size Limits	1:3	Del.R.	250	(Prop.)
	1:7	Del.R.	835	(Final)
Shellfish Reg. No. 55, Crab Trotlines & S-56, Crab Traps	1:4	Del.R.	354	(Prop.)
	1:7	Del.R.	837	(Final)
Tidal Finfish Regulation No. 4, Summer Flounder	1:9	Del.R.	1351	(Prop.)
	1:11	Del.R.	1767	(Final)
Tidal Finfish Regulation No. 8	1:3	Del.R.	270	(Final)
Tidal Finfish Regulation No. 10, Weakfish	1:9	Del.R.	1353	(Prop.)
	1:11	Del.R.	1770	(Final)
Tidal Finfish Regulation No. 12, Atlantic Sturgeon	1:7	Del.R.	787	(Prop.)
	1:10	Del.R.	1655	(Final)
Tidal Finfish Regulation No. 22, Tautog	1:9	Del.R.	1354	(Prop.)
	1:11	Del.R.	1771	(Final)

Tidal Finfish Regulation No. 23, Black Sea Bass	1:9	Del.R. 1356 (Prop.)
	1:11	Del.R. 1772 (Final)
Tidal Finfish Regulation No. 25 for Atlantic Shark	1:4	Del.R. 345 (Prop.)
	1:7	Del.R. 844 (Final)
	1:8	Del.R. 1005 (Errata)
Div. of Water Resources, Regulations for Licensing Operators of Wastewater Facilities		
	1:4	Del.R. 323 (Prop.)
	1:7	Del.R. 924 (Final)
Regulations Governing the Control of Water Pollution	1:4	Del.R. 395 (Prop.)
Department of Public Safety		
Delaware State Police, Board of Examiners of Private Investigators & Private Security Agents	1:10	Del.R. 1570 (Prop.)
Department of Services for Children, Youth and Their Families		
Division of Family Services		
Licensing Requirements for Residential Child Care Facilities and Day Treatment Programs	1:6	Del.R. 668 (Prop.)
Office of Child Care Licensing, Child Abuse Registry	1:7	Del.R. 801 (Prop.)
Department of State, Office of the State Bank Commissioner		
Regulation No. 5.1101(f).0001, Election to be treated for tax purposes as a “Subsidiary corporation” of a Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware	1:3	Del.R. 219 (Prop.)
	1:5	Del.R. 474 (Final)
Regulation No. 5.1101etal.0002, Instructions for preparation of Franchise Tax Report	1:3	Del.R. 221 (Prop.)
	1:5	Del.R. 476 (Final)
Regulation No. 5.1101etal.0003, Estimated Franchise Tax Report	1:3	Del.R. 224 (Prop.)
	1:5	Del.R. 479 (Final)
Regulation No. 5.1101etal.0004, Final Franchise Tax Report	1:3	Del.R. 226 (Prop.)
maintaining branches in this State	1:3	Del.R. 228 (Prop.)
	1:5	Del.R. 481 (Final)
Regulation No. 5.1101etal.0005, Instructions for preparation of Franchise Tax for Federal Savings Banks not headquartered in this state but maintaining branches in this state	1:3	Del.R. 228 (Prop.)
	1:5	Del.R. 483 (Final)
Regulation No. 5.1101etal.0006, Estimated Franchise Tax Report Federal Savings Banks not headquartered in Delaware	1:3	Del.R. 231 (Prop.)
	1:5	Del.R. 486 (Final)
Regulation No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks not headquartered in Delaware	1:3	Del.R. 232 (Prop.)
	1:5	Del.R. 487 (Final)
Regulation No. 5.1101.etal.0008, Instructions for calculation of Employment Tax Credits	1:3	Del.R. 233 (Prop.)
	1:5	Del.R. 488 (Final)
Regulation No. 5.1101etal.0009, Instructions for preparation of Franchise Tax for Resulting Branches in this state of out-of-state banks	1:3	Del.R. 235 (Prop.)
	1:5	Del.R. 490 (Final)
Regulation No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this state of out-of-state banks	1:3	Del.R. 239 (Prop.)
	1:5	Del.R. 494 (Final)

CUMULATIVE TABLES

Regulation No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this state for out-of-state banks	1:3	Del.R.	241	(Prop.)
	1:5	Del.R.	496	(Final)
Regulation No. 5.131.0002, Procedures Governing the Creation & Existence of an Interim Bank.....	1:5	Del.R.	592	(Prop.)
Regulation No. 5.2111(b).0005, Report of Delaware Loan Volume	1:7	Del.R.	812	(Prop.)
	1:9	Del.R.	1415	(Final)
Regulation No. 5.2111/2210/2906.0006, Report of Delaware Assests.....	1:7	Del.R.	815	(Prop.)
	1:9	Del.R.	1418	(Final)
Regulation No. 5.2210(e).0005, Report of Delaware Loan Volume.....	1:7	Del.R.	813	(Prop.)
	1:9	Del.R.	1416	(Final)
Regulation No. 5.2318.0001, Report of Delaware Sale of Checks, Drafts, and Money Orders Volume	1:7	Del.R.	813	(Prop.)
	1:9	Del.R.	1416	(Final)
Regulation No. 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts	1:7	Del.R.	814	(Prop.)
	1:9	Del.R.	1417	(Final)
Regulation No. 5.701/774.0001, Procedures for applications to form a bank, bank & trust company or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code	1:5	Del.R.	595	(Prop.)
	1:7	Del.R.	862	(Final)
Regulation No. 5.761.0017, Incidental Powers	1:5	Del.R.	597	(Prop.)
	1:7	Del.R.	865	(Final)
Regulation No. 5.770.0009, establishment of a branch office by a bank or trust company.....	1:5	Del.R.	598	(Prop.)
	1:7	Del.R.	866	(Final)
Regulation No. 5.771.0005, Procedures governing applications to open branch offices outside the State of Delaware	1:5	Del.R.	599	(Prop.)
	1:7	Del.R.	867	(Final)
Regulation No. 5.795etal.0016, Merger with out-of-state banks	1:5	Del.R.	601	(Prop.)
	1:7	Del.R.	869	(Final)
Regulation No. 5.833.0004, Application by an out-of-state savings institution, out-of- state savings & loan holding company or out-of-state bank holding company to acquire a Delaware savings bank or Delaware savings & loan holding company ...	1:5	Del.R.	602	(Prop.)
	1:7	Del.R.	870	(Final)
Regulation No. 5.844.0009, Application by an out-of-state bank holding company to acquire a Delaware bank or bank holding company.....	1:5	Del.R.	605	(Prop.)
	1:7	Del.R.	873	(Final)
Regulation No. 5.777.0002, Application for a certificate of public convenience & advantage for a limited purpose trust company pursuant to subchapter V of Chapter 7 of Title 5 of the Delaware Code	1:5	Del.R.	609	(Prop.)
	1:7	Del.R.	877	(Final)
Department of Transportation Aeronautical Regulations	1:9	Del.R.	1383	(Prop.)
Governor's Office Amendment to Executive Order No. 46.....	1:3	Del.R.	279	
Appointments & Nominations	1:1	Del.R.	68	
	1:2	Del.R.	200	
	1:3	Del.R.	281	
	1:4	Del.R.	438	
	1:5	Del.R.	623	
	1:6	Del.R.	740	
	1:7	Del.R.	970	

CUMULATIVE TABLES

1847

Appointments & Nominations	1:8	Del.R.	1248	
	1:9	Del.R.	1437	
	1:10	Del.R.	1657	
	1:11	Del.R.	1822	
Executive Order No. 45, Employee & Labor - Management Relations in State Government	1:1	Del.R.	63	
Executive Order No. 46, Governor's Task Force on Violent Crime	1:1	Del.R.	64	
Amendment to Executive Order No. 46.....	1:3	Del.R.	279	
Executive Order No. 47, Executive Committee of the Workforce Development Council	1:1	Del.R.	65	
Executive Order No. 49, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 1997 & Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 1998.....	1:9	Del.R.	1432	
Executive Order No. 50, Establishing the Education Salary Schedule Improvement Committee.....	1:9	Del.R.	1433	
Executive Order No. 51, Establishment of Recommendations on the Coin Design for the Delaware Quarter Dollar Commemorative Coin	1:9	Del.R.	1434	
Insurance Department,				
Regulation No. 47	1:8	Del.R.	1155	(Prop.)
Regulation No. 63	1:8	Del.R.	1160	(Prop.)
Regulation No. 75, Written Notice by Insurers of Payment of Third Party Claims	1:5	Del.R.	591	(Prop.)
	1:9	Del.R.	1408	(Final)
Regulation No. 80, Standards for Prompt, Fair & Equitable Settlement of Claims for Health Care Services	1:11	Del.R.	1698	(Prop.)
Public Service Commission				
Regulation Docket No. 12, Notice of Investigation & Formulation of Rules Concerning Pay Phone Services	1:1	Del.R.	5	(Prop.)
Regulation Docket No. 12, Investigation & Adoption of Rules to Govern Payphone Services within the State of Delaware	1:3	Del.R.	263	(Prop.)
	1:6	Del.R.	730	(Final)
Regulation Docket No. 46, Tack One	1:9	Del.R.	1418	(Final)
Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries	1:1	Del.R.	9	(Prop.)
	1:2	Del.R.	139	(Final)
Regulation Docket No. 47, Promulgation of Rules Regarding the Discounts for Intrastate Telecommunications & Information Services Provided to Schools & Libraries	1:5	Del.R.	462	(Final)
Regulation Docket No. 48, The Implementation of the Universal Service Provisions of the Telecommunications Act of 1996.....	1:11	Del.R.	1814	(Final)
State Personnel Commission				
Merit Employee Relations Board Regulations	1:3	Del.R.	274	(Final)
Violent Crimes Compensation Board	1:8	Del.R.	1161	(Prop.)

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**DELAWARE HARNESS RACING COMMISSION**

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

BEFORE THE DELAWARE HARNESS RACING
COMMISSION

The Commission proposes this amendment pursuant to 3 Del.C. §§10027 and 29 Del.C. §10115. The proposed amendment would ease the whipping rules to allow drivers to use the whip once one handed for a maximum of three strokes from the quarter pole to the 7/8's pole, and to have no restrictions after the lead horse reaches the 7/8's pole. The Commission will consider written comments submitted to the Commission Office on or before 4:00 p.m. on June 30, 1998. The Commission office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

PROPOSED AMENDMENT

Chapter VII, rule VI-M-14

M. Conduct of the Race

1. A driver shall not commit any of the following acts which are considered violations of driving rules:

- a) Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.
- b) Impede the progress of another horse or cause it to break from its gait.
- c) Cross over too sharply in front of another horse or in front of the field.
- d) Crowd another horse by 'putting a wheel under it.'
- e) Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.
- f) Carry another horse out.
- g) Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.
- h) Maintain an outside position without making the necessary effort to improve his/her overall position.

- i) Strike or hook wheels with another sulky.
- j) Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.
- k) Drive in a careless or reckless manner.
- l) Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.
- m) Riding 'half-in' or 'half-out'.
- n) Kicking a horse.

2. A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

3. If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

4. In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

5. If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

6. If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7. If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

8. If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

9. If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

10. If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

11. A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

12. Shouting or other improper conduct in a race is forbidden.

13. Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

14. Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length. Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8 ths pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8 ths pole, these restrictions do not apply.

15. The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

16. The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

17. The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

18. Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation.

19. Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

20. When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

- a) Failure to take the horse to the outside of other horses where clearance exists.
- b) Failure to properly attempt to pull the horse to its gait.
- c) Failure to lose ground while on a break.

If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been

committed, and the driver may be penalized.

21. If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

22. It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

23. The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

24. The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

25. If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

26. If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

Anyone desiring a copy of this proposed rule and regulation may obtain some from the Board office, Division of Professional Regulation Cannon Bldg. Suite 203, 861 Silver Lake Blvd. Dover, Delaware 19904. Written comments should be submitted to the Board office at the above address on or before July 22, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board office at (302) 739-4522, extension 204.

Synopsis

The Board of Speech/Language Pathology, Audiology and Hearing Aid Dispensers proposed to revise the current Rules and Regulations in accordance with 24 Del. C., Section 3714 (3), in order to provide licensees and Board members with a more use-friendly document.

There is only one substantial change.

Section 602.6 of the current Rules and Regulations limits CEs for professional course work for academic credit to a formula of 8 CEs for 2 credits earned by taking a college course. The Board has revised this item so that licensees who take college courses may receive a large number of CEs.

Other changes are related to style and readability. They consist mainly of the resequencing of sections, the inclusion of a table of contents, and clarification of continuing education requirements and timelines.

The Board is establishing the new user-friendly style Rules and Regulations to facilitate future activities of the Board and its licensees.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF EXAMINERS OF SPEECH/
LANGUAGE PATHOLOGISTS, AUDIOLOGISTS &
HEARING AID DISPENSERS**

Statutory Authority: 24 Delaware Code,
Section 3714(3) (24 Del.C. 3714(3))

The Delaware Board of Speech/Language Pathology, Audiology and Hearing Aid Dispensers proposes to change the existing rule and regulation, 602.6 and adopt a new rule and regulation in accordance with 24 Del C. Section 3714 (3).

A public hearing will be held on Wednesday, July 22, 1998 at 2:00 p.m. in the Cannon Bldg., Conference Room A, 861 Silver Lake Blvd. Dover, Delaware.

PROPOSED AMENDMENTS

TABLE OF CONTENTS

		Page
Article I	Licensure Requirements for Speech-Language Pathologists, Audiologists	
Section 1:	Education	3
Section 2:	Clinical Practicum	3
Section 3.:	Clinical Fellowship Year (CFY)	3
Section 4:	National Examination	4
Section 5:	Reciprocity	4
Section 6:	Application Process-Temporary Licensure	4
Section 7:	Application Process-Permanent Licensure	5
Article II	Licensure Requirements for Hearing Aid Dispensers	
Section 1:	Education	6

PROPOSED REGULATIONS

1851

Section 2:	Clinical Practicum	6
Section 3:	Supervised Professional Employment	6
Section 4:	National Examination	6
Section 5:	Application Process-Temporary Licensure	6
Section 6:	Application Process-Permanent Licensure	7
Article III	Requirements for Audiology Aides	
Section 1:	Education and Supervised Employment	8
Section 2:	Certification	8
Section 3:	Duties of the Audiology Aide	8
Article IV	Requirements for Speech Pathology Aides	
Section 1:	Education and Supervised Employment	10
Article V	Continuing Education For All Licensees	
Section 1:	Philosophy	11
Section 2:	Continuing Education Hours and Definitions	11
Section 3:	Suggested Activities	12
Section 4:	Continuing Education Checklist of Responsibilities: Licensee and Sponsor	13
Section 5:	Continuing Education Coordination	14
Section 6:	Administrative Assistant Responsibilities	15
Article VI	Code of Ethics for Speech-Language Pathologists and Audiologists	
Section 1:	Preamble	16
Section 2:	Principle of Ethics I	16
Section 3:	Principle of Ethics II	17
Section 4:	Principles of Ethics III	18
Section 5:	Principles of Ethics IV	19
Article VII	Code of Ethics for Hearing Aid Dispensers	
Section 1:	Code of Ethics	21
Section 2:	Conduct and Relationship with Patient/Client	22
Section 3:	Continuing Education	22
Section 4:	Referral	22
Section 5:	Services Rendered	22
Section 6:	Confidential Aspects of Patient/Client Relations	22
Section 7:	Conduct in Regard to Colleagues and Professionals	23
Section 8:	Maintenance of Records	23
Section 9:	Fees and Compensation	23

Section 10:	Delay in Providing Services	23
Section 11:	Discontinuance of Services	23
Section 12:	Responsibility of the Professional and Colleagues	24
Section 13:	Advertising	24
Section 14:	Standards	25
Section 15:	Discrimination	25

*** PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.**

Proposed Rules and Regulations

ARTICLE I Licensure Requirements for Speech-Language Pathologists and Audiologists

SECTION 1 - Education

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

SECTION 2 - Clinical Practicum

2.1 The Speech/Language Pathology and Audiology applicant must have completed a minimum of 375 clock hours of supervised clinical practicum with major emphasis in the professional area for which the license is being sought.

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

SECTION 3 - Clinical Fellowship Year (CFY)

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

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

3.2 A temporary license valid for only 1 year from the date of issuance and non-renewable must be obtained for fulfillment of the supervised CFY in Delaware. An applicant

for a temporary license must demonstrate that he is or will be supervised by a person who holds a license in the appropriate discipline. (See Section 6)

SECTION 4 - National Examination

4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the appropriate national examination for the area of specialty and license with at least the minimum nationally recommended score.

4.2 A Speech/Language Pathology or Audiology applicant with a temporary license is permitted to complete the appropriate national examination during the period of the temporary license. The requirements in Section 4.1 must be completed prior to expiration of the temporary license which is non-renewable.

SECTION 5 - Reciprocity

5.1 A license will be granted to an applicant who provides proof of a current license from those states with equivalent standards for licensure. The applicant must provide verification statement(s) or letter(s) of good standing (active or inactive) from each state in which a license has been issued.

5.2 A license will be granted to an applicant who holds the current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

SECTION 6 - Application Process-Temporary Licensure

6.1 An applicant must complete an application for temporary licensure. Items which must be provided to the Board office include:

- a) Official Transcript(s);
- b) Documents verifying the appropriate number and level of supervised clinical practicum hours;
- c) CFY plan or letter of intent, signed by the licensed professional who will provide the supervision
- d) payment of appropriate fees.

6.2 A temporary license is valid for one year from the date of issuance and is not renewable

SECTION 7- Application Process -Permanent Licensure

7.1 All Speech/Language Pathology and Audiology applicants must complete the application and submit the appropriate fee.

7.2 An applicant who has ASHA Certification must comply with Section 7.1 and submit a copy of current ASHA

certification to facilitate the issuance of a license(See Section 5)

7.3 An applicant who is currently licensed in another state which has equivalent standards for licensure, must comply with Section 7.1 and submit proof of the current license (copy of license). Verification of the license and a statement of good standing with active or inactive status should be sent to the Board office.

7.4 An applicant who has completed the supervised CFY in Delaware and has a current temporary license, must submit the following documentation to the Board office 30 days prior to expiration of the temporary license.

- a) proof of completion of the CFY
- b) completion of the appropriate national examination (if taken during CFY period) with scores sent directly to the Board office, and
- c) any required items not received with the earlier application for the temporary license.

7.5 An applicant not included in 7.2, 7.3 and 7.4 above, must provide items to the Board office as required in the application including:

- a) official transcript(s),
- b) documents verifying the appropriate number and level of supervised clinical practicum
- c) National examination scores (sent directly to the Board office),
- d) verification of completion of the required supervised CFY signed by a licensed professional and notarized, and
- e) verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).

ARTICLE II Licensure Requirements for Hearing Aid Dispensers

SECTION 1 - Education

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

SECTION 2 - Clinical Practicum

2.1 The Hearing Aid Dispensing applicant is not required to complete a practicum.

SECTION 3 - Supervised Professional Employment

3.1 A Hearing Aid Dispensing applicant applying for a temporary license must be supervised * by a Hearing Aid Dispenser licensed in Delaware.

* Supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

SECTION 4 - National Examination

4.1 Hearing Aid Dispensing applicants must have completed and passed the appropriate national examination for the license, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor, or one selected by the Board to be equivalent.

SECTION 5- Application Process - Temporary Licensure

5.1 An applicant must complete the application for temporary licensure. Items which must be provided to the Board office include:

- a) verification of a high school diploma or its equivalent,
- b) payment of appropriate fees,
- c) three letters of recommendation, and
- d) notarized signature of a Delaware licensed sponsor stating a willingness to provide direct supervision and training.

5.2 A temporary license is valid for one year from date of issuance and is not renewable. A temporary license cannot be renewed for any reason.

5.3 Examination(s) for licensure as a Hearing Aid Dispenser are made available by the Board at least twice yearly. Successful completion of the national examination (See 4.1 above) is required to become permanently licensed and must be completed before the expiration of the temporary license.

SECTION 6 - Application Process-Permanent Licensure

6.1 All Hearing Aid Dispensing applicants must complete an application and submit it with three letters of recommendation and the appropriate fee to the Board office.

6.2 Any Hearing Aid Dispensing applicant who has been licensed in any state must provide verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).

6.3 A Hearing Aid Dispensing applicant who is currently licensed in another state which has equivalent standards for licensure must comply with 6.1 and submit proof of the current license (copy of license). Verification of the license and a statement of good standing with active or inactive status should be sent to the Board office.

6.4 It is the responsibility of the Hearing Aid Dispensing applicant to contact the Board office 30 days prior to expiration of the temporary license to insure that all requirements for

permanent licensure have been completed. This may include:

- a) completion of appropriate National exam
- b) any required item not received

6.5 Any Hearing Aid Dispensing applicant not included in 6.3 or 6.4 must follow the directions in Section 5 above, completing an application for temporary licensure and submitting it with

- a) verification of high school diploma or its equivalent,
- b) national exam score,
- c) three letters of recommendation,
- d) payment of the appropriate fees, and
- e) notarized signature of a Delaware licensed sponsor

who is willing to provide supervised professional employment with training and direct supervision (minimum of 25 % on site).

ARTICLE III Requirements for Audiology Aides

SECTION 1 - Education and Supervised Employment

An Audiology Aide must have a minimum of a high school diploma or its equivalent. An Audiology Aide assists a licensed audiologist in professional endeavors with the audiologist's direct supervision.

SECTION 2 - Certification

Certification of the Audiology Aide must be by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, with documentation. The Audiology Aide must be registered with the Board annually by the supervising, Delaware licensed audiologist.

SECTION 3 - Duties of the Audiology Aide

Duties of the Audiology Aide must be specified by the supervising audiologist and may include the following:
Accurate air conduction pure tone assessment and data recording.

Hearing screenings.

Assist with conditioning techniques.

Cursory otoscopy.

Basic hearing aid maintenance

Routine instrument sterilization.

Biological audiometer check.

Assist with electroacoustic assessment of the audiometer.

Clerical support.

Participate with the professional in research projects, inservice training, or similar endeavors.

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

ARTICLE IV Requirements for Speech Pathology Aides**SECTION 1 - Education and Supervised Employment:**

A Speech Pathology Aide must have a minimum of a high school diploma or its equivalent. A Speech Pathology Aide assists a licensed speech/language pathologist in professional activities with direct supervision by the speech/language pathologist.

The definition of direct supervision for Speech/Language Pathology Aides shall be: "in any situation where an aide is assisting with testing, and/or treatment, direct supervision shall constitute presence of the speech pathologist with the aide and the client at all times."

Article V Continuing Education For All Licensees: Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**SECTION 1 - Philosophy**

1.1 Continuing education is required by the Delaware Board of Examiners to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

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

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

SECTION 2 - Continuing Education Hours and Definitions

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

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

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

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

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

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

2.3.4 Triple License: Individuals retaining licenses in three areas of specialty must obtain a minimum of 30 CE's for each two-year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensing to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

2.3.5 Temporary License: All continuing education requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during the maximum one year period.

2.3.6 Extenuating Circumstances: The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation.

SECTION 3 - Suggested Activities for Obtaining CE's

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

3.2 All continuing education activities approved and sponsored by the American Speech, Language and Hearing Association or other accredited related professional associations, including study of professional journals which

grant ASHA CEU's. Verification is required --photocopy acceptable.

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

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

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

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

3.7 Professional course work for academic credit in Speech/ Language Pathology, Audiology or Hearing Aid Dispensing. Verification of credits earned required. Undergraduate and graduate level courses should be submitted, using appropriate forms, for prior approval 45 days before the activity with course description, brochure, and class schedule/ hours so that the licensee will know in advance the number of CE's to be approved by the Board.

3.8 Professional presentations by licensee on professional topics. Verification required including summary, time spent and verification from sponsor. (1 hour of presentation = 3 CE's)

3.9 Professional publication by licensee within ASHA or related specialty journals. Verification required. Reprint of publication.

3.10 Other continuing education with documentation of content and hours attended. A licensee who wishes to be sure that an activity will be approved by the Board may contact the Board office for information and assistance.

SECTION 4 - Continuing Education Checklist of Responsibilities

4.1 All licensees shall:

4.1.1 obtain a Continuing Education Record form

4.1.2 document completed continuing education activities on Continuing Education Record

4.1.3 obtain Advance Approval form and submit 45 days before the start of a proposed activity for which prior approval is required by the Board or preferred by the licensee .

4.1.4 submit Non-Prior Approved forms within 30 days of completion of activities as recommended by the Board to facilitate accumulation of CE's by licensees.

4.1.5 mail Continuing Education Record to the Board office by April 30 of the renewal year.

4.1.6 retain photocopy of Continuing Education Record for personal records.

4.2 All continuing education sponsors shall:

4.2.1 complete a Sponsor Request for Activity Approval Form and submit it 45 days before the start of the proposed activity.

4.2.2 upon approval, be able to advertise the activities as Delaware Licensure Board Approved for continuing education with the specific number of CE's noted.

4.2.3 at the conclusion of the activity, verify each attendee's participation by signing attendee's Continuing Education Record and/or providing and signing an individual certificate of attendance showing date and title of activity, number of CE's and name of attendee.

4.2.4 submit attendance roster with copy of Board Approval form to the Board office.

SECTION 5 - Board Continuing Education Coordination
Any Board member may be designated to process continuing education requests between scheduled meetings and may

5.1 review, approve or disapprove Sponsor Requests.

5.2 review, approve or disapprove Non-Prior and Prior Approval Requests from licensees.

SECTION 6 - Licensure Board Administrative Assistant

6.1 Receives and prepares for Board meeting and forwards to designated Board member(s), all Sponsor Requests, Prior and Non-Prior Approval forms.

6.2 Receives decision regarding request and notifies person filing request.

6.3 Maintains file of course activities approved for CE's during the current 24 months licensure period.

6.4 Receives Continuing Education Records from licensees. Checks for completeness and approved documentation when appropriate. Audits each licensee's CE's annually and notifies Board of those in jeopardy of not completing requirements.

6.5 Maintains files holding original applications and relevant documentation for the Board.

6.6 Receives Non-Prior Approved Activity forms and forwards to Board member(s) for approval/disapproval.

ARTICLE VI Code of ethics for Speech-Language Pathologists and Audiologists

SECTION 1 - Preamble

1.1 The Preservation of the highest standards of integrity and ethical principles is vital to the responsible discharge of obligations in the professions of speech-language pathology and audiology, This Code of Ethics sets forth the fundamental principles and rules considered essential to this purpose.

1.2 Any action that violates the spirit and purpose of this Code shall be considered unethical. Failure to specify any particular responsibility or practice in this Code of Ethics shall not be construed as denial of the existence of such responsibilities or practices.

1.3 The fundamentals of ethical conduct are described by Principles of Ethics and by Rules of Ethics as they relate to responsibility to persons served, to the public, and to the professions of speech-language pathology and audiology.

1.4 Principles of Ethics, aspirational and inspirational in nature, form the underlying moral basis for the Code of Ethics. Individuals shall observe these principles as professional activity.

1.5 Rules of Ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all individuals.

SECTION 2 - Principle of Ethics I

2.1 Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally.

2.2 Rules of Ethics

2.2.1 Individuals shall provide all services competently.

2.2.2 Individuals shall use every resource, including referral when appropriate, to ensure that high-quality service is provided.

2.2.3 Individuals shall not discriminate in the delivery of professional services on the basis or race, sex, age religion, national origin, sexual orientation, or handicapping condition.

2.2.4 Individuals shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.

2.2.5 Individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

2.2.6 Individuals shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.

2.2.7 Individuals shall not evaluate or treat speech, language, or hearing disorders solely by correspondence.

2.2.8 Individuals shall maintain adequate records of professional services rendered and products dispensed and shall allow access to these records when appropriately authorized.

2.2.9 Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

2.2.10 Individuals shall not charge for services not rendered, nor shall they misrepresent in any fashion, services rendered or products dispensed.

2.2.11 Individuals shall use persons in research or as subjects of eaching demonstrations only with their informed consent.

2.2.12 Individuals shall withdraw from professional practice when substance abuse or any emotional or mental disability may adversely affect the quality of services they render.

* For purposes of this Code of Ethics, misrepresentation includes any untrue statements or statements that are likely to mislead. It also includes the failure to state any information that is material and that ought, in fairness, to be considered.

SECTION 3 - Principle of Ethics II

3.1 Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence.

3.2 Rules of Ethics

3.2.1. Individuals shall engage in the provision of clinical services only when they hold the appropriate Certificate of Clinical Competence or when they are in the certification process and are supervised by an individual who holds the appropriate Certificate of Clinical Competence.

3.2.2. Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

3.2.3. Individuals shall continue their professional development throughout their careers.

3.2.4. Individuals shall delegate the provision of clinical services only to persons who are certified or to persons in the education or certification process who are appropriately supervised. The provision of support services may be delegated to persons who are neither certified nor in the certification process only when a certificate holder provides appropriate supervision.

3.2.5. Individuals shall prohibit any of their professional

staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

3.2.6. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

SECTION 4 - Principles of Ethics III

4.1 Individuals shall honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions.

4.2 Rules of Ethics

4.2.1. Individuals shall not misrepresent their credentials, competence, education, training, or experience.

4.2.2. Individuals shall not participate in professional activities that constitute a conflict of interest.

4.2.3. Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

4.2.4. Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

4.2.5. Individuals' statements to the public (advertising, announcing, and marketing their professional services, reporting research results, and promoting products) shall adhere to prevailing professional standards and shall not contain misrepresentations.

SECTION 5 - Principles of Ethics IV

5.1 Individuals shall honor their responsibilities to the professions and their relationships with colleagues, students and members of allied profession. Individuals shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.

5.2 Rules of Ethics

5.2.1. Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Code of Ethics.

5.2.2. Individuals shall not engage in dishonesty, fraud, deceit, misrepresentation, or any form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

5.2.3. Individuals shall assign credit only to those who have contributed to publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

5.2.4. Individuals' statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

5.2.5. Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

5.2.6. Individuals who have reason to believe that the Code of Ethics has been violated shall inform the Ethical Practice Board.

5.2.7. Individuals shall cooperate fully with the Ethical Practice Board in its investigation and adjudication of matters related to this Code of Ethics.

5.2.8. Individuals shall not discriminate in their relationships with colleagues, students and members of allied professions on the basis of race, sex, age, religion, national origin, sexual orientation, or handicapping condition.

ARTICLE VII Code of Ethics for Hearing Aid Dispensers

SECTION 1 - Code of Ethics

1.1 This is a Code of Ethics for those engaged in the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments. This Code sets standards of professional integrity and practice, including relationships with patients/clients, colleagues and the general public.

1.2 Ethical principles are standards by which the profession and individual Hearing Aid Dispensers determine the propriety of their conduct. Adherence to these standards serve to assure public confidence in the integrity of the services of Hearing Aid Dispensers in this profession. It is incumbent on all Hearing Aid Dispensers to abide by all laws, or rules and regulations applicable to the dispensing of hearing aids in Delaware.

1.3 Rules of Ethics

1.3.1 Individuals shall state only the true facts in public announcements and advertising of hearing aids and related products, and shall not, in any way, mislead or misrepresent in regard to their performance, appearance, benefits, elements, and use.

1.3.2 Individuals shall provide thorough and ethical consulting services when dispensing instruments, including the appropriate testing and fitting suitable for the patient/client's particular type of hearing loss.

1.3.3 Individuals shall, at all times, provide the best possible service to the hearing impaired, offering counsel,

understanding and technical assistance contributing toward their deriving the maximum benefit from their hearing instruments.

1.3.4 Individuals shall constantly encourage and support research, cooperating with medical and other hearing health professionals and societies to employ the maximum accumulation of scientific knowledge and technical skills in the testing of human hearing for the selection, fitting and maintenance of hearing instruments.

SECTION 2 - Conduct and Relationship with Patient/Client

2.1 Hearing Aid Dispensers engaged in the practice of the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments, shall hold paramount the welfare of the patient/client.

SECTION 3 - Continuing Education

3.1 Hearing Aid Dispensers shall engage and participate in continuing education during each year of active practice in the best interest of the patient/client and professional development.

SECTION 4 - Referral

4.1 Hearing Aid Dispensers shall utilize all resources available, including referral to other specialists as needed.

SECTION 5 - Services Rendered

5.1 Hearing Aid Dispensers shall accept and seek full responsibility for the exercise of judgment within their area of expertise. These services include the testing of human hearing, and the selection, counseling, fitting, dispensing and servicing of hearing instruments.

5.2 Hearing Aid Dispensers shall not guarantee outstanding results from the use of hearing instruments, products, services or counseling when such is not the case. They shall exercise caution not to mislead persons to expect results that cannot be predicted.

SECTION 6 - Confidential Aspects of Patient/Client Relations

6.1 Hearing Aid Dispensers shall hold in professional confidence all information and professional records concerning a patient/client and use such data only for the benefit of the patient/client or as the law demands.

SECTION 7 - Conduct in Regard to Colleagues and Hearing Health Care Professions

7.1 Hearing Aid Dispensers shall keep the welfare of the

patient/client uppermost at all times. They shall avoid personal invective directed toward professional colleagues or members of hearing health care professions. They shall conduct themselves at all times in a manner which will enhance the status of the profession. They shall be supportive to individuals and organizations with whom they are associated to their mutual benefit. They shall not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of their professional judgment and skill, which tend to cause a deterioration in the quality of service, or which require consent to unethical conduct.

SECTION 8 - Maintenance of Records

8.1 Hearing Aid Dispensers shall initiate and maintain records of service provided to patients/clients. All laws, or rules and regulations pertaining to keeping of records shall be carefully observed.

SECTION 9 - Fees and Compensation

9.1 Hearing Aid Dispensers shall not participate with other health professionals or any other person in agreements to divide fees or to cause financial or other exploitation when rendering professional services.

SECTION 10 - Delay in Providing Services

10.1 Hearing Aid Dispensers shall not delay furnishing care to patients/clients served professionally, without just cause.

SECTION 11 - Discontinuance of Services

11.1 Hearing Aid Dispensers shall not discontinue service to patients/clients without providing reasonable notice of withdrawal, and satisfying all contractual agreements.

SECTION 12 - Responsibility of The Profession and Colleagues

12.1 Hearing Aid Dispensers have the duty to observe all laws, rules and regulations, applicable to the dispensing of hearing aids, to uphold the dignity and honor of the profession and to accept its ethical principles. They shall not engage in any activity that will bring discredit to the profession and shall expose, without fear or favor, illegal or unethical conduct in the profession.

12.2 In the event it appears that a Hearing Aid Dispenser is in violation of this Code, fellow Hearing Aid Dispensers are encouraged to report the circumstances to the Board.

12.3 Hearing Aid Dispensers holding an appointed position in the State or Provincial Chapter, shall not use such a position

for self-aggrandizement.

SECTION 13 - Advertising

13.1 Hearing Aid Dispensers who choose to advertise services shall use only material considered ethical and complying with laws, or rules and regulations governing advertising.

13.2 Hearing Aid Dispensers shall endorse the following statement of principles that assures protection of the hearing impaired and the public in general.

13.2.1 TRUTH-Advertising shall tell the truth, and shall reveal significant facts, the concealment of which would mislead the public, and shall not dispense any product or part thereof, representing that it is new, unused, or rebuilt, when such is not the fact.

13.2.2 RESPONSIBILITY-Advertisers shall be willing and able to provide substantiation of claims made.

13.2.3 TASTE AND DECENCY-Advertising shall be free of statements, illustrations, or implications which are offensive to good taste or public decency.

13.2.4 DISPARAGEMENT-Advertising shall offer merchandise or service on its merits, and shall refrain from attacking competitors or disparaging their products, services or methods of doing business.

13.2.5 BAIT ADVERTISEMENT-Advertising shall offer only merchandise or services which are readily available for purchase during the advertised period at the advertised price; it is unethical for any Hearing Aid Dispenser to advertise a particular model or kind of instrument to obtain prospects for the sale of a different model or kind of instrument than that advertised, or to imply a relationship with a manufacturer or trade name that does not exist.

13.2.6 GUARANTEES AND WARRANTIES-Advertising of guarantees and warranties shall be explicit. Advertising of any guarantee or warranty shall clearly and conspicuously disclose its nature and extent, the manner in which the guarantor or warrantor will perform, and the identity of the guarantor or warrantor. It is unethical to use, or cause to be used, any guarantee or warranty which is false, misleading, deceptive, or unfair whether in respect to the quality, construction, serviceability, performance, or method of manufacture of any industry product, or in respect to the terms and conditions of refund of purchase price thereof, or in any other respect.

SECTION 14 - Standards

Maintenance of high standards by all Hearing Aid Dispensers is in the best interest of persons served professionally, Hearing Aid Dispensers and the profession.

14.1 It shall be unethical for Hearing Aid Dispensers to willfully and knowingly violate any law or rule or regulation

applicable to the dispensing of hearing aids.

14.2 It shall be unethical to use such terms or to use any abbreviation of such terms as doctor, physician, otologist, certified hearing aid audiologist, clinical audiologist, medical audiologist, research audiologist, industrial audiologist, when such is not the fact.

14.3 It shall be unethical to use any symbol or depiction which connotes the medical profession.

14.4 It shall be unethical to use any terms that may reasonably be said to confuse the public that a private business practice has some relationship to a governmental or nonprofit medical, educational or research institution.

SECTION 15 - Discrimination

15.1 Hearing Aid Dispensers shall not discriminate in the delivery of professional services on the basis or race, national origin, religion, sex, age, marital status, sexual orientation, or handicapping condition.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE COUNCIL ON REAL ESTATE
APPRAISERS**

Statutory Authority: 24 Delaware Code,
Section 2934(a) (24 Del.C. 2934(a))

The Delaware Council on Real Estate Appraisers proposes to repeal the existing rules and regulations and adopt new rules and regulations in accordance with 24 Del. C. Section 2934 (b)(1).

A public hearing will be held on Tuesday, July 21, 1998 at 9:30 a.m. in the Cannon Building, Conference Room "A", 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain same from the Council office, Division of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be submitted to the Council office at the above address on or before July 21, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Council office at (302) 739-4522, ext. 205.

SYNOPSIS

The Delaware Council on Real Estate Appraisers proposes to repeal the existing rules and regulations and adopt new rules and regulations in accordance with 24 Del. C. Section 2934(b)(1). The proposed rules and regulations will set forth the qualifications required for appraiser licensure and certification, renewal of licensure and certification, continuing education, examination, general appraisal practice and standard appraisal practice (including supervision of trainees and advertising), and the procedures for filing complaints and conducting investigations.

EXISTING RULES AND REGULATIONS OF THE DELAWARE COUNCIL ON REAL ESTATE APPRAISERS

SECTION 1 APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE

1.01 APPLICATION

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and such other information as may be necessary to identify the applicant and determine his/her qualifications and fitness for licensure or certification.

1.02 FILING AND FEES

A. Properly completed applications must be received in the Council's office or postmarked not later than sixty days prior to the scheduled examination which the applicant wishes to take and must be accompanied by the appropriate fee. Once the application has been filed and processed, the application fee may not be refunded.

B. There will be a fee charged for the following:

1. Initial application for appraiser trainee license
2. Initial application for licensed real property appraiser license
3. Initial application for certified general real property appraiser certificate
4. Initial application for certified residential real property appraiser certificate
5. Renewal fee
6. Duplicate license and certificate fee
7. Inactive status fee
8. Roster fee
9. Printing fee
10. Federal Appraiser Registry Fee

Fees are set each year by the Division of Professional Regulation.

C. Payment of application fees shall be made by certified check, bank check, or money order, payable to the State of Delaware, and mailed to the Delaware Council on Real Estate Appraisers, P. O. Box 1401, Margaret O'Neill Building, Dover, Delaware, 19903. For further information, please contact the Administrative Assistant to the Council at 302-739-4522.

SECTION 2 - APPRAISER LICENSING AND CERTIFICATION

2.01 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION

A. Applicants for certification as a state certified general or residential real property appraiser must satisfy the Council on Real Estate Appraisers Rules and Regulations qualification requirements stated in Chapter 29, Title 24, Section 2934, Delaware Code, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto."

B. Applicants for licensure as a state licensed real property appraiser shall meet the following minimum qualifications:

1. The education and exam requirements are successful completion of 90 classroom hours of education on real estate matters satisfactory to the Council, including classroom hours on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice and passing the licensed real property appraiser exam.

2. The experience requirement is two thousand (2,000) hours. One thousand five hundred (1,500) hours must be in appraisal experience as defined by the Appraisal Qualifications Board in their appraisal qualifications criteria. The other 500 hours of experience can be in the following categories: real estate sales experience, property management and real estate leasing. (Rule 2.01 B. 1 and 2 effective 1/1/96)

C. Applicants for licensure as a state licensed appraiser trainee shall have successfully completed a minimum of 45 classroom hours of education on real estate matters satisfactory to the Council, including classroom hours on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice.

D. Guidelines for Qualifying Mass Appraisal Experience - The Delaware Council on Real Estate Appraisers ("Council") has developed an application for ad valorem tax assessors to qualify mass appraisal experience toward licensure or certification.

The application is different than the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor's Application for Real Estate Appraiser License or Certificate.

The State of Delaware under Chapter 24, Subchapter H, Regulation of Real Estate Appraisers, Subsection 2932, subparagraph (c), sets forth specifically:

"(c) The Council on Real Estate Appraisers is required to include in its regulations educational experience, and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, Public Law 101-73 [12 U.S.C. & 1822a et seq.], and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del Laws, c. 381 ss 1; 68 Del. Laws, c. 140, ss 5-7, 15.)"

Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation "Interpretations/Clarifications" to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

"Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques to value properties similar to those used by appraisers and (2) effectively use the appraisal process.

Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process by themselves, shall not be eligible for experience credit.

Mass appraisals shall be performed in accordance with USPAP Standard 6."

In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6.

It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate.

Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience.

An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules

and Regulations.

USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours over a two (2) - year period is required for all applicants for licensure or certification. A minimum of 1,000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.

As stated in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate, applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

A. Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

B. Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

1. Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

2. The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

3. If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation systems was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules

from local market analysis:

4. If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

Mass Appraisal Experience Log

Applicants seeking mass appraisal experience credit must complete the attached Mass Appraisal Experience Log. Use the key on the Mass Appraisal Experience Log form for creditable experience. The information included in each column is as follows:

Date of Activity	State the specific dates of the activity. If a range of dates is appropriate be sure that the activity occurred continuously over that period. (Example: March 23-24, 1992)
Value Date	Applicants applying for ad valorem, mass appraisal experience completed in Delaware must list the month and year of the valuation date.
Property Class	Use the key on the form for identifying the property type: 1. Residential (less than 5 units) 2. Multi - Family 2 - 4 Units 3. Commercial 4. Industrial (including special purpose properties)
City/Town	Municipality where the mass appraisal work was used to generate appraisals.
Type of Activity	Use the key on the form for identifying the property type. The creditable type of activity are listed as follows: A. Highest and Best Use Analysis - Detail analysis used to determine highest and best use of a site both as if vacant and as developed. B. Model Specification - Development of the valuation schedules; such documentation should include the approach to value (cost, market or income), identification of how factors (property characteristics) were selected, the quantification of these factors (dollar or percentage adjustments) and how the relationship between and among the factors was determined. C. Model Calibration - Adjusting the valuation schedules using the generally accepted techniques, such documentation should include any statistical analyses

employed to set unit prices and percentage adjustments:

Hours	Only the actual working hours on the associated activity are creditable. Only time specifically spent on the activity is creditable. Working full - time on a revaluation project does not automatically translate into 40 hours per week of creditable appraisal experience. The applicant must be precise in detailing the activities and when they took place. In evaluating the number of hours of credit requested, any unusual number of hours of credit requested, any unusual number of hours claimed for a particular activity may result in further review of the supporting documentation. NOTE THAT DATA COLLECTION AND FIELD REVIEW ACTIVITIES BY THEMSELVES ARE NOT CREDITABLE EXPERIENCE.
Position Title	List your position at the time of activity.
Documentation	State the physical location of the documentation which details each activity for which experience credit is requested. It is advisable to secure copies of any documentation not in your possession prior to applying for experience credit. THE APPLICANT IS RESPONSIBLE FOR THE PRODUCTION OF THIS DOCUMENTATION. Therefore, it is important that the applicant claim credit only for the activities for which documentation can be immediately produced.
Location	

Upon request the applicant may be asked to submit sworn statements from witnesses who can verify their claimed experience. (Rule 2.01 D, effective 11/14/95)

2.02 QUALIFICATIONS FOR EXAMINATION

The Council shall review each application to determine whether the applicant is qualified to sit for the examination. Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.

2.03 LICENSE AND CERTIFICATE RENEWAL

A. In November of each odd number year, the Division of Professional Regulation will send renewal notices to the

home address of all licensed and certified appraisers. Certificates and licenses will expire on December 31st of each odd number year.

B. As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or non-resident, shall be required to satisfy the continuing education requirements set forth in rule 2.04 of this Section.

C. Any person who acts or holds himself/herself out as a state licensed or state certified real property appraiser while his/her appraiser license or certificate is expired will be subject to disciplinary action and penalties as described in Chapter 29, Title 24, of the Delaware Code.

2.04 CONTINUING EDUCATION

A. As a prerequisite to renewal of a real property appraiser license or certificate, the licensee or certificate holder shall present evidence satisfactory to the Council of having completed, during the immediately preceding two (2) years, the number of classroom hours of instruction, approved by the Council as set by the Appraiser Qualifications Board (AQB) as from time to time amended, as provided by 24 Del. C. Section 2934 (e).

B. As a prerequisite to renewal of a license, certificate and trainee license, a seminar dealing with updating of USPAP (Uniform Standards of Professional Appraisal Practice), or a seminar dealing with USAP shall be required each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council. (Rule 2.04 A. and B effective 1/1/96)

2.05 INACTIVE STATUS

A. A licensee or certificate holder may request to be placed on inactive status for a period not to exceed two (2) years. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council, a licensee or certificate holder shall be placed on inactive status for a period not to exceed two (2) years. The Council may grant extensions if the licensee or certificate holder shows due cause.

B. A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real property appraiser. However, in order to continue to hold an appraiser license or certificate, a licensee or certificate holder on inactive status must renew his license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.

C. A licensee or certificate holder on inactive status may request to be returned to active status at any time. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council and payment of all necessary fees, a licensee or certificate holder on inactive status shall be returned to active status. (Rule 2.05 A, B, and C effective 5/11/95)

D. The Council may take disciplinary action against a licensee or certificate holder on inactive status.

2.06 EXPIRED LICENSE OR CERTIFICATE

A. Expired real property appraiser licenses and certificates may be reinstated within twelve (12) months after expiration upon proper application and payment of the renewal fee plus a late filing fee as set by the Division of Professional Regulation.

B. Licenses and certificates expired for more than twelve (12) months may be considered for reinstatement upon proper application, payment of the renewal fee plus late filing fee and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed.

2.07 PAYMENT OF LICENSE AND CERTIFICATE FEES

Checks in payment of real property appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.

2.08 DUPLICATE LICENSE OR CERTIFICATE FEE

A licensee or certificate holder may, by submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, obtain a duplicate real property appraiser license or certificate or pocket card to replace an original license certificate or pocket card which has been lost, damaged, or destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.09 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid annually by the licensed or certificate holder to the State of Delaware.

SECTION 3 - APPRAISER EXAMINATIONS

3.01 TIME AND PLACE

A. Examinations for real property appraiser licenses and certificates will be scheduled at such times and places as determined by the Council. Applicants will be scheduled for examination based on the date of application filing in accordance with the Council's published schedule of examination dates and application filing dates. Applicants will be given written notice of when and where to appear for examination.

B. Except as provided in Paragraph C of this Rule, an applicant who has been scheduled for a particular examination date will not be rescheduled for a later examination date unless a written request to be rescheduled is made at least fifteen

(15) days in advance of the scheduled examination date.

C. An applicant may be granted an excused absence from a scheduled examination if he/she provides evidence satisfactory to the Council that his/her absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. — A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. — A request for an excused absence received more than fifteen (15) days after the examination date will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination.

3.02 EXAMINATION

A. Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the Uniform State Certification/Licensing Examination or its equivalent as endorsed by the Appraiser Qualifications Board. The prerequisites to sit for the applicable examination is completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. However, the experience requirement for the applicable classification must be met before the applicable license/certification is granted/issued. Should the experience requirement be met within two (2) years from the date of successful completion of the examination, the examination will be considered valid. Should the experience requirement not be met within the two (2) year period, the examination will be considered invalid and it will be necessary to re-apply and pay the required fee as if no examination had been taken.

3.03 RE-EXAMINATION

If an applicant for a real property appraiser license or certificate fails to pass the examination, he/she shall make written request to the Council, accompanied by the appropriate fee, in order to be scheduled for another examination.

3.04 CHEATING AND RELATED MISCONDUCT

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real property appraiser license or certificate, as well as for disciplinary action if the applicant holds an appraiser license or certificate.

3.05 CONFIDENTIALITY OF EXAMINATION

Licensing and certification examinations are the exclusive

property of the Assessment Systems, Inc. and are confidential. No applicant, licensee, or certificate holder shall obtain, attempt to obtain, receive, or communicate to other persons examination questions. Violation of this Rule shall be grounds for denial of a real property appraiser license or certificate if the violator is an applicant and for disciplinary action if the violator holds an appraiser license or certificate.

3.06 EXAMINATION RESULTS

The passing scores on the examination shall be the scores recommended as passing by Assessment Systems, Inc., or the successor agency or company then contracted by the Division of Professional Regulation for administering the Uniform State Certification/Licensing Examination or its equivalent as endorsed by the Appraiser Qualifications Board. (Rule 3.06 effective 5/11/95)

SECTION 4 - GENERAL APPRAISAL PRACTICE

4.01 USE OF TITLES

A. A state licensed real property appraiser shall utilize the term "state licensed real property appraiser," a state certified residential real property appraiser shall utilize the term "state certified residential real property appraiser," and a state certified general real property appraiser shall utilize the term "state certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A state licensed appraiser trainee shall use the term "state licensed appraiser trainee," and shall only co-sign appraisals along with a state licensed or state certified real property appraiser. Approved abbreviations are as follows:

- DE Cert Gen followed by the certification number,
- DE Cert Res followed by the certification number,
- DE Lic Appr followed by the license number,
- DE Appr Trainee followed by the license number.

B. Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

4.02 DISPLAY OF LICENSES AND CERTIFICATES

A. The real property appraiser license or certificate of a state licensed or state certified real property appraiser shall be prominently displayed at the appraiser's place of business. Pursuant to Rule 4.06 the license or certificate of the designated appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the designated appraiser shall be prominently displayed at such office.

B. The biennial license or certificate renewal pocket card issued by the Council to each state licensed or state certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.03 ADVERTISING

A. When advertising or otherwise holding himself/herself out as a real property appraiser, a state licensed real property appraiser shall identify himself/herself as a "state licensed real property appraiser," a state certified residential real property appraiser shall identify himself/herself as a "state certified residential real property appraiser," and a state certified general real property appraiser shall identify himself/herself as a "state certified general real property appraiser."

B. A state licensed or state certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

C. In the event that any licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the licensee or certificate holder, he/she shall first notify the Council in writing of such name and furnish the Council with a copy of each registration of assumed name certificate filed with the Secretary of State or other appropriate office.

4.04 CHANGE OF NAME OR ADDRESS

All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.05 APPRAISAL REPORTS

A. Each written appraisal report prepared by or under the direction of a state licensed or state certified real property appraiser shall bear the signature of the state licensed or state certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state licensed appraiser trainee, (as co-signer only)," "state licensed real property appraiser," "state certified residential real property appraiser," or the designation "state certified general real property appraiser," or the approved abbreviations as specified in Section 4.01 A. as applicable. Each such appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

B. When a state licensed or certified real property appraiser signs an appraisal report prepared by another person, including a subcontractor acting under the direction or supervision of the appraiser, such appraiser shall be fully responsible for the content of the report.

4.06 APPRAISAL OFFICE ADMINISTRATION

A. A certified or licensed appraiser shall be designated by each appraisal firm, each combined real estate brokerage and appraisal firm, and each branch office of such firms for which real estate appraisals are performed by:

1. Two (2) or more state licensed or state certified real property appraisers who are employed by or associated with the firm; or

2. Licensed appraiser trainees who are employed by or associated with the firm and who assist a state licensed or state certified real property appraiser in the performance of real estate appraisals.

B. The certified or licensed appraiser so designated shall be responsible for:

1. The proper display of licenses and certificates of all state licensed and state certified real property appraisers employed by or associated with that office of the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule 2.03 of these Rules and Regulations;

2. The proper notification to the Council of any change of business address or trade name of that office of the firm and the registration of any assumed business name adopted by the firm for its use;

3. The proper conduct of advertising of appraisal services by or in the name of the firm;

4. The proper retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;

5. The maintenance of a record for each of the firm's state licensed appraiser trainees that generally describes the nature and extent of assistance rendered in connection with each appraisal; and

6. The maintenance of a record for each of the firm's state licensed and state certified residential real property appraisers that generally describes the nature and extent of assistance rendered by the state licensed real property appraiser when assisting a state certified residential or general real property appraiser and any assistance rendered by the state certified residential real property appraiser when assisting a state certified general real property appraiser in performing an appraisal.

C. No licensee or certificate holder shall be so designated for more than one appraisal firm, combined real estate brokerage and appraisal firm, or branch office of such firms.

D. Each certified or licensed appraiser so designated shall notify the Council in writing of any change in his/her status as the certified or licensed appraiser so designated within ten (10) days following the change.

E. Each certified or licensed appraiser so designated shall be located at the office for which he/she is responsible for direct and personal supervision thereof.

4.07 DUTIES AND RESPONSIBILITIES OF STATE LICENSED APPRAISER TRAINEES; SUPERVISION OF

PROPOSED REGULATIONS

STATE LICENSED APPRAISER TRAINEES; TRAINEE LICENSE RENEWALS

A. The holder of a real property appraiser trainee license issued pursuant to 24 Del. C. Section 2934(d) and Rule 2.01(e) shall have the following duties and responsibilities:

(1) The trainee shall work under the direct supervision of a STATE LICENSED OR STATE CERTIFIED REAL PROPERTY APPRAISER;

(2) The trainee shall maintain an experience log on a form provided by the Council;

(3) The trainee shall inspect the property and participate in the appraisal process in order to sign the report and to receive credit for the hours spent. The report shall be signed by the trainee as follows:

Assisted by:

_____ Trainee

Name

License Number: _____

(4) The trainee shall ensure that the log is available at all times for inspection by the Council; and

(5) When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

B. A supervising appraiser must be a STATE LICENSED OR CERTIFIED REAL PROPERTY APPRAISER, and shall have the following duties and responsibilities:

(1) The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the trainee in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). "DIRECT SUPERVISION" means to:

(a) personally inspect with the trainee the interior and exterior of each piece of property appraised;

(b) personally review each appraisal report prepared by the trainee;

(c) accept full responsibility for the report;

(d) assign work to the trainee only if the trainee

is

competent to perform such work; and

(e) approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements.

(2) The supervisor shall, at least once a month, sign the experience log required to be kept by the trainee and shall affix his/her license or certification number.

(3) The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council.

(4) After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory

to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in their appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.07 (B)(1)(a), provided the trainee is competent to perform the inspection.

(5) The supervisor shall not supervise more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.07(B)(4).

(6) The supervisor must sign an affidavit affirming that he or she is a state licensed or certified Real Property Appraiser and that he or she shall comply with all rules and policies regarding supervisory appraisers.

(7) The supervisor shall comply with all provisions of Rule 4.06 regarding appraisal reports.

C. Real Property Appraiser Trainee's licenses may only be renewed pursuant to Rule 2.03 two (2) times. (Rule 4.07 A, B, and C effective 10/04/94)

D. 1. When an appraiser trainee is discharged or terminates his/her employment with a licensed or certified real estate appraiser by whom he/she is employed, such licensed or certified real estate appraiser shall immediately notify the Council in writing of such termination.

2. The licensed or certified appraiser, at the time of the written notification to the Council, shall address a communication to the last known address of such appraiser trainee, which communication shall advise the appraiser trainee that his/her employment has been terminated. A copy of the communication to the appraiser trainee shall accompany the notification to the Council. No such appraiser trainee shall perform any of the acts contemplated by this Chapter or engage directly or indirectly in the business of an appraiser trainee until the Council shall issue a new license showing change of employment and business location. (Rule 4.07 D. 1 and 2 effective 5/11/95)

4.08 SUPERVISION OF LICENSED OR CERTIFIED RESIDENTIAL APPRAISERS

A. When a state licensed real property appraiser assists a state certified residential or general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified real property appraiser, the state certified real property appraiser shall:

1. Actively and personally supervise the state licensed real property appraiser;

2. Review the appraisal report and supporting data used in connection with the appraisal;

3. Comply with all provisions of Rule 4.06 of this Section regarding appraisal reports; and

4. Prepare and furnish to the certified or licensed appraiser designated under Paragraph 4.06, if applicable, and to each state licensed real property appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed real property appraiser in connection with the appraisal, and place a copy of such report in the supporting file for the appraisal.

B. When a state certified residential real property appraiser assists a state certified general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified general real property appraiser, the state certified general real property appraiser shall perform those supervisory acts set forth in Subsection A of this Rule with regard to the activities of the state certified residential real property appraiser.

SECTION 5 - STANDARDS OF APPRAISAL PRACTICE

5.01 APPRAISAL STANDARDS

A. Every appraiser trainee, state licensed and state certified real property appraiser shall, in performing the acts and services of a state licensed or state certified real property appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

B. Copies of the "Uniform Standards of Professional Appraisal Practice," are available upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, DC 20005-3517.

SECTION 6 - COMPLAINTS; HEARING PROCEDURES; FINAL DECISIONS

6.01 COMPLAINTS

A. The following procedure for the investigation of complaints against a real estate appraiser shall apply:

1. A member of the public desiring to file a complaint against a real estate appraiser shall file a written complaint with the Director of the Division of Professional Regulation (the "Division") who shall mail a certified copy, return receipt requested, of the complaint to the Council.

2. The Division shall thereafter mail a copy of the complaint to the accused real estate appraiser. Said mailed copy of the complaint shall constitute notice of the pending complaint against the real estate appraiser. The real estate appraiser may respond in writing to the Division to the complaint's allegations within 20 days of the receipt of the complaint by the real estate appraiser.

3. The Division shall then assign a Division investigator to investigate the complaint. At the Council's next regularly scheduled meeting, it may assign a Council member to assist the Division in an advisory capacity with the technical aspects of the investigation of the complaint. Said assisting Council member shall not take part in the Council's deliberations on the complaint at any hearing held regarding the complaint. The assisting Council member shall not communicate any issue of law or fact regarding the investigation to any fellow Council members. The Division's investigator shall direct the investigation of the complaint and shall be responsible for issuing a final written report at the conclusion of the investigation.

4. The complainant shall also be notified in writing within 30 days of receipt of the complaint by the Division that the Division of Professional Regulation has received the complaint and that it has been referred to be investigated by a Division investigator.

5. Following the investigator's written report, the Division may forward the complaint to the Attorney General's Office for a review by a Deputy Attorney General who, if warranted, may file a formal complaint against the accused real estate appraiser. Otherwise, the initial written complaint shall be used in any future hearings in the proceedings.

B. Upon receipt of a complaint from the Attorney General's office or an investigative report of a complaint from the Division of Professional Regulation, the Council shall determine what action, if any, it shall take.

1. If the Council decides not to take any further action, and the complainant is known to the Council, the Council shall forward by letter to the complainant its reasons for not taking further action.

2. If the Council decides to take further action, the matter shall be heard by the Council within 3 months from the date on which the complaint from the Attorney General's Office or the investigative report from the Division was received. The Council shall fix the time and place for a full hearing of the matter.

6.02 HEARING PROCEDURES

A. At least 30 days before the date fixed for the hearing, the Council shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the accused real estate appraiser. In cases where the accused real estate appraiser cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation. The accused real estate appraiser shall also be advised of his/her rights, as follows:

1. That he/she has the right to appear personally and to be represented by counsel;

2. That he/she has the right to cross-examine any witness who may appear against him/her and produce witnesses and evidence in his/her own defense; and

3. That he/she is entitled to the subpoena power of the Council to insure the attendance of any witnesses he or she intends to call. If the accused wishes to avail himself/herself of the Council's subpoena power, he/she must submit to the Council, in writing and no later than fifteen (15) days prior to the date of the hearing, the names and addresses of the witnesses whose attendance he/she wishes the Council to compel.

B. All hearings shall be informal without the use of the rules of evidence. All testimony shall be taken under oath. All testimony which the Council determines to be relevant, reliable, and probative and not unduly repetitious, shall be admissible. Objections to the admission or exclusion of evidence shall be brief and shall state the grounds for objection. Any offer of proof which is made in connection with the objection to the admission of evidence shall consist of a statement of that which the offer contends would be adduced by such evidence. Where the offered evidence concerns a document, a copy of the same shall be marked for identification.

C. All testimony shall be recorded either by an official reporter or by means of an electronic recording device. In the event electronic means are used, the electronic record shall be preserved by a transcript until after the time for appeal of the Council's decision has expired with no appeal being taken. The Council shall maintain a permanent written record of all hearings in the form of official minutes. Appearances shall be noted in the official minutes of the Council.

D. Hearings shall be conducted in the following manner:

1. The Council shall open the hearing with a brief statement of the purpose of the hearing.

2. The Council shall then receive the evidence which is offered to support the charges which have been proffered against the accused real estate appraiser.

3. The accused real estate appraiser shall be afforded an opportunity to cross-examine any witness who may testify against him or her.

4. After all of the evidence which supports the charges has been received, the accused real estate appraiser may present a brief statement of that which he or she intends to establish.

5. The accused real estate appraiser may then testify in his/her own behalf and present witnesses and evidence in his/her defense.

6. All witnesses who appear before the Council shall be subject to examination by the Council.

6.03 TRANSCRIPTS

Transcripts of the proceedings may be obtained by the accused real estate appraiser or any other person interested in the hearing upon written request and payment of the costs

involved in preparing the same.

6.04 RETURN OF DOCUMENTARY EVIDENCE

Any documentary evidence which is submitted to the Council shall be returned to the owner thereof upon written request for the return of such documents within 120 days of the Council's final decision. Otherwise, the Council may dispose of such evidence at its discretion.

6.05 FINAL DECISION

A. If, on the basis of the evidence presented at the hearing, the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under subchapter H, Chapter 29 of Title 24 as it deems necessary. The Council's decision shall be in writing and shall include:

1. A brief statement of the evidence presented;
2. The Council's findings of fact;
3. What record evidence these findings are based upon; and
4. The Council's conclusions of law.

B. A copy of the Council's decision shall be mailed immediately by certified mail, return receipt requested, to the accused real estate appraiser. The Council's decision shall become effective on the 30th day after the date it is mailed or served on the accused real estate appraiser, unless there is an appeal by the accused real estate appraiser to the Superior Court within that time.

SECTION 7 - PUBLIC DISCLOSURE

7.01 PUBLIC NOTICE

Public notice of all meetings shall be given seven (7) days prior to all meetings.

A. The notice will be posted at the Division of Professional Regulation Office in Dover, Delaware, according to the Freedom of Information Act.

B. Said notice shall include the agenda, as well as the date, time, and location of each meeting.

7.02 MEETING MINUTES

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

A. Said minutes shall include a record of those present.

B. The minutes shall also include a record, by individual members, of each vote taken, as well as any action agreed upon.

C. It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes, and keep a copy on file with the Division of Professional Regulation.

7.03 COUNCIL RECORDS

It shall be the responsibility of the Council's Administrative Assistant to safeguard the Council's records,

and to make them accessible to the general public:

A. No citizen of the State of Delaware shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

B. The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs, or which is not a public record in which the public has no legitimate interest. Records will be open to the public in reference to the Freedom of Information Act.

SECTION 8 - CHANGE AND MODIFICATION TO RULES AND REGULATIONS 8.01 CHANGES/MODIFICATIONS

The Council may, from time to time, change or modify these Rules and Regulations as dictated by the evolution of appraisal practice after providing for the Public Notice/Hearing as required, if any.

SECTION 9 - TEMPORARY PRACTICE AND RECIPROACITY

9.01 TEMPORARY PRACTICE

The Council may grant temporary licensing or certification privileges in accordance with 24 Delaware Code Section 2935 (a). **9.02 RECIPROACITY**

The Council may grant a reciprocal license in accordance with 24 Delaware Code Section 2935 (b) to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent to the State of Delaware.

SECTION 10 - EFFECTIVE DATE

In accordance with 29 Delaware Code Section 10118 (b), the effective date of these rules and regulations shall be thirty (30) days from the date of the Council's order adopting these rules and regulations. After December 31, 1992 no person, partnership, association or corporation shall act as a real estate appraiser, or advertise or assume to act as such without being registered with and duly licensed or certified by the Council on Real Estate Appraisers.

SECTION 11 - SEVERABILITY

If any part of these rules and regulations are held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

Adopted October 22, 1992

PROPOSED RULES AND REGULATIONS
DELAWARE COUNCIL ON REAL ESTATE
APPRAISERS

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
<u>SECTION 1 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE</u>	
1.01 Application	<u>1</u>
1.02 Filing and Fees	<u>1</u>
<u>SECTION 2 - APPRAISER LICENSING AND CERTIFICATION</u>	
2.01 Qualifications for Appraiser Licensure and Certification	<u>2</u>
2.02 License and Certificate Renewal	<u>3</u>
2.03 Continuing Education	<u>3</u>
2.04 Inactive Status	<u>4</u>
2.05 Expired License or Certificate	<u>5</u>
2.06 Payment of License and Certificate Fees	<u>5</u>
2.07 Duplicate License or Certificate Fee	<u>5</u>
2.08 Federal Appraiser Registry	<u>6</u>
<u>SECTION 3 - EXAMINATION</u>	
3.01 Examination	<u>6</u>
<u>SECTION 4 - GENERAL APPRAISAL PRACTICE</u>	
4.01 Appraisal Office Administration	<u>7</u>
4.02 Supervision of State Licensed Appraiser Trainees	<u>9</u>
4.03 Supervision of Licensed or Certified Residential Appraisers and Trainees	<u>13</u>
4.04 Use of Titles	<u>14</u>
4.05 Display of License and Certificates	<u>15</u>
4.06 Advertising	<u>15</u>
4.07 Change of Name or Address	<u>16</u>
4.08 Appraisal Reports	<u>16</u>
<u>SECTION 5 - TEMPORARY PRACTICE & RECIPROACITY</u>	
5.01 Temporary Practice	<u>17</u>
5.02 Reciprocity	<u>17</u>
<u>SECTION 6 - QUALIFYING MASS APPRAISAL EXPERIENCE</u>	
6.01 Qualifying Mass Appraisal Experience	<u>18</u>
6.02 Mass Appraisal Experience Log	<u>22</u>

PROPOSED REGULATIONS

SECTION 7 - STANDARDS OF APPRAISAL PRACTICE

7.01 Appraisal Standards 24

SECTION 8 - COMPLAINTS; HEARING PROCEDURES; FINAL DECISIONS

8.01 Complaints 25

8.02 Hearing Procedures 25

8.03 Transcripts 27

8.04 Return of Documentary Evidence 27

8.05 Final Decision 28

SECTION 9 - PUBLIC DISCLOSURE

9.01 Public Notice 28

9.02 Meeting Minutes 29

9.03 Council Records 29

SECTION 10 - CHANGE AND MODIFICATION TO RULES AND REGULATIONS

10.01 Changes/Modifications 30

SECTION 11 - SEVERABILITY

11.01 Severability 30

* PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.

SECTION 1 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE

1.01 APPLICATION

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.02 FILING AND FEES

A. Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

B. A fee set by the Division of Professional Regulation will be charged for the following:

1. Initial application and licensure for appraiser trainee license

2. Initial application and licensure for licensed real

property appraiser license

3. Initial application and certification for certified residential real property appraiser certificate

4. Initial application and certification for certified general real property appraiser certificate

5. Renewal fee

6. Duplicate license and certificate fee

7. Inactive status fee

8. Roster fee

9. Printing fee

10. Federal Appraiser Registry fee

11. Letter of Good Standing

12. Copies of the Uniform Standards of Professional Appraisal Practice

C. Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 739-4522.

SECTION 2 - APPRAISER LICENSING AND CERTIFICATION

2.01 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION

A. Applicants for certification as a state certified general or residential real property appraiser and for licensed real property appraiser must satisfy the qualification requirements stated in Chapter 29, Title 24, Section 2934, Delaware Code, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto."

B. Applicants for licensure as a state licensed appraiser trainee shall have successfully completed a minimum of 45 classroom hours of education on real estate matters satisfactory to the Council, of which fifteen (15) classroom hours shall be on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice.

2.02 LICENSE AND CERTIFICATE RENEWAL

A. In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensed and certified appraisers. Certificates and licenses will expire on October 31st of each odd numbered year.

B. As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.03 of this Section.

C. Any person who acts or professes to be a state licensed or state certified real property appraiser while their appraiser license or certificate has expired will be subject to disciplinary action and penalties as described in Chapter 29, Title 24, of the Delaware Code.

2.03 CONTINUING EDUCATION

A. As a prerequisite to renewal of a real property appraiser license or certificate, the licensee or certificate holder shall present evidence satisfactory to the Council of having completed during the immediately preceding two (2) years, the number of classroom hours of instruction, approved by the Council as set by the Appraiser Qualifications Board (AQB) as from time-to-time amended, as provided by 24 Del. C. Section 2934(c).

B. As a prerequisite to renewal of a license, certificate and trainee license, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council.

2.04 INACTIVE STATUS

A. A licensee or certificate holder may request to be placed on inactive status for a period not to exceed two (2) years. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council, a licensee or certificate holder shall be placed on inactive status for a period not to exceed two (2) years. The Council may grant extensions if the licensee or certificate holder shows due cause.

B. A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real property appraiser. However, in order to continue to hold an appraiser license or certificate, a licensee or certificate holder on inactive status must renew his/her license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.

C. A licensee or certificate holder on inactive status may request to be returned to active status at any time. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council and payment of all necessary fees, a licensee or certificate holder on inactive status shall be returned to active status.

2.05 EXPIRED LICENSE OR CERTIFICATE

A. Expired real property appraiser licenses and certificates may be reinstated within twelve (12) months after expiration upon proper application and payment of the renewal fee plus a late filing fee as set by the Division of Professional Regulation.

B. Licenses and certificates expired for more than twelve (12) months may be considered for reinstatement upon proper application, payment of the renewal fee plus late filing fee, provision of proof of having obtained continuing education

equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed, and successful completion of the examination as required in Section 3 herein. Further, the reinstatement application must meet the current requirements of the AQB for education and experience.

2.06 PAYMENT OF LICENSE AND CERTIFICATE FEES

Checks in payment of real property appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.

2.07 DUPLICATE LICENSE OR CERTIFICATE FEE

By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.08 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid annually by the licensee or certificate holder to the State of Delaware.

SECTION 3 - EXAMINATION

3.01 EXAMINATION

A. The Council shall review each application to determine whether the applicant is qualified to sit for the examination. Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.

B. Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the

date of the application.

C. For the examination to be considered valid, the experience requirement must be satisfied within two (2) years of the date of successful completion of the examination. Should the experience requirement not be met within the two (2) year period, the examination will be considered invalid and it will be necessary to re-apply and pay the required fee as if no examination had been taken.

D. The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**SECTION 4 - GENERAL APPRAISAL PRACTICE
DUTIES AND RESPONSIBILITIES OF STATE LICENSED
APPRAISER TRAINEES; SUPERVISION OF STATE
LICENSED APPRAISER TRAINEES; TRAINEE LICENSE
RENEWALS**

4.01 APPRAISAL OFFICE ADMINISTRATION

A. A certified or licensed appraiser shall be designated as the supervisory appraiser by each appraisal firm, each combined real estate brokerage and appraisal firm, and each branch office of such firms for which real estate appraisals are performed by:

1. Two (2) or more state licensed or state certified real property appraisers who are employed by or associated with the firm; or

2. Licensed appraiser trainees who are employed by or associated with the firm and who assist a state licensed or state certified real property appraiser in the performance of real estate appraisals.

B. The certified or licensed appraiser so designated shall be responsible for:

1. The proper display of licenses and certificates of all state licensed and state certified real property appraisers employed by or associated with that office of the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule 2.02 of these Rules and Regulations;

2. The proper notification to the Council of any change of business address or trade name of that office of the firm and the registration of any assumed business name adopted by the firm for its use;

3. The proper conduct of advertising of appraisal services by or in the name of the firm;

4. The property retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;

5. The maintenance of a record for each of the firm's state licensed appraiser trainees that generally describes the nature and extent of assistance rendered in connection with each appraisal; and

6. The maintenance of a record for each of the firm's state licensed and state certified residential real property appraisers that generally describes the nature and extent of assistance rendered by the state licensed real property appraiser when assisting a state certified residential or general real property appraiser and any assistance rendered by the state certified residential real property appraiser when assisting a state certified general real property appraiser in performing an appraisal.

C. No licensee or certificate holder shall be so designated for more than one appraisal firm, combined real estate brokerage and appraisal firm, or branch office of such firms.

D. Each certified or licensed appraiser so designated shall notify the Council in writing of any change in his/her status of the certified or licensed appraiser so designated within ten (10) days following the change.

E. Each certified or licensed appraiser so designated shall be located at the office for which he/she is responsible for direct and personal supervision thereof.

**4.02 SUPERVISION OF STATE LICENSED APPRAISER
TRAINEES**

A. A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report.

B. A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

1. Actively and personally supervises the state licensed appraiser trainee;

2. Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

3. Complies with all provisions of Rule 4.08 of this Section regarding appraisal reports; and if applicable,

4. Prepares and furnishes to the certified or licensed appraiser designated under Paragraph 4.01, and to each state licensed appraiser trainee whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed appraiser trainee and places a copy of such report in the supporting file for the appraisal.

C. All appraiser trainees must be licensed as required under Chapter 29, Title 24, of the Delaware Code

D. The holder of a real property appraiser trainee license issued pursuant to 24 Del. C. Section 2934(d) and Rule 2.01(B)

shall have the following duties and responsibilities:

1. The trainee shall work under the direct supervision of a State licensed or state certified real property appraiser;
2. The trainee shall maintain an experience log on a form provided by the Council;
3. The trainee shall inspect the property and participate in the appraisal process in order to sign the report and to receive credit for the hours spent. The report shall be signed by the trainee as follows:

Assisted by: _____, Trainee

Name

License Number: _____

4. The trainee shall ensure that the log is available at all times for inspection by the Council; and
5. When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

E. A supervising appraiser must be a State licensed or state certified real property appraiser, and shall have the following duties and responsibilities:

- (1) The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the trainee in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). "Direct Supervision" means to:
 - (a) personally inspect with the trainee the interior and exterior of each property appraised;
 - (b) personally review each appraisal report prepared by the trainee;
 - (c) accept full responsibility for the report;
 - (d) assign work to the trainee only if the trainee is competent to perform such work; and
 - (e) approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements.

(2) At least once a month, the supervisor shall sign the experience log required to be kept by the trainee and shall affix his/her license or certification number.

(3) The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council.

(4) After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule

4.02(B)(1)(a), provided the trainee is competent to perform the inspection.

(5) The supervisor shall not supervise more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.02(E)(1)(a).

(6) The supervisor must sign an affidavit affirming that he/she is a state licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers.

(7) The supervisor shall comply with all provisions of Rule 3.06 regarding appraisal reports.

F. Pursuant to Rule 2.03 a Real Property Appraiser Trainee's licenses may be renewed only two (2) times.

G. When an appraiser trainee is discharged or terminates his/her employment with a licensed or certified real estate appraiser by such licensed or certified real estate appraiser shall immediately notify the Council in writing of such termination. At the time of the written notification to the Council, the licensed or certified appraiser shall address a communication to the last known address of such appraiser trainee, which communication shall advise the appraiser trainee that his/her employment has been terminated. A copy of the communication to the appraiser trainee shall accompany the notification to the Council. No such appraiser trainee shall perform any of the acts contemplated by this Chapter or engage directly or indirectly in the business of an appraiser trainee until the Council shall issue a new license showing change of employment and business location.

4.03 SUPERVISION OF LICENSED OR CERTIFIED RESIDENTIAL APPRAISERS AND TRAINEES

A. When a state licensed real property appraiser assists a state certified residential or general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified real property appraiser, the state certified real property appraiser shall:

1. Actively and personally supervise the state licensed real property appraiser;
2. Review the appraisal report and supporting data used in connection with the appraisal;
3. Comply with all provisions of Rule 4.08 of this Section regarding appraisal reports; and if applicable,

4. Prepare and furnish to the certified or licensed appraiser designated under Paragraph 4.01, and to each state licensed real property appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed real property appraiser and place a copy of such report in the supporting file for the appraisal.

B. When a state certified residential real property appraiser assists a state certified general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified

PROPOSED REGULATIONS

general real property appraiser, the state certified general real property appraiser shall perform those supervisory acts set forth in Subsection A of this Rule with regard to the activities of the state certified residential real property appraiser.

4.04 USE OF TITLES

A. Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

B. A state licensed real property appraiser shall utilize the term "state licensed real property appraiser"; a state certified residential real property appraiser shall utilize the term "state certified residential real property appraiser"; and a state certified general real property appraiser shall utilize the term "state certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A state licensed appraiser trainee shall use the term "state licensed appraiser trainee" and shall only co-sign appraisals along with a state licensed or state certified real property appraiser. Approved abbreviations are as follows:

- DE Cert Gen followed by the certification number,
- DE Cert Res followed by the certification number,
- DE Lic Appr followed by the license number,
- DE Appr Trainee followed by the license number.

4.05 DISPLAY OF LICENSES AND CERTIFICATES

A. The real property appraiser license or certificate of a state licensed or state certified real property appraiser shall be prominently displayed at the appraiser's place of business. Pursuant to Rule 4.01 the license or certificate of the supervisory appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the supervisory appraiser shall be prominently displayed at such office.

B. The biennial license or certificate renewal pocket card issued by the Council to each state licensed or state certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.06 ADVERTISING

A. When advertising or otherwise holding himself/herself out as a real property appraiser, a state licensed real property appraiser shall identify himself/herself as a "state licensed real property appraiser." A state certified residential real property appraiser shall identify himself/herself as a "state certified residential real property appraiser". A state certified general real property appraiser shall identify himself/herself as a "state certified general real property appraiser."

B. A state licensed or state certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association,

corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

4.07 CHANGE OF NAME OR ADDRESS

All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.08 APPRAISAL REPORTS

A. Each written appraisal report prepared by or under the direction of a state licensed or state certified real property appraiser shall bear the signature of the state licensed or state certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state licensed appraiser trainee" (as co-signer only), "state licensed real property appraiser," "state certified residential real property appraiser," or the designation "state certified general real property appraiser," or the approved abbreviations as specified in Section 4.01. Where applicable, each appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

B. When a state licensed or certified real property appraiser signs an appraisal report prepared by another person, including a subcontractor acting under the direction or supervision of the appraiser, such appraiser shall be fully responsible for the content of the report.

SECTION 5 - TEMPORARY PRACTICE & RECIPROCITY

5.01 TEMPORARY PRACTICE

The Council may grant temporary licensing or certification privileges in accordance with 24 Delaware Code, Section 2935 (a).

5.02 RECIPROCITY

The Council may grant a reciprocal license in accordance with 24 Delaware Code Section 2935 (b) to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent to the State of Delaware.

SECTION 6 - GUIDELINES FOR QUALIFYING MASS APPRAISAL EXPERIENCE

6.01 QUALIFYING MASS APPRAISAL EXPERIENCE

The Delaware Council on Real Estate Appraisers

("Council") has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification.

The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor's Application for Real Estate Appraiser License or Certificate.

The State of Delaware under Chapter 24, Subchapter II, Regulation of Real Estate Appraisers, Subsection 2932, subparagraph (c), sets forth specifically:

"(c) The Council on Real Estate Appraisers is required to include in its regulations educational experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73 [12 U.S.C. & 1833 a et seq.], and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)"

Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued an additional explanation "Interpretations/Clarifications" to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

"Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process.

Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

Mass appraisals shall be performed in accordance with USPAP Standard 6."

In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for

compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations.

USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours over a two (2) - year period is required for all applicants for licensure or certification. A minimum of 1,000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.

As stated in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate, applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

A. Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

B. Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

1. Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

2. The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete

PROPOSED REGULATIONS

specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

3. If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

4. If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

6.02 MASS APPRAISAL EXPERIENCE LOG

Applicants seeking mass appraisal experience credit must complete the attached Mass Appraisal Experience Log. Use the key on the Mass Appraisal Experience Log form for creditable experience. The information included in each column is as follows:

<u>Date of Activity</u>	State the specific dates of the activity. If a range of dates is appropriate, be sure that the activity occurred continuously over that period. (Example: March 23-24, 1992)
<u>Value Date</u>	Applicants applying for ad valorem, mass appraisal experience completed in Delaware must list the month and year of the valuation date.
<u>Property Class</u>	Use the key on the form for identifying the property type. <ol style="list-style-type: none"> 1. Residential (less than 5 units) 2. Multi - Family (2 - 4 units) 3. Commercial 4. Industrial 5. Special purpose properties
<u>City/Town</u>	Municipality where the mass appraisal work was used to generate appraisals.
<u>Type of Activity</u>	Use the key on the form for identifying the property type. The creditable types of activity are listed as follows: <ol style="list-style-type: none"> A. Highest and Best Use Analysis - Detail analysis used to determine highest and best use of a site both as if vacant and as developed. B. Model Specification - Development of the valuation schedules. Such

documentation should include the approach to value (cost, market or income), identification of how factors (property characteristics) were selected, the quantification of these factors (dollar or percentage adjustments) and how the relationship among the factors was determined.

C. Model Calibration - Adjusting the valuation schedules using the generally accepted techniques, such documentation should include any statistical analyses employed to set unit prices and percentage adjustments.

Hours

Only the actual working hours on the associated activity are creditable. Only time specifically spent on the activity is creditable. Working full-time on a revaluation project does not automatically translate into 40 hours per week of creditable appraisal experience. The applicant must be precise in detailing the activities and when they took place. In evaluating the number of hours of credit requested, any unusual number of hours claimed for a particular activity may result in further review of the supporting documentation. **NOTE THAT DATA COLLECTION AND FIELD REVIEW ACTIVITIES BY THEMSELVES ARE NOT CREDITABLE EXPERIENCE.**

Position Title

List your position at the time of activity.

Documentation

State the physical location of the documentation which details each activity for which experience credit is requested. It is advisable to secure copies of any documentation not in your possession prior to applying for experience credit. **THE APPLICANT IS RESPONSIBLE FOR THE PRODUCTION OF THIS DOCUMENTATION.** Therefore, it is important that the applicant claim credit only for the activities for which documentation can be immediately produced.

Location

Upon request the applicant may be asked to submit sworn statements from witnesses who can verify his/her claimed experience.

SECTION 7 - STANDARDS OF APPRAISAL PRACTICE

7.01 APPRAISAL STANDARDS

A. In performing the acts and services of a state licensed

or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

B. Copies of the "Uniform Standards of Professional Appraisal Practice" are available upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time-to-time.

SECTION 8 - COMPLAINTS; HEARING PROCEDURES; FINAL DECISIONS

8.01 COMPLAINTS

The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in Section 8810 of Title 29 of the Delaware Code.

8.02 HEARING PROCEDURES

All hearings shall be in accordance with the Administrative Procedures Act, 29 Del. C. Sections 10121-10129.

A. At least 30 days before the date fixed for the hearing, the Council shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the accused real estate appraiser. In cases where the accused real estate appraiser cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation. The accused real estate appraiser shall also be advised of his/her rights, as follows:

1. That he/she has the right to appear personally and to be represented by counsel;
2. That he/she has the right to cross-examine any witness who may appear against him/her and produce witnesses and evidence in his/her own defense; and
3. That he/she is entitled to the subpoena power of the Council to ensure the attendance of any witnesses he or she intends to call. If the accused wishes to avail himself/herself of the Council's subpoena power, he/she must submit to the Council, in writing and no later than fifteen (15) days prior to the date of the hearing, the names and addresses of the witnesses whose attendance he/she wishes the Council to compel.

B. All hearings shall be informal and shall not be bound by the formal rules of evidence. All testimony shall be taken under oath. All testimony which the Council determines to be relevant, reliable, and probative and not unduly repetitious, shall be admissible. Objections to the admission or exclusion

of evidence shall be brief and shall state the grounds for objection. Any offer of proof which is made in connection with the objection to the admission of evidence shall consist of a statement of that which the offeror contends would be abused by such evidence. Where the offered evidence concerns a document, a copy of the same shall be marked for identification.

C. All testimony shall be recorded either by a court reporter or by means of an electronic recording device. In the event electronic means are used, the electronic record shall be preserved until after the time for appeal of the Council's decision has expired with no appeal being taken. The Council shall maintain a permanent written record of all hearings in the form of official minutes.

D. Hearings shall be conducted in the following manner:

1. The Council shall open the hearing with a brief statement of the purpose of the hearing.

2. The Council shall then receive the evidence which is offered to support the charges which have been proffered against the accused real estate appraiser.

3. The accused real estate appraiser shall be afforded an opportunity to cross-examine any witness who may testify against him/her.

4. After all of the evidence which supports the charges has been received, the accused real estate appraiser may present a brief statement of that which he/she intends to establish.

5. The accused real estate appraiser may then testify in his/her own behalf and present witnesses and evidence in his/her defense.

6. All witnesses who appear before the Council shall be subject to examination by the Council.

8.03 TRANSCRIPTS

Transcripts of the proceedings may be obtained by the accused real estate appraiser or any other person interested in the hearing upon written request and payment of the costs involved in preparing the same.

8.04 RETURN OF DOCUMENTARY EVIDENCE

Any documentary evidence which is submitted to the Council shall be returned to the owner thereof upon written request for the return of such documents within 120 days of the Council's final decision. Otherwise, the Council may dispose of such evidence at its discretion.

8.05 FINAL DECISION

A. If, on the basis of the evidence presented at the hearing, the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under Subchapter II, Chapter 29 of Title 24 as it deems necessary. The Council's decision shall be in writing and shall include:

1. A brief statement of the evidence presented,

PROPOSED REGULATIONS

2. The Council's findings of fact,

3. What record evidence these findings are based upon, and

4. The Council's conclusions of law.

B. A copy of the Council's decision shall be mailed immediately by certified mail, return receipt requested, to the accused real estate appraiser. The Council's decision shall become effective on the 30th day after the date it is mailed or served on the accused real estate appraiser, unless there is a stay pending appeal by the accused real estate appraiser ordered by the Superior Court.

SECTION 9 - PUBLIC DISCLOSURE

9.01 PUBLIC NOTICE

Public notice of all meetings shall be given seven (7) days prior to all meetings.

A. The notice will be posted at the Division of Professional Regulation Office in Dover, Delaware, according to the Freedom of Information Act.

B. Said notice shall include the agenda, as well as the date, time, and location of each meeting.

9.02 MEETING MINUTES

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

A. Said minutes shall include a record of those present.

B. The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

C. It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

9.03 COUNCIL RECORDS

It shall be the responsibility of the Council's Administrative Assistant to safeguard the Council's records and to make them accessible to the general public.

A. No citizen of the State of Delaware shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

B. The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to the Freedom of Information Act.

SECTION 10 - CHANGE AND MODIFICATION TO RULES AND REGULATIONS

10.01 CHANGES/MODIFICATIONS

The Council may, change or modify these Rules and

Regulations as dictated by the evolution of appraisal practice after providing for the Public Notice/Hearing as required, if any.

SECTION 11 - SEVERABILITY

11.01 SEVERABILITY

If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION DELAWARE BOARD OF NURSING

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 Del.C. 1906(1))

The Delaware Board of Nursing in accordance with 24 Del.C. §1906(1) has proposed to revise certain sections of Articles II, VII, VIII, IX and X of the Rules and Regulations related the Law regulating the Practice of Nursing in the State of Delaware that address nursing education programs, standards of nursing practice, the practice of nursing as an Advanced Practice Nurse in the State of Delaware, mandatory continuing education, and disciplinary proceedings.

The proposed changes include the following:

ARTICLE II:

Amend Section 1: Definitions to change "National League for Nursing" to "National Accrediting Agency for Nursing Education"

Amend Section 5: Standards for Approval, 5.10:1 and 5.10:2, substitute "Board-approved national accrediting agency for nursing education" for "National League for Nursing".

ARTICLE VII:

Amend Section 7: Definitions to delete 7.2:4 "The RN may not delegate functions that are to be performed only by licensed nurses listed in Section 4." in its entirety. In 7.4: Add "These exclusions do not apply to Advanced Practice Nurses."

ARTICLE VIII:

Amend Section 7: Generic Functions of the Advanced Practice Nurse Within The Specialized Scope of Practice include but ar not limited to: Add 7.14 to read "Delegating tasks appropriately" and renumber accordingly.

ARTICLE IX:

This Article includes revised definitions, additional methods to obtain continuing education, and clarification of process.

A public hearing will be held on Wednesday, July 8, 1998 at 11:30 a.m., in the second floor conference room A of the Cannon Building, 861 Silver lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 silver Lake Blvd., cannon building, Suite 203, Dover, Delaware 19903. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be at the public hearing.

ARTICLE II NURSING EDUCATION PROGRAMS**SECTION 1 - DEFINITIONS**

1.1 "Board" - the Delaware Board of Nursing.

1.2 "Conditional Approval" - the status granted to a program that is determined to be deficient in a specified area. When this determination is made by the Board, written notice shall be sent to the program specifying the deficient areas, and the time limit within which the deficiencies are to be corrected.

1.3 "Full Approval" - the status granted to a program that meets the requirements of the Law and the Rules and Regulations of the Board. Continuation of full approval is contingent upon annual review of the program and continuing to meet the criteria.

1.4 "Initial Approval" - authorization to admit students and enter into contractual agreements for clinical facilities. It is granted only after an application has been submitted, reviewed and a survey visit made by the Board. No students shall be admitted to the program until the institution has received written notification that initial approval has been granted. Failure to comply will delay initial approval.

1.5 National League for Nursing "National Accrediting Agency For Nursing Education"- a national accrediting agency for nursing education that is recognized by the Council on Postsecondary Accreditation and by the U.S. Department of Education.

1.6 "Nursing education program" - as defined in 24 Del. C., Chapter 19.

SECTION 2: AUTHORITY DESIGNATED TO BOARD OF NURSING

2.1 In accordance with 24 Delaware Code, Chapter 19, the Board may:

- A. Approve curricula and develop criteria and standards for evaluating nursing education programs;
- B. Provide for surveys of such programs at such time as it may deem necessary;
- C. Approve such programs to meet the requirements of the Chapter and of the Board; and
- D. Deny or withdraw approval from nursing education programs for failure to meet prescribed curriculum or other standards. (Subsections 1906 (b), (c), (e)).

SECTION 3: PURPOSES OF APPROVAL

3.1 The state requires that nursing education programs be approved in order to:

- A. Provide for the safe practice of nursing by setting minimum requirements for the programs that prepare the licensee.
- B. Encourage self-evaluation for the improvement of a nursing education program.
- C. Provide for the public a list of nursing education programs that meet the requirements set by the Board.
- D. Assure the graduates of approved nursing programs of their eligibility to apply for admission to the licensing examination and to facilitate their licensure by endorsement in other states.

SECTION 4: PROCEDURE FOR ESTABLISHING A NURSING EDUCATION PROGRAM**PHASE I**

4.1 An administrative officer of the institution shall complete the appropriate application form and forward three copies to the Executive Director of the Board at least 12 months prior to enrollment of students.

4.2 The Board shall review the application and conduct a site visit. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

4.2:1 Alternatively, the institution desiring to establish a nursing education program may elect to have the site visit made by a Board member(s) and a nursing education consultant, the latter with special expertise in the same type of nursing education as the program. The consultant shall be from a list of qualified persons approved by the Board. Costs associated with the visit of the consultant shall be borne by the nursing education program requesting same.

4.3 The purpose of the site visit is to validate the information recorded on the application.

4.4 The site visitation team shall make a written report to the Board.

4.5 The Board shall report to the institution within 90 days after all requirements of Phase I have been met.

PHASE II

4.6 The institution shall notify the Board of the appointment of a qualified nurse as director of the program at least nine months in advance of the anticipated enrollment of students in nursing courses.

4.7 The director shall be responsible for planning the program and providing the information required in Part II of the application form, which must be resubmitted at least three months prior to the anticipated enrollment of students.

4.8 The Board shall review the application and supporting information at a regularly scheduled meeting and determine if the program is prepared to admit students. If it is so determined, initial approval will be granted.

PHASE III

4.9 Following initial approval, the director of the program shall submit five copies of a progress report to the Board every six months. This shall be a general report of progress to date to include number of students enrolled, attrition rate, faculty credentials, curriculum design, and use of clinical facilities. After the admission of students, these reports shall continue to be submitted at six month intervals until discontinued by the Board.

4.10 The institution shall appoint other qualified nurse faculty members no less than four months in advance of enrollment of students in nursing courses to participate in determining the theoretical framework and in developing the curriculum plan and course content.

4.10:1 The program shall be developed according to criteria in accordance with Section V of these Regulations. The curriculum plan, including course descriptions, shall be submitted for Board review and approval three months in advance of enrollment of students in nursing courses.

4.11 Following the graduation of the first class, the nurse faculty shall prepare and submit five copies of a self evaluation report to the Board for review. The Board will conduct a survey visit to consider full approval of the program.

4.11:1 The Board's decision regarding approval status

shall be sent in writing to the appropriate administrative officers and to the director of the nursing education program.

SECTION 5: STANDARDS FOR APPROVAL

5.1 Organization and Administration.

5.1:1 The school shall be authorized to conduct a nursing education program by charter or articles or incorporation of the controlling institution, by resolution of its board of control, or by the school's own charter or articles of incorporation.

5.1:2 Universities, colleges, community or junior colleges, and public schools offering programs in nursing shall be accredited by their appropriate agencies.

5.1:3 Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association.

5.1:4 Any agency or institution that is used by a nursing education program shall be authorized to conduct business in the state of Delaware, or in the state in which the agency or institution is located.

5.1:5 The authority and responsibility for the operation of the nursing education program shall be vested in a director who is duly licensed to practice professional nursing in Delaware and who is responsible to the controlling board, either directly or through appropriate administrative channels.

5.1:6 A written organization plan shall be prepared and submitted to the Board and shall indicate the lines of authority and communication of the program to the controlling body, other departments within the controlling institution, the affiliating and cooperating agencies, and to the advisory committee, if one exists.

5.1:7 Adequate funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The director of the nursing program shall be responsible for budget recommendations and administration, consistent with the established policies of the controlling agency.

5.1:8 When the program uses educational or clinical resources that are under the control of another authority, there shall be written agreements with each resource provider. Such agreements shall be developed jointly with the provider, reviewed periodically according to the policies of the program and the agency, and include provision for adequate notice of termination.

5.1:9 Clerical services shall be provided to support the program with a minimum of one full-time secretary and additional secretarial staff as needed.

5.2 Philosophy and Objectives

5.2:1 Philosophy and objectives shall be clearly stated in writing.

5.3 Faculty**5.3:1 Minimum Qualifications**

A. All nursing faculty members, including the director, shall hold current licenses to practice as Registered Nurses in Delaware.

B. The director and each member of the nursing faculty shall be academically and professionally qualified for the position to which appointed. All nursing faculty members shall maintain professional competence in their area(s) of teaching responsibility through professional development activities such as nursing practice, participation in professional meetings, workshops, formal college courses, and nursing research.

C. The director of a baccalaureate degree program shall hold an earned doctoral degree or have a specific plan for completing a doctoral degree and shall hold a degree in nursing at the Master's level or higher. The director shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

D. The director of a nursing education program shall hold a minimum of a Master's degree. The director shall hold a degree in nursing at the baccalaureate level or higher and shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

E. Each member of the nursing faculty shall hold a baccalaureate degree in nursing or a Master's in nursing. Faculty employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

F. Non-nurse members of the faculty shall hold academic and professional credentials in their field of specialization.

5.3:2 Number

The number of faculty members shall be sufficient to prepare the students for licensure, to achieve the objectives as stated in the school's application, and reasonably proportionate to:

- A. Number of students enrolled;
- B. Frequency of admissions;
- C. Education and experience of faculty members;
- D. Number and location of clinical facilities; and
- E. Total responsibilities of the faculty members.

5.3:3 Conditions of employment

A. Qualifications and responsibilities for faculty member positions shall be defined in writing.

B. Written personnel policies shall be consistent

with the policies of the sponsoring institution.

C. Faculty assignments shall allow time for class and laboratory preparation, teaching, program evaluation, improvement of teaching methods, guidance of the students, participation in faculty organizations and committees, attendance at professional meetings, and participation in continuing education activities.

5.3:4 Functions

The principal functions of the faculty shall be to:

A. Develop the philosophy and objectives of the nursing program;

B. Develop, implement, evaluate and revise the curriculum;

C. Participate in the recruitment, admission and retention of students in the nursing program;

D. Establish criteria for promotion and completion of the program in nursing;

E. Evaluate student achievement on the basis of established criteria;

F. Recommend successful candidates for degree, diploma and other forms of recognition; and

G. Participate in appropriate activities of the controlling institution.

5.3:5 Organization

A. The nursing faculty shall attend regular meetings of the faculty for the purpose of developing, implementing and evaluating the nursing curriculum.

B. Committees shall be established as needed.

C. Written rules or bylaws shall govern the conduct of nursing faculty meetings and committees.

D. Minutes of faculty and committee meetings, including action taken, shall be recorded and available for reference.

E. Provision shall be made for nursing student membership and participation on faculty committees and in committee meetings as appropriate.

F. Where nursing practice/education (advisory) committees are established, their functions and relationship to the board of control and to the program shall be clearly defined.

G. Written rules shall govern the activities of the nursing practice/education (advisory) committee(s) and minutes of the meetings shall be on file in the administrative office of the program.

5.4 Students**5.4:1 Admission, Promotion and Graduation****A. Criteria**

Policies and procedures related to the selection and admission of students are the responsibility of the individual school.

B. Students shall be admitted on the basis of established criteria and without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

C. There shall be written policies for the admission and re-admission of students.

D. Schools granting advanced standing after admission via challenge examinations, College Level Examination Program, teacher made tests or any other method shall have written criteria for granting course credit.

E. The policies for promotion, retention and graduation shall be published in the school catalogue or in other appropriate documents that are available to students.

F. All candidates in a program that requires applicants to be registered nurses must be licensed in Delaware if any clinical experiences occur in the State.

5.4:2 Services

A. There shall be written policies for student welfare as related to health, counseling and guidance, financial aid, and residence life, if offered.

B. There shall be well-defined written policies governing payment and refund of tuition and other fees.

5.5 Information

5.5:1 Annual Report

By September 1 of each year, five copies of an annual report of the nursing education program shall be sent to the Board, using the format supplied by the Board. The report will include information from August 1 of the previous year through July 31 of the current academic year.

5.5:2 School Records

A nursing education program shall maintain a system of records which shall contain all data relating to approval by any agency or body. The data shall include, but not be limited to, course outlines, minutes of faculty and committee meetings, pertinent correspondence, reports of standardized tests and survey reports. Such data shall be available to the Board representatives during the course of a site survey visit subject to applicable provisions of state and federal law.

5.5:3 Students Records

A. The school shall maintain a record for each student. Subject to applicable provisions of law, such records shall be available to Board representatives during the course of a site survey visit.

B. A final transcript for each student shall be retained in the permanent records of the school.

C. Provision shall be made for the protection of records against loss, destruction and unauthorized use.

5.5:4 School Bulletin or Catalogue

Current information about the school shall be published periodically and distributed to students, applicants for admission and to the Board. It should include a general description of the program, philosophy and objectives of the controlling institution and of the nursing programs, admission and graduation requirements, fees, expenses, and financial aid, educational facilities, living accommodations, student activities and services, curriculum plan, course descriptions, and faculty staff roster.

5.6 Curriculum

The following shall apply to nursing education programs:

5.6:1 Nursing Education Programs

A. The curriculum shall reflect the stated philosophy and objectives of the school and evidence of an organized pattern of instruction and appropriate supervised nursing practice consistent with sound educational practices and principles of learning.

B. LPN and RN programs shall provide for concurrent or correlated theory and clinical practice in the physical and/or mental health care of individuals of all ages, the nursing care of mothers and newborns, children, adults, the aged, individuals with mental health problems, and individuals in diverse settings, not necessarily in separate courses.

1. Clinical experiences shall include preventive aspects of illness, nursing care of persons with acute and chronic illnesses and rehabilitative care. Opportunities shall be provided for the student to participate in patient teaching in a variety of settings with individuals, families and other groups.

2. Concurrent and or correlated theory shall include the history of nursing, health care issues, and legal-ethical issues.

C. The RN curriculum shall provide instruction in the following fields:

1. Physical and biological sciences including content from the areas of anatomy and physiology, chemistry, microbiology, pharmacology and nutrition, which may be integrated, combined or presented as separate courses, and

2. Social and behavioral sciences including content drawn from the fields of communication theory, psychology and sociology and shall serve as a basis for the selection of learning experiences which develop abilities and skills in observation, interviewing, interpersonal relations, and problem-solving.

3. Professional nursing responsibilities.

4. Nursing research and nursing leadership in BSN programs.

D. The LPN curriculum shall provide instruction in the following fields:

1. Essential facts and principles in the biological, physical and social sciences including body structure and functions, elementary microbiology, pharmacology and nutrition, signs of emotional and mental health, human growth and development, and administration of medications.

5.7 Evaluation

5.7:1 Evaluation as a basis for curriculum revision and change in practices is a continuous process and an inherent responsibility of the faculty. The degree to which the faculty accomplishes its objectives shall be determined through

evaluation of curriculum content, teaching methodologies, clinical and other learning experiences, student progress, success of graduates on the licensing examination, promotion, retention and degree of nursing competence of the graduate.

5.8 Educational Facilities

5.8:1 Classrooms, laboratories, and conference rooms shall be adequate in number, size and type for the number of students and educational purposes for which the rooms are used.

5.8:2 Offices

A. Offices shall be available and adequate in size, number and type to provide faculty with opportunities for uninterrupted work and privacy for conferences with students.

B. Space for clerical staff, records, files and other equipment shall be adequate for the needs of the program.

5.8:3 Learning Resources

A. The library shall have recent, pertinent and sufficient holdings to meet the learning needs of students and faculty.

1. Provision shall be made for regular additions to and deletions from the library collection.

2. Library facilities and policies shall be conducive to effective use.

B. Equipment shall be available so that a multimedia approach to learning is afforded.

5.8:4 Clinical Facilities

A. The clinical facility to which the student is assigned for clinical practice is considered an integral part of the nursing program.

B. Clinical facilities shall be selected by the faculty to provide learning experiences essential to achieve the stated purposes of the program and the stated objectives for each clinical course. They may include, but are not limited to:

1. Inpatient facilities such as acute care hospitals, specialized hospitals, long term and extended care facilities.

2. Outpatient facilities such as hospital based clinics, community health centers, mental health clinics and physicians' offices.

3. Other community agencies such as hospices, health maintenance organizations, day care centers, senior centers and prisons.

C. The following criteria for clinical facility use must be met:

1. There shall be an environment in which effective learning can take place and in which the student is recognized as a learner.

2. There shall be an adequate number of qualified professional and other nursing personnel not including the student, to ensure safe care of the patient.

3. There shall be a sufficient number and variety of patients to provide adequate learning experiences.

D. Hospital facilities shall be accredited by the Joint

Commission on Accreditation of Health Care Organizations or the American Osteopathic Association. Other facilities such as specialized hospitals, long term and extended care facilities and community health agencies shall be licensed or approved by the appropriate approving authority.

E. Facilities used for clinical experience shall be approved by the Board prior to the assignment of students. Approval shall be based on information provided by the school on forms furnished by the Board. A visit by Board representatives to the clinical site may be scheduled.

F. Clinical facilities used in another state require written notification to that jurisdiction's Board of Nursing.

G. Written agreements between the school and agencies involved shall:

1. Ensure that the faculty are ultimately responsible for the students' learning experiences.

2. Provide for continuous planning for students in cooperation with the director of nursing and appropriate nursing staff of the agency.

3. Provide adequate space for the number of students and faculty to conduct educational conferences.

H. Observational experiences shall be planned in cooperation with the agency to meet stated objectives.

5.9 Program Changes

5.9:1 Program Changes Requiring Board of Nursing Prior Approval

A. Changes in the philosophy and/or objectives of the program.

B. Changes in the overall curriculum plan.

C. Changes in the administrative sponsorship of the program.

5.9:2 Procedure for Approval of Program Change

A. When a program change is contemplated, consultation from the Board is available.

B. When any program change is proposed, a written plan shall be submitted to the Board including the:

1. Description of the change

2. Rationale for the change

3. Relationship of the proposed change to the present program.

C. Three copies of these materials shall be submitted to the Board at least one month prior to the Board meeting at which time the request will be considered.

5.10 Procedure for Continuing Full Approval

5.10:1 Each nursing education program that ~~has full~~ National League for Nursing (NLN) accreditation is accredited by a Board-approved national accrediting agency for nursing education must submit a copy of the NLN self-study document and the NLN letter of notification of accreditation status by September following the reaccreditation visit. This is contingent on the program remaining NLN accredited and sharing copies of all correspondence related to compliance

with ~~NEN~~ the national accrediting agency's recommendations. Extraneous material will be disseminated to Board Members at the discretion of the Executive Director in consultation with the President.

5.10:2 Each nursing education program that does not have ~~National League for Nursing Board approved national~~ accreditation will be re-evaluated at least every five years. Survey visits may be scheduled as determined by the Board.

A. Representative(s) of the Board will conduct a survey visit on a date mutually acceptable to the nursing program and the Board.

B. The Board shall notify the director of the nursing education program of the intended survey visit by June of the year preceding the survey visit. The Director shall coordinate an agenda for the visit with the Board and submit it to the Board office three weeks prior to the visit for distribution to the team.

C. The school shall submit five copies of a comprehensive self-evaluation report, following the format supplied by the Board, by September 1 of the survey year.

5.10:3 Interim visits may be made at any time within the five-year period either by request or as deemed necessary by the Board, with advance notice. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

5.10:4 If the Board determines that a program is not maintaining the standards of Section 5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct deficiencies.

5.10:5 A failure to attain an eighty percent pass rate on the licensure examination for first time candidates as reflected in two consecutive annual reports will require presentation to the Board of a plan to identify and correct deficiencies. Progress reports will be required.

A. A program reporting five or fewer candidates in a 12 month period with a failure to attain an eighty percent pass rate as reflected in two consecutive annual reports must provide a written explanation to the Board for action.

5.10:6 Deficiencies sufficient to warrant a determination of conditional approval (probation) may include one or more of the following:

A. Failure to adhere to the school's stated philosophy and curriculum objectives.

B. Repeated violations of stated academic and/or admission policies.

C. Failure to maintain a faculty and administration of adequate size and qualifications.

D. Use of students for nursing services or other purposes that are not primarily educational.

E. Failure to provide adequate resources for cognitive learning and clinical practice.

F. Failure to admit and retain students and/or hire and promote faculty and other personnel without discrimination as to age, race, religion, sex, sexual preference,

national origin, or disability.

G. Failure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.

H. Any other deficiencies that, in the opinion of the Board, detrimentally affect the educational process.

5.10:7 A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.

5.10:8 Provisions of Sections 6.1 B., C., D., and E. shall prevail for any program for which Board approval has been discontinued.

SECTION 6: TERMINATION OF A NURSING PROGRAM

6.1 The controlling institution shall:

A. Submit written notification to the Board of its intent to terminate or interrupt the nursing program.

B. Provide for the completion of the nursing program for all students currently enrolled.

C. Safeguard the quality of the educational program for these students.

D. Provide for the permanent retention of records of students and graduates.

E. Notify the Board in writing as to the location of records and where requests for records may be sent.

SECTION 7: PROCEDURE FOR ANNUAL REVIEW OF NURSING EDUCATION PROGRAMS

7.1 The Board shall review the annual reports and self-evaluation reports of the programs submitted each September.

7.2 Following review of the reports from the programs, written notification of the action taken at the regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the school. This could include notification of the Board's intention to conduct a site visit.

7.3 Site Visits

7.3:1 For any site visit, the President shall designate the Board members who are to make the survey visits and the chair person of the survey team. At least one member of each team shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

7.3:2 The site visit may be made by a Board member(s) and a nursing education consultant, the latter with special expertise at the same level of nursing education as the program. The consultant shall be selected from a list of qualified persons submitted by the nursing program and approved by the Board. Costs associated with the hiring of the consultant shall be borne by the program.

7.3:3 The Board will indicate in advance any clinical areas they wish to visit.

7.3:4 The school shall schedule separate interviews for the visitors with:

- A. The nurse administrator of the program
- B. The faculty
- C. Representative students from each level
- D. Others as deemed appropriate by the agency or the Board.

7.3:5 The school shall have records available for visitor review, including:

- A. Committee minutes
- B. Course materials
- C. Evaluation data regarding the entire program
- D. Other materials as specified by the survey team.

(Approved 11/8/95)

ARTICLE VII - STANDARDS OF NURSING PRACTICE

SECTION 1: AUTHORITY

1.1 "Standards of nursing practice" means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

SECTION 2: PURPOSE

2.1 The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

SECTION 3: STANDARDS OF PRACTICE FOR THE REGISTERED AND LICENSED PRACTICAL NURSE

3.1 Standards related to the Registered Nurse.

3.1:1 The Registered Nurse shall conduct and document, nursing assessments of the health status of individuals and groups by:

A. Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

1. Biophysical and emotional status and observed changes;
2. Growth and development;

3. Ethno-cultural, spiritual, socio-economic and ecological background;

4. Family health history;

5. Information collected by other health team members;

6. Ability to perform activities of daily living;

7. Consideration of client's health goals;

8. Client knowledge and perception about health status and potential, or maintaining health status;

9. Available and accessible human and material resources

10. Patterns of coping and interaction.

B. Sorting, selecting, reporting, and recording the data.

C. Analyzing data.

D. Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

E. Evaluating data.

3.1:2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

3.1:3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnosis. This includes, but is not limited to:

A. Prescribing nursing intervention(s) based on the nursing diagnosis.

B. Initiating nursing interventions through

1. Giving care.
2. Assisting with care.
3. Delegating care.

C. Identifying to the identification of priorities in the strategies of care.

D. Setting realistic and measurable goals for implementation.

E. Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

F. Supervising the caregiver to whom care is delegated.

3.1:4 Registered Nurses shall participate in the implementation of the strategy of care by:

A. Providing care for clients whose conditions are stabilized or predictable.

B. Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

C. Providing an environment conducive to safety and health.

D. Documenting nursing interventions and client outcomes.

E. Communicating nursing interventions and client outcomes to health team members.

3.1:5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

A. Evaluation data shall be appropriately documented; and

1. Be communicated to the client, family, significant others and appropriate members of the health care team; and

2. Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

SECTION 4: STANDARDS OF PRACTICE FOR THE LICENSED PRACTICAL NURSE

4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

4.1:1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

A. Sorting, selecting, reporting, and recording the data.

B. Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

1. Biophysical and emotional status and observed changes;
2. Growth and development;
3. Ethno-cultural, spiritual, socio-economic, and ecological background;
4. Family health history;
5. Information collected by other health team members;
6. Ability to perform activities of daily living;
7. Consideration of client's health goals;

4.1:2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

4.1:3 Licensed Practical Nurses shall participate in developing strategies of case based on assessment and nursing diagnoses.

A. Contributing to setting realistic and measurable goals for implementation.

B. Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

C. Contributing to setting client priorities.

4.1:4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

A. Providing care for clients whose conditions are stabilized or predictable.

B. Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

C. Providing an environment conducive to safety and health.

D. Documenting nursing interventions and client outcomes.

E. Communicating nursing interventions and client outcomes to health team members.

4.1:5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

SECTION 5: STANDARDS RELATED TO THE REGISTERED AND LICENSED PRACTICAL NURSE'S COMPETENCIES AND RESPONSIBILITIES.

5.1 Registered and Licensed Practical Nurses shall:

5.1:1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

5.1:2 Accept responsibility for competent nursing practice.

5.1:3 Function as a member of the health team:

A. By collaborating with other members of the health team to provide optimum care, or

B. As an LPN under the direction and supervision of a recognized licensed authority.

5.1:4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

5.1:5 Obtain instruction and supervision as necessary when implementing nursing techniques.

5.1:6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

5.1:7 Participate in evaluating nurses through peer review.

5.1:8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

5.1:9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

5.1:10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

5.1:11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

5.1:12 Respect the property of clients, their families and significant others.

In addition to proceeding, the Registered Nurse shall:

5.1:13 Delegate to others only those nursing

interventions that those persons are prepared or qualified to perform.

5.1:14 Supervise others to whom nursing interventions are delegated.

5.1:15 Retain professional accountability for care when delegating.

5.1:16 Teach safe practice to other health care workers as appropriate.

SECTION 6: DISPENSING

6.1 Definitions

A. "Dispense" - To deliver a medication pursuant to a standing order.

B. "Prescription label" - a label affixed to every prescription or drug order which contains the following information at a minimum.

1. A unique number for that specific drug order.

2. The date the drug was dispensed.

3. The patient's full name.

4. The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

5. The practitioner's directions as found on the prescription order.

6. The practitioner's name.

7. The initials of the dispensing nurse.

8. The name and address of the facility or practitioner from which the drug is dispensed.

9. Expiration date.

C. "Standing order" - An order written by the practitioner which authorized a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

6.2 Standards:

A. Only registered nurses may assume the responsibility of dispensing as defined in the nurse practice act and delineated below.

B. The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

C. The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

D. The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

E. Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

F. The nurse may not designate any part of the dispensing function to any other individual who is not licensed to dispense.

G. The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

H. The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

I. A usage review process must be established for the medicines dispensed to assure proper patient usage.

J. All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

K. Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

L. The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

M. Conformance to paragraphs G through L are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

6.3 Medication modifications

6.3.1 A nurse may accept a change in the dosage of a medication from a pharmacist who is acting as an agent of the physician.

SECTION 7 - DELEGATION

7.1 DEFINITIONS

7.1:1 "Unlicensed Assistive Personnel" - Individuals not licensed to perform nursing tasks what are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in Section 1921 (a)(4) of the Nurse Practice Act).

7.1:2 "Delegation" - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.1:3 "Supervision" - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.1:4 “Accountability” - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.2 CONDITIONS

The following conditions are relevant to delegation:

7.2:1 Only RNs may delegate.

7.2:2 The RN must be knowledgeable regarding the unlicensed assistive personnel’s education and training and have opportunity to periodically verify the individual’s ability to perform the specific tasks.

7.2:3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

~~7.2:4 The RN may not delegate functions that are to be performed only by licensed nurses listed in Section 4.~~

7.3 CRITERIA

The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.3:1 Determination of appropriate factors include, but are not limited to:

- A. stability of the client’s condition
- B. educational background, skill level, or preparation of the individual
- C. nature of the nursing act that meets the following:

1. task is performed frequently in the daily care of a client
2. task is performed according to an established sequence of steps
3. task may be performed with a predictable outcome
4. task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.3:2 The RN must be readily available in person or be telecommunication.

7.4 EXCLUSIONS

The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

7.4:1 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.4:2 Development of nursing diagnosis and care goals;

7.4:3 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.4:4 Specific tasks involved in the implementation

of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.4:5 Administration of medications, including prescription topical medications; and

7.4:6 Receiving or transmitting verbal orders.

ARTICLE VIII RULES AND REGULATIONS GOVERNING THE PRACTICE OF NURSING AS AN ADVANCED PRACTICE NURSE IN THE STATE OF DELAWARE

SECTION 1: AUTHORITY

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

SECTION 2: PURPOSE

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

SECTION 3: SCOPE

3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del. C., §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

SECTION 4: DEFINITIONS

4.1 “Advanced Practice Nurse”

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

4.1:1 “CERTIFIED NURSE MIDWIFE (C.N.M.)”

A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification

examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

4.1:2 “CERTIFIED REGISTERED NURSE ANESTHETIST (C.R.N.A.)”

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

4.1:3 “CLINICAL NURSE SPECIALIST (C.N.S.)”

A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in Article VIII, Section 9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

4.1:4 “NURSE PRACTITIONER (N.P.)”

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

4.2 “Audit”

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

4.3 “Board”

The Delaware Board of Nursing

4.4 “Collaborative Agreement”

Written verification of health care facility approved clinical privileges; or health care facility approved job

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

4.5 “Guidelines/ Protocols”

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

4.6 “National Certification”

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

4.6:1 The agencies so approved include but are not limited to:

- A. American Academy of Nurse Practitioners
- B. American Nurses Credentialing Center
- C. American Association of Nurse Anesthetists Council on Certification of Nurse Anesthetists
- D. American Association of Nurse Anesthetists Council on Recertification of Nurse Anesthetists
- E. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- F. National Certification Board of Pediatric Nurse Practitioners and Nurses.
- G. ACNM Certification Council, Inc.

4.7 “Post Basic Program”

4.7:1 A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

4.7:2 The program must be one offered and administered by an approved health agency and/or institution of higher learning,

4.7:3 Post basic means a program taken after licensure is achieved.

4.8 “Scope of Specialized Practice”

That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

4.9 “Supervision”

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

SECTION 5: GRANDFATHERING PERIOD

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

SECTION 6: STANDARDS FOR THE ADVANCED PRACTICE NURSE

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

6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in Section 4.1 of these Rules and Regulations:

A. Performs comprehensive assessments using appropriate physical and psychosocial parameters;

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

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

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

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

F. Uses appropriate teaching/learning strategies to diagnose learning impediments;

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

H. Reviews and revises guidelines/protocols, as necessary;

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

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

K. Pursues strategies to enhance access to and use of adequate health care services;

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

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

N. Establishes a collaborative agreement with a licensed

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

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

SECTION 7: GENERIC FUNCTIONS OF THE ADVANCED PRACTICE NURSE WITHIN THE SPECIALIZED SCOPE OF PRACTICE include but are not limited to:

7.1 Eliciting detailed health history(s)

7.2 Defining nursing problem(s)

7.3 Performing physical examination(s)

7.4 Collecting and performing laboratory tests

7.5 Interpreting laboratory data

7.6 Initiating requests for essential laboratory procedures

7.7 Initiating requests for essential x-rays

7.8 Screening patients to identify abnormal problems

7.9 Initiating referrals to appropriate resources and services as necessary

7.10 Initiating or modifying treatment and medications within established guidelines

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

7.12 Providing health education through teaching and counseling

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

7.14 Delegating tasks appropriately

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

SECTION 8: CRITERIA FOR APPROVAL OF

CERTIFICATION AGENCIES

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

8.2 The national certifying body:

8.2:1 Is national in the scope of its credentialing.

8.2:2 Has no requirement for an applicant to be a member of any organization.

8.2:3 Has educational requirements which are consistent with the requirements of these rules.

8.2:4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.2:5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.2:5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.2:5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.2:5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.2:5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.2:5.5 Examinations are evaluated for psychometric performance;

8.2:5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.2:5.7 Examination security is maintained through established procedures

8.2:6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.2:7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.2:8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.2:9 Has an evaluation process to provide quality assurance in its certification program.

SECTION 9: APPLICATION FOR LICENSURE TO PRACTICE AS AN ADVANCED PRACTICE NURSE

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

9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

9.2:1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

9.2:2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

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

9.4 A Registered Nurse meeting the practice requirement as listed in Section 11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

9.4:1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

9.4:2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 11.2.1.

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

9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice

Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del. C. Chapter 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del. C., Section 1906(20) - (22).

SECTION 10: TEMPORARY PERMIT FOR ADVANCED PRACTICE NURSE LICENSURE

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

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

B. The individual applying holds a current license in Delaware, and

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

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

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

10.1:1 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

A. The individual meets the requirements in 10.1.A. or B., and E. and;

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

C. The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 10.1 D; or,

D. The individual meets A and B hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

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

10.3 A temporary permit may be issued:

A. For up to two years in three month periods.

B. At the discretion of the Executive Director.

10.4 A temporary permit will be withdrawn:

A. Upon failure to pass the first certifying examination

1. The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

a. current employer reference,

b. supervision available,

c. job description,

d. letter outlining any extenuating circumstances,

e. any other information the Board of Nursing deems necessary.

B. In the absence of a collaborative agreement.

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

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

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

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

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

SECTION 11: MAINTENANCE OF LICENSURE STATUS: REINSTATEMENT

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

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

11.2:1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

11.2:2 An Advanced Practice Nurse who does not meet

the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

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

11.4 Advanced Practice Nurses who fail to renew their licenses by December 31 of the renewal period shall be considered to have lapsed licenses. After December 31 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 11.4 followed.

11.6 An application for reinstatement of ~~designation~~ licensure must be filed and the appropriate fee paid.

SECTION 12 AUDIT OF LICENSEES

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

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

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

C. An unsatisfactory audit shall result in Board action.

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

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

SECTION 13 EXCEPTIONS TO THE REQUIREMENTS TO PRACTICE

13.1 The requirements set forth in Section 9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

ARTICLE IX - RULES AND REGULATIONS PERTAINING TO MANDATORY CONTINUING EDUCATION

SECTION ~~2 1~~: DEFINITIONS

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

~~2-1~~ 1.1 "Approved Method" means a planned educational experience, as described in Section 3.

~~1.2~~ "Approved-~~Offering~~ Provider" means an entity that is one of the following:

~~A. Accredited by a nationally recognized approver of providers of nursing-related continuing education;~~

A nationally accredited provider of nursing related continuing education; or

~~B. Provided by~~ An organization or agency that is approved as a provider or has programs that are approved by a nationally accredited approver of nursing related continuing education; or

~~C. Provided by~~ A Board of Nursing approved school of nursing; or

~~D. A staff development department within a licensed health care agency; or by a recognized~~ An accredited educational institution; or by an entity organized to provide continuing education and duly licensed or registered to do business in Delaware; or

~~E. An entity approved by the Delaware Board of Nursing, pursuant to Sections 8 4 & 5, if not meeting any other criteria. of this section 2-1.~~

~~2-2~~ 1.3 "Audit" means

~~2-2-1~~ A. The verification of completion of continuing education requirements for a minimum of 1% of the total number of licenses issued during a specified time period. (Refer to Section 6) or

~~2-2-2~~ B. The verification of adherence to continuing education approved provider requirements during a specified time period. Providers may be audited as the Board determines. and, in any event, a minimum of every three years. (Refer to Section 7)

~~2-3~~ 1.4 "Biennium" means the two year period of licensure beginning in ~~December 31~~ of an odd numbered year and ending in ~~to December 30~~ of the next odd numbered year for the Registered Nurse and the two year period of licensure beginning in ~~December 31~~ of an even-numbered year to ~~December 30~~ of and ending in the next even numbered year for the Licensed Practical Nurse.

~~2-4~~ 1.5 "Contact Hour" means one contact hour equals a

PROPOSED REGULATIONS

minimum of 50 minutes. One half contact hour equals a minimum of 25 minutes.

~~2-5~~ 1.6" Continuing Education" means those professional ~~Organized educational~~ experiences beyond basic preparation designed to maintain and/or augment the knowledge, skills, and attitudes of nurses enrich the nurse's contribution to health care and for the purpose of protecting the public health, safety, and welfare.

~~2-6~~ 1.7" Orientation" means the means by which nurses are introduced to the philosophy, goals, policies, procedures, role expectations, physical facilities and special services in a specific work setting. Orientation programs do not meet the continuing education requirements of these rules.

SECTION ~~4~~ 2: CONTINUING EDUCATION LICENSURE RENEWAL REQUIREMENTS

Board Authority

The Board derives its authority under Delaware Code, Chapter 19, Title 24, Section 1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in Article VI., Section 5.

~~4-2~~ 2.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium.

~~4-5~~ 2.1:1 Units of measurement for continuing education shall be as follows: no less than .5 contact hours and be as follows:

~~1 CONTACT HOUR = 50 MINUTES OF INSTRUCTION (minimum)~~

- a. 50 MINUTES = 1 CONTACT HOUR
- b. 25 MINUTES = .5 CONTACT HOUR
- c. 1 ACADEMIC SEMESTER HOUR (CREDIT)

= 5 CONTACT HOURS

- d. 1 C.M.E. = 1.2 CONTACT HOURS
- e. CERTIFICATION/RECERTIFICATION

(excluding preacquired skills and knowledge) = 20 CONTACT HOURS (ONLY DURING THE BIENNIUM AWARDED)

~~4-4~~ 2.2 Requirements

2.2.1 Renewal

To obtain a Registered Nurse or Licensed Practical Nurse license for the next biennium period, the licensee shall submit, along with the renewal application and fee, a completed report on a form furnished by the Board office, documenting the completion of all continuing education requirements for that biennium.

2.2.2 Reinstatement

To obtain a Registered Nurse or Licensed Practical Nurse

license through reinstatement, the applicant shall submit, along with the reinstatement application and fee, a completed report on a form provided by the Board office, documenting the completion of all continuing education requirements for the past two years.

~~4-3~~ 2.2.3 Reinstatement/Endorsement

A Registered Nurse who has endorsed into Delaware during a biennium or whose license was reactivated or reinstated during a biennium must earn 15 contact hours if more than a full calendar year remains in the biennium to obtain a Registered Nurse license for the next biennium period. A Licensed Practical Nurse must earn 12 contact hours if more than a full calendar year remains in the biennium to obtain a Licensed Practical Nurse license for the next biennium period.

~~4-4~~ 2.3 The required hours shall be completed in the period for which the license was issued. Contact hours from a previous licensure period will not count nor may credits be accumulated for use in a future licensing period.

~~4-6~~ 2.4 To be approved for continuing education credit, offerings shall meet the qualifications of appropriate subject matter as specified in these Rules and Regulations. ~~or be required as a part of a formal post-generic nursing program, e.g., a nursing elective.~~

~~4-7~~ 2.5 The licensee shall retain all original certificates or transcripts to verify completion of each continuing education offering and award of contact hours.

~~3-3~~ 2.6 Exceptions

~~3-3-1~~ 2.6:1 Those persons licensed by examination within a biennial renewal period are exempt from continuing education requirements for that biennium.

~~3-3-2~~ 2.6:2 A licensee who has had a physical or mental illness during the license period can apply to the Board of Nursing for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one renewal period. Should the illness extend beyond one renewal period, a new request must be submitted.

~~3-3-3~~ 2.6:3 A request for a waiver will be reviewed and acted upon within 90 days of receipt.

SECTION 3: APPROVED METHODS TO EARN CONTACT HOURS

~~3.1~~ A planned educational experience means any of the following that meets the criteria in Section 7: Academic Studies

~~3.1.1~~ A regularly offered course offered by an accredited school, university or college for which college credit has been awarded and/or for which class attendance is

necessary. May include successful completion of challenge examinations.

3.2 Authoring an Article, Book Chapter, or Independent Study

3.2.1 The article, book chapter, or independent study (See 3.6) must be related to nursing. Proof of acceptance from the editor or the published work will document achievement of this type of continuing education. A maximum of five contact hours of continuing education may be earned per biennium by this method. Letters to the editor or opinion statements will not be recognized.

~~3.1:2~~ 3.3 Certification/Recertification

3.3.1 A process by which a nongovernmental agency or association certifies that an individual licensed to practice as an Advanced Practice Nurse, a Registered Nurse, or a Licensed Practical Nurse has met certain predetermined standards specified for specialty practice. National certification or recertification equals 20 contact hours awarded during the biennium. A certification/recertification document indicating the date of recognition must be available. When recertification requirements include more than 20 contact hours, the additional contact hours can be applied toward the total of 30 contact hours for R.N. or 24 contact hours for L.P.N. licensure.

~~3.1:3~~ 3.4 Conference

3.4.1 A meeting that brings together participants for one or more days to ~~hear the~~ discuss the latest developments and activities from individuals with special expertise in the subject matter of the conference.

~~3.1:4~~ 3.5 Extension Studies

3.5.1 A course given through an accredited school, college or university for which academic credit may or may not be awarded and for which class attendance is not necessary.

~~3.1:5~~ 3.6 Independent Study

3.6.1 ~~A course undertaken through an organized agency or with an individual to enhance skills and knowledge in nursing.~~ An educational activity designed for completion by learners, independently, at the learner's own pace and at a time of the learner's choice.

Examples: Articles in journals, videocassette programs, computer programs for which there is a test of knowledge and a certificate awarded upon completion.

~~3.1:6~~ 3.7 Inservice Education

3.7.1 ~~A planned offering provided by an employing agency for enrichment of knowledge and improvement of nursing skills.~~ Activities intended to help nurses acquire, maintain, and/or increase the level of competence in fulfilling his or her assigned responsibilities, specific to the expectations of the employer. Planned inservices must be a minimum of

25 minutes. Mandatory education, such as CPR, infection control, fire, safety, and facility specific policies and practices, is not recognized as continuing education.

3.8 Presentation/Lecture

3.8.1 Educational presentations, excluding preparation time, made to other health professionals that are not required by an individual's job description. The presenter must submit program brochures, course syllabi or letter from the provider identifying the participation of the presenter. Contact hours shall be equal to the actual presentation time. A maximum of five contact hours of continuing education may be earned per biennium by this method.

3.9 Research Project

3.9.1 The research project must have been done during the biennium. The licensee must submit an abstract as evidence of being one of the recognized researchers. A maximum of five contact hours of continuing education may be earned per biennium by this method.

~~3.1:7~~ 3.10 Symposium or Seminar

3.10.1 A meeting of groups of participants to explore, in depth, a pre-selected, thoroughly researched topic. The emphasis is on discussion and a free exchange of ideas and experiences.

~~3.1:8~~ 3.11 Workshop

3.11.1 A meeting that offers opportunities for persons with common interest or problems to meet with specialists to consider new knowledge and practices and to experience working on specific relevant tasks.

~~3.2~~ 3.12 Any method not on this approved list will require that a written petition justifying the request be submitted to the Board of Nursing.

~~3.2:1~~ 3.12:1 The Board may consider the request at its next regularly scheduled Board meeting if received at least two weeks before the meeting. If less than two weeks, the request will be processed at the following meeting.

SECTION 64: CONTINUING EDUCATION - PROVIDER

~~6.1~~ 4.1 Board Authority

The Board derives its authority under Delaware Code, Title 24, Chapter 19, to create requirements for becoming an approved provider and maintaining that status. The Board also has the authority to develop an auditing mechanism to verify compliance with criteria for approved providers.

~~6.2~~ 4.2 Criteria for approved providers

The approved providers shall produce evidence of their capability to adhere to criteria indicative of quality continuing education for nurses. Each provider approved under ~~2.1:8~~

Section 1.2. E., will be assigned a provider number by the Board and shall provide an annual statement of compliance with these criteria.

6-3 4.3 Subject matter criteria. The provider will ensure that:

A. The subject matter is specifically designed to meet the objectives, the stated level and learning needs of the participants.

B. The content is planned, logically sequenced and reflects input from experts in the subject matter.

C. The subject matter reflects the professional educational needs of the learner in order to meet the health care needs of the consumer.

6-4 4.4 Criteria related to the operation of an approved continuing education providership. The provider shall:

A. Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of its offerings.

B. Have an organizational structure and training objectives.

C. Develop course descriptions, objectives, and learning outcomes.

D. Assign contact hours according to a uniform measure of credit and not award contact hours for less than 25 minutes.

E. Establish dates and times for programs.

F. Plan and structure programs with teaching and learning methodologies that include a statement of purpose and measurable educational objectives.

G. Use faculty who have academic preparation and/or experience in the subject matter.

H. Use evaluation processes or tools that provide participants an opportunity to evaluate in writing the learning experience, the instructional methods, facilities, and resources.

I. ~~When co-providing,~~ Award the contact hours and be responsible for assurance that all criteria in this chapter are met, when co-providing.

J. Notify the Board within 30 days of changes in the administrative authority, the address of the provider, ~~or~~ and its ability to meet the criteria.

6-5 4.5 Criteria related to record maintenance and continuing education programs. The provider shall:

A. Maintain records on persons awarded contact hours for a minimum of six years from their date of program completion. The records shall include the name of licensee, contact hours awarded, social security number, title, and dates of offerings.

B. Provide for secure storage and retrieval of individual attendance and information regarding each offering.

C. Furnish each participant with an individual record of completion that displays the following on the front of the certificate: participant's name, provider name and number, contact hours awarded, starting and ending dates of the

offering, subject matter and a reminder to the participant to retain the certificate for the period of licensure.

SECTION 7 5: BOARD APPROVAL PROCESS FOR PROVIDERS FROM SECTION 1.2.E.

7-1 5.1 An application will be sent to a potential provider upon request. Initial approval will be granted for up to three years. Upon submission of a non-refundable fee, the required materials and a determination of the Delaware Board of Nursing that the materials fulfill the criteria for providers as specified in these Rules and Regulations, initial approval will be granted for up to three years. ~~An application will be sent to a potential provider upon request.~~

7-2 5.2 The following materials and information must accompany an application:

A. A description of the administrative authority of the potential provider;

B. The job description of the person who is administratively responsible for provider activities;

C. The continuing education philosophy purpose and goals;

D. Organizational charts defining lines of authority and communication in relation to continuing education;

E. Plan for faculty selection;

F. Evidence of nursing participation in program planning and/or administration;

G. A record system and a procedure to ensure confidentiality and safe storage;

H. The criteria used to plan and implement continuing education activities;

I. The criteria used to verify attendance;

J. A procedure that ensures the participant who successfully completes an educational activity will receive a document displaying an attendance record, number of contact hours awarded, provider name and number, title of presentation, and the date and location for each offering;

K. Registration procedure(s);

L. A plan for evaluation, including:

1. A procedure for participant evaluation that includes assessment of the instruction, resources and facilities, and

2. A system for the follow up of suggestions for improvement;

M. Documents from two typical sample course offerings including:

1. A narrative of the planning of the offerings including evidence of nursing participation;

2. A sample brochure or other form of advertising;

3. Course content, i.e., topical course outline, objectives;

4. Teaching-learning methodologies and supportive materials;

5. Bibliography; and
6. A sample participant evaluation form.

7-3 5.3 The Executive Director will review the completed application upon receipt.

7-3-1 5.3:1 The review is based on the criteria as specified in these Rules and Regulations.

7-3-2 5.3:2 If the Executive Director finds the application incomplete, the applicant will be notified and have two opportunities to submit revised applications.

7-3-3 5.3:3 If the application does not meet established criteria within three reviews, the Executive Director may recommend that the Board deny it.

7-3-4 5.3:4 When the application meets all requirements as set forth for providers in these Rules and Regulations, the Executive Director shall recommend approval to the Board.

7-3-5 5.3:5 The Board may approve for up to three years, or elect not to approve.

7-3-6 5.3:6 The provider will be notified of the Board of Nursing's decision in writing within two weeks.

7-3-7 5.3:7 A provider number will be assigned at the time of approval and issued within three weeks. This number must be used in all correspondence with the Board. This number will be published on a list of approved providers.

7-3-8 5.3:8 An application that has been denied provider status by the Board may be re-submitted one year after the denial date.

7-4 5.4 Complaints against providers.

7-4-1 5.4:1 Provider approval may be rescinded at any time during the approved period for noncompliance with approved provider requirements or for complaints that the Board determines indicate the program does not meet criteria.

7-4-2 5.4:2 Providers may appeal a decision by requesting a hearing before the Board.

SECTION 4 6: AUDIT OF LICENSEES

4-1 6.1 The Board ~~may~~ will randomly and on an individual basis select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that their records are to be audited for compliance with the continuing education requirements.

A. Upon receipt of such notice, the licensee must submit verification of compliance for the period of licensure being audited. Verification materials which may be requested include proof of attendance, academic transcripts, certificates showing number of contact hours awarded, and documentation of compliance with exceptions.

B. The licensee must submit documentation within three weeks of receipt of notice.

C. The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which

the audits are reviewed.

D. An unsatisfactory audit shall result in Board action.

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

F. Fulfillment of the audit requirements must be completed prior to license renewal.

SECTION 8 7: AUDIT OF PROVIDERS

8-1 7.1 The Board may select approved providers for audit. Upon selection, the Board shall:

A. Notify the approved providers that their records are to be audited for compliance with continuing education requirements;

B. Be provided with records that document compliance with the Rules and Regulations for providers; and

C. Conduct a site visit as necessary.

SECTION 5 8: DISCIPLINARY PROCEEDINGS; APPEAL

A. Failure to comply with continuing education requirements will result in action under Section 1922 of the Nurse Practice Act and the license will be considered lapsed.

B. Application for reinstatement of a lapsed license must be filed with a completed continuing education document form and the fee paid before practice can continue.

ARTICLE X DISCIPLINARY PROCEEDINGS

SECTION 1: DISCIPLINARY SANCTIONS

1.1 The Board may:

- refuse to issue a temporary permit or a license to practice nursing;

- revoke, suspend or censure a license to practice nursing;

- issue a letter of reprimand;

- place a license on probationary status;

- refuse to renew a license; or

- otherwise discipline a licensee as provided by Delaware Code 24, Chapter 19 §1922.

SECTION 2: PROCEDURES

2.1 Any individual shall submit written complaints of violations of Delaware Code 24, Chapter 19 to the Division of Professional Regulation and the Executive Director shall retain a copy.

2.2 Any Board member receiving a complaint alleging a practitioner's or licensee's violation of the Nurse Practice Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director.

2.3 Hearings on licensing matters and complaints filed with the Board that allege a practitioner or licensee has violated the Nurse Practice Act, 24 Del. C. Chapter 19, shall be heard and determined by the Board in accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 Del. C., Chapter 101. When the licensee/practitioner, prosecuting Deputy Attorney General, and appointed Board member, if any, consent, the complaint may be resolved through the Consent Agreement process described herein in lieu of a formal disciplinary hearing before the Board.

SECTION 3: REISSUANCE OF LICENSE FOLLOWING DISCIPLINARY ACTION

3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated, on such conditions as the Board may determine, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

SECTION 4: UNPROFESSIONAL CONDUCT DEFINED

4.1 Nurses whose behavior fails to conform to legal standards and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.

4.2 Unprofessional conduct shall include but is not limited to the following:

- A. Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.
- B. Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintaining competency.
- C. Performing new nursing techniques and/or procedures without education and practice.
- D. Inaccurately recording, falsifying or altering a patient or agency record.
- E. Committing verbal or physical abuse of patients or co-employees.
- F. Assigning unlicensed persons to perform the practice of licensed nurses.
- G. Delegating nursing practice or advanced nursing practice or advanced nursing practice has been delegated.
- I. Leaving a patient assignment except in documented emergency situations.
- J. Failing to safeguard a patient's dignity and right to privacy in providing services.
- K. Violating the confidentiality of information concerning a patient.
- L. Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.

M. Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or mental impairment.

N. Diverting drugs, supplies or property of a patient or agency.

O. Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

P. Practicing professional or practical nursing when license or temporary permit has expired.

Q. Practicing as an advanced registered nurse practitioner when designation and/or certification and/or temporary permit has expired.

R. Practicing professional or practical nursing in this state without a current Delaware license or permit.

S. Practicing as an advanced registered nurse practitioner in this state without current designation and a registered nurse license and/or temporary permits.

T. Allowing another person to use her/his nursing license, temporary permit, or certification of advanced registered nurse practitioner for any purpose.

U. Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

V. Resorting to fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice designation.

W. Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.

X. Failing to report unprofessional conduct by another licensee.

Y. Practicing or holding oneself out as an advanced registered nurse practitioner in any category without holding a Board authorized certificate of state designation in such category.

Z. Failing to comply with the requirements for mandatory continuing education.

AA. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

BB. Failing to comply with the terms and conditions set out in a disciplinary action of the Board. (4/8/98)

SECTION 5 - CONSENT AGREEMENT PROCESS

5.1 Disciplinary proceedings subject to resolution by Consent Agreement process shall proceed as follows:

5.1:1 The President shall appoint a Board member, subject to ratification by the Board at the next meeting, to review each formal complaint against a licensee and determine whether the Consent Agreement process can be used in lieu

of a formal disciplinary hearing. Similarity to previous cases that have established Board remedies and severity and number of counts may be considered. The assigned Deputy Attorney General may also request that the complaint proceed by the Consent Agreement process.

5.1:2 If the appointed Board member and the state prosecutor concur that a consent agreement is appropriate, the Board office shall send the licensee a copy of the formal complaint and a request to proceed either to a formal hearing or to a Consent Agreement process within 14 days. If the Consent Agreement process is not appropriate, the complaint will be set for hearing.

5.1:3 The licensee shall be required to respond within 14 days when the Consent Agreement alternative is offered. When the response deadline is not met or the licensee declines the Consent Agreement process, a hearing date shall be scheduled.

5.1:4 Upon receipt of agreement to use the Consent Agreement process, the appointed Board member and Board counsel shall receive a copy of the complaint, investigative report, and any other appropriate material within seven days.

5.1:5 The Board counsel shall consult with the appointed Board member in drafting the Consent Agreement. Negotiations among the licensee and his/her counsel, if any, the Board member, Board counsel, and the prosecutor may take place by informal conferences, telephone, or correspondence. The Consent Agreement will include a brief recitation of the facts; the licensee's acknowledgment of charge(s) in the complaint and violation of the Nurse Practice Act; the licensee's waiver of rights to the formal disciplinary hearing before the Board; and sanction to be imposed.

5.1:6 The consultation and drafting and acceptance of the consent agreement are to be done in a timely fashion, with a report to the Board at 60 day intervals until presentation for approval by the Board.

5.1:7 If agreement among all parties has not occurred after 120 days from presentation of the first consent agreement, the Board shall be notified of the reasons why no agreement has been reached. If appropriate, the Board may schedule a complaint for a hearing.

5.1:8 After the licensee and his or her attorney, if any, the prosecutor, and the appointed Board member have signed the consent agreement, it shall be presented to the Board at the Board's next meeting for signature by a quorum of the Board and entry as an order of the Board.

5.1:9 The Consent Agreement is not effective until it is entered as an order of the Board. At any time before the Consent Agreement is entered as an order the Board, either the licensee or the State may terminate the consent agreement process and elect to proceed by formal disciplinary hearing before the Board.

DEPARTMENT OF EDUCATION

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

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****MIDDLE LEVEL EDUCATION REGULATION****A. TYPE OF REGULATORY ACTION REQUESTED**
Amendment to Existing Regulation**B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION**

The Secretary seeks the approval of the State Board of Education to amend the Middle Level Education section of the Handbook for K-12 Education, Section III, pages C-1 through C-5. With the amendments, this section will become a single regulation on Middle Level Education.

Presently this section is divided into three parts: Part A, Middle Level Education Policy, Part B.1., Middle Level Programs, and Part B.2., Additional Middle Level Requirements. Part B.2., Additional Middle Level Requirements includes the following subtitles: (a) Programs in English Language Arts, Mathematics, Social Studies, and Science; (b) Visual and Performing Arts (music, visual arts, theater and dance); (c) Gifted and Talented Education; (d) Comprehensive Health Education and Family Life Education; (e) Physical Education; (f) Home Economics; (g) Instruction in the Constitution of the United States; (h) Metric System; (i) Consumer Education; (j) Minimum Class Periods; and (k) Pre-Vocational Courses.

Items a. and b.(2) are covered by an existing regulation; b.(1) is reflected in the amended regulation and item c. is a technical assistance statement. Item d. is a reference to an existing regulation and is only repeated here for Technical Assistance purposes, and item e. will be amended as a separate regulation. Item f. is reflected in the amended regulation, items g., h., and i. were repealed previously and items j. and k. are regulated in the requirements that must be met to receive Vocational-Technical Educational funding units.

Part A., Middle Level Education Policy will be amended to reflect Part B.1., and also those items listed in Part B.2., as amending Part A. In addition, Part A. has been amended to more clearly define the grades defined as part of Middle Level Education and 2.a. on the Middle Level Curriculum has been reworded. Item 2.g. on climate has been eliminated from Part A. because of the difficulty in measuring it, and items 2.h. and i. were combined into one to become item g. The amended regulation eliminates repetition and non-regulatory language and focuses on the requirements for all Middle Schools in Delaware.

C. IMPACT CRITERIA

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

The amended regulation, as the original regulation, is designed to improve the academic achievement of middle level students by requiring program elements that specifically support the academic growth and achievement of this age child.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation is written to ensure that all students receive the same opportunities throughout their Middle Level Education Program.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation is designed to address the needs of the total Middle Level child and health and safety are part of the program.

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

The amended regulation does not specifically deal with equal rights issues.

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 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 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 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?

The Del. C., Section 122 (5), directs the Department of Education to make rules and regulations concerning these issues and this action is to simply amend an existing regulation.

10. What is the cost to the state and local school boards of compliance with the regulation?

The amendment does not add any additional cost to the existing regulation and all local school districts are currently working to bring all of their former junior high school programs in line with the Middle School elements.

FROM HANDBOOK FOR K-12 EDUCATION

III. MIDDLE LEVEL EDUCATION

A. MIDDLE LEVEL EDUCATION POLICY

1. PHILOSOPHY

~~The State Board of Education recognizes that Middle Level Education is special and unique in the state's educational system. As such, it is a broad-based program that provides young adolescents with a positive environment during their transition years. It emphasizes the development of the student in the academic, physical, social and emotional realms within a community of learning and caring.~~

~~The State Board of Education also recognizes that those who administer effective middle level programs and those who teach and work in them should be appropriately educated for, and personally committed to, the process of helping each student succeed and become future oriented.~~

2. REQUIREMENTS FOR MIDDLE LEVEL EDUCATION PROGRAMS

~~By September, 1996, every public school in Delaware with students in consecutive grades within the range of grades 5 through 8 shall organize those students into middle level programs either as separate schools or as a separate school within a school. Additionally, beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a middle level endorsement or certificate. This endorsement and/or certificate will assure that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.~~

~~The following are the essential components of a program designed to meet the learning styles and developmental needs of middle level students. These components of effective Middle Level Education shall be implemented by all reorganized middle level schools:~~

~~a. A comprehensive core curriculum for all students with a planned sequence of concepts and skills including, but not limited to: communication skills,~~

multicultural literacy, humanities, social sciences, mathematics, natural sciences, fine and performing arts, critical/creative thinking, family life/parenting education, health and wellness education, technological literacy and the exploration of occupational and personal interests.

b. Grouping of students into smaller heterogeneous learning communities within the larger school.

c. Interdisciplinary teams of teachers who share responsibility for instruction of the same students, integrate subject matter, and collaborate to meet changing developmental and instructional student needs.

d. Counseling, mentoring and career exploration programs designed to assist students with personal and future decision making, particularly decisions related to high school program choices.

e. Co-curricular activities, including opportunities for volunteerism, which are varied and related to the current interests and developmental stages of middle level students.

f. Staff development programs designed specifically for middle level practitioners based upon the unique needs of middle level students and programs.

g. A school climate where positive relationships with adults and other students create an atmosphere conducive to personal and academic growth as well as a sense of security and structure.

h. Cooperative relationships with health and social service agencies which provide students with the health and family support systems.

i. Partnerships emphasizing a supportive role be developed and maintained with families, business and industry, agencies serving youth and their families, elementary and high school staff and students, and higher education institutions, to help assure the success of middle level students.

The Department of Public Instruction shall provide technical assistance to the districts and schools to assure an effective transition and to help schools organize their programs. Program Guidelines for Middle Level Education will serve as the basis for operating, evaluating, and organizing middle level education.

(State Board Approved April 1991, Revised March 1995)

B. PROGRAMS

1. MIDDLE LEVEL PROGRAMS

- a. English/Language Arts
- b. Math
- c. Science
- d. Social Studies
- e. Visual and Performing Arts
- f. Foreign Language
- g. Gifted and Talented Education

h. Health and Family Life Education

i. Physical Education

j. Pre-Vocational-Technical Education
Orientation/Exploration

k. Home Economics and Family Life/
Parenting Education

l. Technology Education

2. ADDITIONAL MIDDLE SCHOOL REQUIREMENTS

a. Programs In English Language Arts, Mathematics, Science and Social Studies

(1) Middle level school programs in English language arts, mathematics, science and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

c. Gifted and Talented Education

(1) Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

d. Comprehensive Health Education and Family Life Education

Based on the Comprehensive Health Education and Family Life Education Policy, Health and Family Life Education must be provided in grades 5 and 6 for thirty-five (35) hours in each grade of which fifteen (15) hours in each grade must address Drug/Alcohol Education. In grades 7 and 8, separate from other subject areas, there must be a minimum of sixty (60) hours of Comprehensive Health Education of which fifteen (15) hours in each grade must address Drug/Alcohol Education. If all of the sixty (60) hours are provided in one year at grade 7 or 8, an additional fifteen (15) hours of Drug and Alcohol Education must be provided in the other grade. (See Page A-55 of the Handbook for this Policy, State Board Approved September 1987, Revised July 1990)

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

f. Home Economics

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

g. Instruction in the Constitution of the United States

In the area of social studies, Delaware Code requires that

“The instruction in the Constitution of the United States and the Constitution and government of the State of Delaware shall begin not later than opening of the eighth grade...” (See Page A-39 of the Handbook for 14 Del. C. Section 4103)

This requirement must be met through units included in the social studies curriculum.

h. Metric System

A unit of instruction must be provided on the metric system of measurement. This instruction may be offered as part of the science or mathematics curriculum. (See Page A-39, State Board Approved February 1974)

i. Consumer Education

Fifteen classroom hours of introductory study in consumer education is also required in middle level programs. (See Page A-37 State Board Approved Requirement, May 1975)

j. Minimum Class Periods

Although the maximum number of periods allocated to any subject area is left to the discretion of the individual school, it should be emphasized that minimum and appropriate instructional time be devoted to all subject areas. Educational needs of students based upon appropriate diagnostic techniques should aid in determining the number of class sessions per week as well as class length.

(1) The minimum amount of time a subject shall meet per week must not be less than two periods or the equivalent of 90 minutes per week of class time. Schools should endeavor to provide class instruction beyond the minimum required.

k. Pre-Vocational Courses

State Board approval for funding pre-vocational courses (99.0200) will be contingent upon meeting approved State content standards for pre-vocational education courses and shall be designated as such, independent of any other course, and offered as a self-contained vocational subject as described in b. of this section. (State Board Approved July 1987)

unique developmental needs of middle level students are met. With high student achievement as a goal, the intent is to encourage teams of adults and students to work at enhancing learning in partnership with the home and the community. Middle schools should be unique educational settings committed to preparing students for a productive adulthood.

REQUIREMENTS FOR MIDDLE SCHOOLS

1. Every public school in Delaware with students in consecutive grades within the range of grades 5 through 8 shall organize those students into middle level programs either as separate schools or as a school within a school. In schools where consecutive grade configurations do not exist, schools shall have the option of organizing the fifth grade as part of an elementary school program.

2. Beginning and newly employed teachers, administrators and counselors who work in middle schools shall hold a middle level endorsement or certificate as of September 1998.

3. All middle schools shall implement the following components of effective middle level education:

a. A comprehensive curriculum available for all students based on the content standards and including, but not limited to: English Language Arts, mathematics, science, social studies, visual/performing arts, foreign language, health and physical education, family life/parenting education and a prevocational program that may include, technology education, business, finance and marketing and/or agriscience.

b. Grouping of students into smaller heterogeneous learning communities within the larger school.

c. Interdisciplinary teams of teachers who share responsibility for instruction of the same students, integrate subject matter, and collaborate to meet changing developmental and instructional student needs.

d. Counseling, mentoring and career exploration activities designed to assist students with decision making, particularly decisions related to high school program choices, career pathways and a high school graduation plan.

e. Co-curricular activities, including opportunities for service learning, which are varied and related to the current interests and developmental stages of middle level students.

f. Staff development programs designed specifically for middle level practitioners.

g. Partnerships and Cooperative relationships with health and social service organizations, families, business and industry, elementary and high school students and staff, higher education and others to help assure the health, well being and academic success of middle school students.

AS AMENDED

MIDDLE LEVEL EDUCATION

The middle level policy is intended to assure that the

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****TITLE I COMPLAINT PROCESS****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION**

The Secretary seeks the approval of the State Board of Education to amend the regulation entitled Title I Complaint Process, found in the Handbook for K-12 Education, Section I.F.2., pages A-15 and A-16. This regulation needs to be amended to reflect the requirements of the Elementary Secondary Education Act (ESEA) of 1965 as amended by the Improving America's Schools Act (IASA) of 1994. The amendment to the federal act requires "the State to adopt written procedures for receiving and resolving any complaint from an organization or individual that the State or an agency or consortium of agencies is violating a Federal Statute or regulation that applies to a covered program as listed in the Federal Statute." The amendments to the Delaware Department of Education Regulation change the name of the regulation to Federal Programs Complaint Process, change the Department of Public Instruction to the Delaware Department of Education, list all of the programs covered by the complaint process as defined in the Federal Statute and add the Goals 2000: Educate America Act of 1994 to the list of covered programs. Section 3 (formerly 2.b.) of the DOE regulation also has been changed to encourage individuals to file a complaint with the local school district prior to filing a complaint with the Delaware Department of Education, but does not preclude filing first with the state agency.

C. IMPACT CRITERIA

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

The amended regulation addresses a complaint process not curriculum issues.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation is designed to assure that Federal program funds are used correctly by the local school districts and that students are served as the Federal legislation intended.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses a complaint process not health and safety issues.

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

The amended regulation does address student's legal rights by providing a complaint process to use if Federal programs are not being carried out as the statute intended.

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 any 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 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 not be an impediment to the implementation of any other state educational policies.

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

The Federal Statute requires the State have a regulation concerning the Federal Program Complaint Process.

10. What is the cost to the state and local school boards of compliance with the regulation?

There is no cost to the state and local boards for complying with this regulation.

FROM THE HANDBOOK FOR K-12 EDUCATION**I.F.2. TITLE I COMPLAINT PROCEDURES**

a. ~~An organization or an individual may file a written, signed complaint with the Title I Office of the Delaware Department of Public Instruction (Title I Office) concerning an alleged violation by a Local Education Agency (LEA) or the State Education Agency (SEA) of a Federal statute or regulations that apply to the Title I LEA Program, in~~

accordance with 200.73-75 of the Title I regulations and the following procedures:

(1) The complaint must include (a) a statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA Program; and (b) the facts on which the statement is based.

(2) The Title I Office shall resolve the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty calendar days of the receipt of the complaint. An extension of the time limit may be made by the Title I Office only if exceptional circumstances exist with respect to a particular complaint.

(3) The Title I Office may conduct an independent on-site investigation of a complaint, if it determines that an on-site investigation is necessary.

b. An organization or an individual may file a written, signed complaint with the LEA, in lieu of the Title I Office, concerning an alleged violation by the LEA of a Federal statute or regulations that apply to the Title I LEA Program.

(1) The complaint must include (a) a statement that the LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA Program and (b) the facts on which the statement is based.

(2) The superintendent or the agency head of the LEA shall resolve the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within thirty calendar days of the receipt of the complaint.

(3) An appeal of the LEA decision may be made by the complainant to the Title I Office of the Department of Public Instruction. The appeal shall be in writing and signed by the individual making the appeal. The Title I Office shall resolve the appeal in the same manner as a complaint, as indicated in A.1. through 3.

c. Any party to the complaint has the right to request the Secretary, U. S. Department of Education, to review the final decision of the Title I Office. The request for an appeal of the decision to the Secretary shall be made in writing to the Title I Office within sixty days of the receipt of the decision.

d. Complaints and appeals to the Title I Office shall be mailed to the following address:

Title I Office
Department of Public Instruction
P. O. Box 1402
Dover, Delaware 19903

(State Board Approved February 1990)

AS AMENDED

FEDERAL PROGRAMS GENERAL COMPLAINT PROCEDURES*

1. Programs that are covered by this complaint process include: Part A of Title I, Improving Basic Programs Operated by the Local Education Agency; Part B of Title I, Even Start Family Literacy Program; Part C of Title I, Migrant Education; Part D of Title I, Children and Youth who are Neglected, Delinquent, or at Risk of Dropping Out; Title II Eisenhower Professional Development Program; Subpart 2 of Part A Title III, State and Local Programs for School Technology Resources; Part A of Title IV, Safe and Drug Free Schools and Communities; and Title VI, Innovative Education Program Strategies, as required under the Elementary Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act (IASA) of 1994. In addition the Delaware Department of Education is extending the complaint procedures to include programs under the Goals 2000: Educate America Act of 1994.

2. An organization or an individual may file a written, signed complaint with the Delaware Department of Education concerning an alleged violation by a Local Education Agency or the State Education Agency of Federal statutes or regulations that apply to these programs.

a. The complaint shall include (a) a statement that the State Education Agency or a Local Education Agency has violated a requirement of a Federal statute or regulation that applies to these Local Education Agency programs. And (b) the facts on which the statement is based.

b. The Delaware Department of Education shall resolve the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty calendar days of the receipt of the complaint. An extension of the time limit may be made by the Department of Education only if exceptional circumstances exist with respect to a particular complaint.

c. The Delaware Department of Education may conduct an independent on-site investigation of the complaint, if it determines that an on-site investigation is necessary.

3. An organization or an individual is encouraged to file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

a. The complaint shall include (a) a statement that the Local Education Agency has violated a requirement of a Federal statute or regulation that applies to the Local Education Agency's programs and (b) the facts on which the statement is based.

b. The superintendent or the agency head of the Local Education Agency shall resolve the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within thirty calendar days of the receipt of the complaint.

c. An appeal of the Local Education Agency decision may be made by the complainant to the Department of Education. The appeal shall be in writing and signed by the individual making the appeal. The Department of Education shall resolve the appeal in the same manner as a complaint, as indicated in 2. a, b and c.

4. Any party to the complaint has the right to request the Secretary, U. S. Department of Education, to review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

5. Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Director of Unified Planning and Quality Assurance
Department of Education
P. O. Box 1402
Dover, Delaware 19903

* IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect disabled students. See the State's Administrative Manual: Programs for Exceptional Children.

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE

SAFETY

Repeal of Regulation for Safety

The Secretary seeks the consent of the State Board of Education to repeal the regulation on Safety, pages A-46 and A-47, section I.M.2. a, b, and d in the Handbook for K-12 Education. This section includes six different references to safety issues all addressed to the school principal. This section should be repealed because it is mainly there for technical assistance purposes and where a regulation was adopted as directed by Delaware Code, Title 14, Chapter 2, Section 204, the Code has been repealed. Part a. states that the principal is responsible for a safe school environment and should become responsible for the laws relating to such a responsibility. This does not need to be made into a regulation. Part b. refers to the use of eye protection devices for students and refers to the Delaware Code, Title 14, Section 8302, Requirements for Eye Protection in Educational Institutions in the State of Delaware.

This requirement is in the Code and does not need to be regulated by the Department of Education. Part c. will be amended as a separate regulation as recommended by the State Board at their April meeting. Part d. says that the principal will properly supervise the arrival and departure of school buses and will hold exit drills twice each year. The Delaware School Transportation Manual addresses the responsibilities of principals concerning the arrival and departure of school buses. Part d. should not be regulated because it is already covered in the Transportation regulations. Parts e. and f. address the issues of playground equipment and playground safety. The 14 Del. C., Section 204, Kindergartens and Playgrounds and other Schools law has been repealed and the existence of the law was the reason for the regulatory language of parts e. and f. in the Handbook for K-12 Education. Title 14, Section 1056 of the Del. C., gives the local school boards the responsibility for the use, control and management of their playground equipment, hence the Department of Education does not need to make regulations on playground equipment and safety.

I.M.2.SAFETY

a. ~~The principal is responsible for the provision of a safe environment for students and should become familiar with the laws which relate to such responsibility.~~

b. ~~14 Del. C., §8302 requires the use of eye protection devices for students and staff while participating in hazardous activities. (For further information see Requirements for Eye Protection in Educational Institutions in the State of Delaware, [February 1975].)~~

c. ~~Pupils being released from school for other than medical purposes shall be released only to their parents or to persons authorized by their parents. The school superintendent, principal, or others delegated by the superintendent or principal, shall check carefully to make certain that the person claiming to represent the parent is so authorized. Written authority is preferable; however, a check may be made by telephoning the parent for confirmation.~~

d. ~~The principal will see that all buses are properly supervised on arrival and departure. Exit drills shall be carried out at least twice each year. The principal as well as teachers and drivers should be familiar with the State of Delaware School Transportation Manual, (April 1976).~~

e. ~~Each district shall adopt a policy statement that shall address the installation, maintenance, operation, periodic self-inspection and use of playgrounds and playground equipment with emphasis on safe use by students and public.~~

f. ~~The building principal is responsible for forming an ad-hoc advisory committee to assist in implementing and monitoring established district policy concerning playground safety. Awareness of the Playground Safety Policy should be provided to students, staff, parents and community through safety instruction programs and widespread dissemination.~~

THE PRECEDING THREE REGULATORY CHANGES WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS REGULAR MEETING ON THURSDAY, JUNE 18, 1998

DRAFT
MAY 15, 1998

ADOPTED, 1998 BY THE SECRETARY OF
DELAWARE HEALTH AND SOCIAL SERVICES
UNDER AUTHORITY OF 16 DEL. C. §122(3)(t)

TABLE OF CONTENTS

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3)(t)(1) (16 Del.C. 122(3)(t)(1))

The Office of Lead Poisoning Prevention, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss proposed Regulations Governing Lead-Based Paint Hazards. These proposed regulations describe the training and certification requirements of individuals engaged in lead-based paint abatement activities, the accreditation requirements of lead-based paint hazard control training programs, and the lead-based paint work practice standards.

The public hearing will be held on June 24, 1998, at 1:00 pm, in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Lead Poisoning Prevention
Jesse S. Cooper Building
Federal and Water Streets
Dover, Delaware 19901
Phone: 302-739-4731

Anyone wishing to present their oral comments at this hearing should contact Thomas V. May at (302) 739-4731 by June 19, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by July 2, 1998, to:

Jeffrey Beaman, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903

STATE OF DELAWARE
REGULATIONS GOVERNING
LEAD-BASED PAINT HAZARDS

SECTION 83.1 - GENERAL PROVISIONS

- 83.1.100 Preamble
- 83.1.200 Purpose
- 83.1.300 Severability
- 83.1.400 Definitions

SECTION 83.2 - APPLICATION AND RENEWAL REQUIREMENTS

- 83.201 Accreditation of training programs
- 83.202 Application process
- 83.203 Requirements for the accreditation of training programs
- 83.204 Minimum training curriculum requirements
- 83.205 Requirements for the accreditation of refresher training programs
- 83.206 Re-accreditation of training programs
- 83.207 Suspension, revocation and modification of accredited training programs
- 83.208 Procedures for suspension, revocation, or modification of training programs
- 83.209 Training program record keeping requirements.

SECTION 83.3 - CERTIFICATION OF INDIVIDUALS AND FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITIES

- 83.301 Certification of individuals
- 83.302 Inspector, Risk Assessor, Supervisor, Abatement Worker and Project Designer
- 83.303 Certification based on prior training
- 83.304 Re-certification of individuals
- 83.305 Certification of abatement firms
- 83.306 Suspension, revocation and modification of certification of individuals engaged in lead-based paint activities
- 83.307 Suspension, revocation and modification of certification of firms engaged in lead-based paint activities
- 83.308 Procedures for suspension, revocation, or modification of the certification of individuals or firms

SECTION 83.4 - WORK PRACTICE STANDARDS FOR CONDUCTING LEAD-BASED PAINT ACTIVITIES

- 83.401 Effective date, applicability, and terms
- 83.402 Inspection
- 83.403 Lead hazard screen
- 83.404 Risk assessment
- 83.405 Abatement
- 83.406 Collection and laboratory analysis of samples
- 83.407 Composite dust sampling
- 83.408 Record keeping
- 83.409 Inspections
- 83.410 Reporting

SECTION 83.5 - CERTIFICATION, FEES AND RECIPROCITY

- 83.501 Certification of Occupations and Accreditation of Other Training Programs
- 83.502 Fees
- 83.503 Reciprocity

SECTION 83.6 - COMPLIANCE AND ENFORCEMENT PROCEDURES

- 83.601 General
- 83.602 Penalty

APPENDICES

- A. Supplementary Information
- B. Disturbance Decision Tree

STATE OF DELAWARE**REGULATIONS GOVERNING LEAD-BASED PAINT ACTIVITIES****SECTION 83.1
GENERAL PROVISIONS****83.1.100 Preamble**

These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to the Authority invested in the Secretary by 16 Del. C. §122(3)(t). These regulations, excluding homeowners working about the site of their residence under proper state, county and local requirements, establish standards for regulation of lead-based paint hazard control activities, including the training and certification of companies and workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control, the accreditation of lead-based paint hazard training programs and the establishment of procedures for their enforcement.

83.1.200 Purpose

These regulations shall be construed and applied to promote their underlying purpose of protecting the public health. They establish standards by which certified public or private organizations, firms, companies and individuals engaged in lead-based paint abatement activities in target housing and child occupied facilities shall adhere. Individuals and firms are encouraged to choose to require more stringent requirements.

83.1.300 Severability

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications of these regulations.

83.1.400 Definitions

83.1.401 "Abatement" means any measure or set of measures designed to permanently eliminate lead based paint hazards. Abatement includes, but is not limited to:

(A) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of leadpainted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

(B) All preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

(C) Specifically, abatement includes, but is not limited to:

(1) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or a child-occupied facility that:

(a) Shall result in the creation of or the permanent elimination of lead based paint hazards; or

(b) Are designed to permanently eliminate lead-based paint hazards and are described in (A) and (B) of this definition.

(2) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with Delaware Health and Social Services regulations for accreditation.

(3) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by these regulations unless such projects are covered by 83.1.401(D) of this definition; or

(4) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(D) Abatement does not include renovation,

remodeling, landscaping or other activities when such activities are not designed to permanently eliminate lead-based paint hazards, but instead, are designed to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operation and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

83.1.402 "Accessible surface" means any interior or exterior surface, such as an interior window sill, that a young child can mouth or chew.

83.1.403 "Accredited training program" means a training program that has been accredited by the Secretary, Delaware Health and Social Services to provide lead-based paint activities training.

83.1.404 "Adequate quality control" means a plan or design which ensures the authenticity, integrity and accuracy of samples, including dust, soil and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

83.1.405 "Certified abatement firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the Secretary, Delaware Health and Social Services has issued a certificate of approval.

83.1.406 "Certified inspector" means an individual who has been trained by an accredited training program, to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purpose of abatement clearance testing.

83.1.407 "Certified abatement worker" means an individual who has been trained by an accredited training program, to perform abatements.

83.1.408 "Certified project designer" means an individual who has been trained by an accredited training program, to prepare abatement project designs, occupant protection plans, and abatement reports.

83.1.409 "Certified risk assessor" means an individual who has been trained by an accredited training program, to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purpose of abatement clearance testing.

83.1.410 "Certified supervisor" means an individual who has been trained by an accredited training program, to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

83.1.411 "Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours, and the combined weekly visits lasts at least 6 hours and the

combined annual visits lasts at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

83.1.412 "Clearance levels" is a value that indicates the maximum amount of lead permitted in dust or on a surface following completion of an abatement activity.

83.1.413 "Common area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

83.1.414 "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators, and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and down spouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, sliding handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells and air conditioners.

83.1.415 "Containment" means a process to protect workers, building occupants and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement.

83.1.416 "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

83.1.417 "Course test" means a third party evaluation selected by the Secretary that measures the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

83.1.418 "Department" means the Department of Health & Social Services as defined in Title 29, Section 7904(a) Delaware Code.

83.1.419 "Deteriorated paint" means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

83.1.420 "Discipline" means one of the specific types of categories of lead-based paint activities identified in these regulations for which individuals may receive training from accredited programs and become certified by the Secretary, Delaware Health and Social Services. For example, "abatement worker" is a discipline.

83.1.421 "Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings, to a component or room.

83.1.422 "Documented methodologies" are methods or protocols used to sample for the presence of lead in paint, dust or soil.

83.1.423 "Elevated blood level (EBL)" means an excessive absorption of lead that is a concentration of lead in whole blood of 20 mg/dl (micrograms of lead per deciliter of whole blood) for a single venous test, or, of 15 - 19 mg/dl in two consecutive fingerstick blood level tests taken 3 to 4 months apart.

83.1.424 "Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

83.1.425 "Encapsulation" means the application of an encapsulant.

83.1.426 "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

83.1.427 "EPA" means US Environmental Protection Agency.

83.1.428 "Firm" means any business company, whether or not incorporated.

83.1.429 "Friction surface" means any interior or exterior surface such as a window or stair tread, that is subject to abrasion or friction.

83.1.430 "Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

83.1.431 "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in these regulations as well as any other skill taught in a training course.

83.1.432 "Hazardous waste" means any waste subject to Delaware Department of Natural Resources and Environmental Control regulation as required in 7 Del. C. Chapter 63.

83.1.433 "HUD" means U.S. Department of Housing and Urban Development.

83.1.434 "Impact Surface" means any interior or exterior surface such as surfaces on doors that is subject to damage by repeated impact or contact.

83.1.435 "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report explaining the results of the investigation.

83.1.436 "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized

cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based hazards or potential hazards, and the establishment and operation of management and resident education programs.

83.1.437 "Lead-based paint" means a paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

83.1.438 "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment and abatement, as defined in these regulations.

83.1.439 "Lead-based paint hazard" means any condition that causes exposure to lead from lead contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

83.1.440 "Lead contaminated dust" means surface dust in residential dwellings, or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by the EPA

83.1.441 "Lead contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified by the EPA.

83.1.442 "Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling.

83.1.443 "Living area" means any area of residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

83.1.444 "Multi-family dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

83.1.445 "Paint in poor condition" means 10 square feet or more of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g. walls, ceilings, floors, doors); or more than 10 percent of the total surface areas of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

83.1.446 "Permanently covered soil" means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch and other landscaping materials are not considered permanent covering.

83.1.447 "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or

instrumentality of the Federal, state or local government.

83.1.448 "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

83.1.449 "Proficiency test" means an extensive written examination designed to validate a person's level of competence regarding Lead Abatement techniques and safety, to include: his/her knowledge of health hazards related to human exposure to lead dust and lead painted surfaces; construction safety; application of lead safe work practices; and, containments designed to reduce/minimize worker and building occupant exposure to lead hazards, specialized equipment designed to reduce lead exposure/hazards for workers and residence occupants, specialized lead-based paint removal using chemicals, hazardous waste management and specialized work practices.

83.1.450 "Recognized laboratory" means an environmental laboratory recognized by the EPA as being capable of performing an analysis for lead compounds in paint, soil, and dust.

83.1.451 "Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

83.1.452 "Residential dwelling" means a detached single family dwelling unit, including attached structures such as porches and stoops; or, a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

83.1.453 "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a written report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

83.1.454 "Secretary" means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

83.1.455 "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

83.1.456 "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

83.1.457 "Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities,

demonstrations, evaluations, and, if applicable, hands-on experience.

83.1.458 "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

83.1.459 "Training program" means lead training curriculum accredited by the Secretary, Delaware Health and Social Services, and offered to the public by a training provider.

83.1.460 "Training provider" means an individual or firm which has been approved by the Delaware Department of Education to provide training in Delaware and accredited by the Secretary, Delaware Health and Social Services to conduct accredited lead-based paint activities training program(s) to individuals engaged in lead-based paint activities.

83.1.461 "Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

83.1.462 "Visual inspection for risk assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

SECTION 83.2

APPLICATION AND RENEWAL REQUIREMENTS

83.201 Accreditation of training programs

After the implementation date of these regulations, January 1, 1999, it shall be unlawful for any person, to provide training or offer to provide training for any discipline of lead-based paint activity without first possessing an approval from the Secretary as an accredited training program.

(A) Accredited training programs shall offer and provide only training for the disciplines for which they are approved.

(B) The Secretary shall approve an accredited training program for any firm or business which applies and meets the qualifications specified in these regulations.

(C) A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines; Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. A training provider may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(D) A training provider shall not provide, offer, or claim to provide accredited lead-based paint activities courses without applying for and receiving accreditation from the Secretary as required in these regulations.

83.202 Application process

The following are procedures a training provider shall

follow to receive accreditation to offer lead-based paint activities courses:

(A) A training provider seeking accreditation shall submit a written application to the Secretary containing the following information:

(1) The training provider's business name, address, and telephone number.

(2) Written evidence that the applicant has been approved by the Delaware Department of Education as a training provider.

(3) A list of courses for which it is applying for accreditation.

(4) A statement signed by the training provider certifying that the training program meets the requirements established in these regulations. If a training provider uses EPA recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA, the training program manager shall include written evidence of these certifications as well.

(5) If a training provider does not use EPA recommended model training materials or training materials approved by an EPA authorized State or Indian Tribe, its application for accreditation shall also include:

(a) A copy of the student and instructor manuals, or other materials to be used for each course.

(b) A copy of the course agenda for each course.

(6) All training providers shall include in their application for accreditation the following:

(a) A description of the facilities and equipment to be used for lecture and hands-on training.

(b) The name, address and location of the training facility.

(c) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(d) A copy of the quality control plan [as described in 83.203(I)]

(e) A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

(B) If a training program meets the requirements in 83.203, then the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the training provider. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Secretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary within the 90 day period may also request additional materials retained by the training provider under 83.209. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a training provider's application is disapproved, the program

may reapply for accreditation at any time. Application fees for disapproved training programs will not be refunded.

(C) A training provider may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training provider may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

83.203 Requirements for the accreditation of training programs.

For a training provider to obtain accreditation from the Secretary to offer lead-based paint activities courses, the program shall meet the following requirements:

(A) The training provider shall employ a training manager who has demonstrated experience, education, or training in the construction industry in the areas of lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health or industrial hygiene, and:

(1) At least 2 years of experience, education, or training in teaching workers or adults, that is satisfactory to the Secretary; or

(2) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(3) Two years of experience in managing a training program specializing in environmental hazards.

(B) The training manager shall designate a qualified principal instructor for each course who has:

(1) Demonstrated experience, education, or training in teaching workers or adults; and

(2) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specified training; and

(3) Demonstrated experience, education, or training in lead abatement, painting, carpentry, renovation remodeling, occupational safety and health, or industrial hygiene.

(C) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(D) The following documents shall be accepted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, specifically listed in 83.203(A)&(B). This documentation must be submitted with the accreditation application. Those documents include the following:

(1) Official academic transcripts or diploma as evidence of meeting the education requirements.

(2) Letters of reference, or documentation of work experience, as evidence of meeting the work experience

requirements.

(3) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(E) The training provider shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(F) To become accredited in the following disciplines, the training provider shall provide training courses that meet the following training hour requirements.

(1) Inspector course - a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Inspector course are contained in 83.204 (A).

(2) Risk Assessor course - a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the Risk Assessor course are contained in 83.204 (B).

(3) Supervisor course - a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the Supervisor course are contained in 83.204 (C).

(4) Project Designer course - a minimum of 8 training hours. The minimum curriculum requirements for the Project Designer course are contained in 83.204 (D).

(5) Abatement Worker course - a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Abatement Worker course are contained in 83.204 (E).

(G) For each course offered, the training provider shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(1) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work.

(2) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(3) The course test shall be a third party test selected by the Secretary.

(H) The training provider shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(1) The name, unique identification numbers, and address of the individual.

(2) The business name, address and phone number of the certified training provider and the name of the training manager.

(3) The name of the particular course that the individual completed.

(4) Dates of course completion/test passage.

(5) Expiration date of certification.

(I) The training provider shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(1) Procedures for periodic revision of training materials to reflect innovations in the field.

(2) Procedures for the training manager's annual review of principal instructor competency.

(J) The training provider shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in Section 83.4. These standards shall be taught in the appropriate courses and training environments to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

(K) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(L) The training provider and training manager shall allow the Secretary to conduct either announced or unannounced audits of the training program(s) to verify the contents of the application for accreditation.

83.204 Minimum training curriculum requirements.

To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training providers must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(A) Inspector.

(1) Role and responsibilities of an Inspector.

(2) Background information on lead and its adverse health effects.

(3) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(4) Liability and insurance issues relating to lead-based paint abatement.

(5) Lead-based paint inspection methods, including selection of rooms, and components for sampling or testing.*

(6) Paint, dust and soil sampling methodologies.*

(7) Clearance standards and testing, including random sampling.*

(8) Preparation of the final written inspection

report.*

(9) Record keeping.

(B) Risk Assessor.

(1) Role and responsibilities of a Risk Assessor.

(2) Collection of background information to perform a risk assessment.

(3) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(4) Liability and insurance issues relating to lead-based paint abatement.

(5) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

(6) Lead hazard screen protocol.

(7) Sampling for the other sources of lead exposure.*

(8) Interpretations of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.*

(9) Development of hazard control options, the role of interim controls and options and operations and maintenance activities to reduce lead-based paint hazards.

(10) Preparation of a final written risk assessment report.

(C) Supervisor.

(1) Role and responsibilities of a Supervisor.

(2) Background information on lead and its adverse health effects.

(3) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(4) Liability and insurance issues relating to lead-based paint abatement.

(5) Risk assessment and inspection report interpretation.*

(6) Development and implementation of an occupant protection plan and abatement report.

(7) Lead-based paint hazard recognition and control.*

(8) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(9) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*

(10) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*

(11) Clearance standards and testing.*

(12) Cleanup and waste disposal.

(13) Record keeping.

(D) Project Designer.

(1) Role and responsibilities of a Project Designer.

(2) Liability and insurance issues relating to lead-based paint abatement.

(3) Development and implementation of an occupant

protection plan for large scale abatement projects.

(4) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large scale abatement projects.

(5) Interior dust abatement/cleanup or lead hazard control and reduction methods for large scale abatement projects.

(6) Clearance standards and testing for large scale abatement projects.

(7) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(E) Abatement Worker.

(1) Role and responsibilities of an Abatement Worker.

(2) Background information on lead and its adverse health effects.

(3) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(4) Lead-based paint hazard recognition and control.*

(5) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(6) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*

(7) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

83.205 Requirements for the accreditation of refresher training programs.

A training provider may seek accreditation to offer refresher training courses in any of the following disciplines; Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. To obtain accreditation to offer refresher training, a training provider must meet the following minimum requirements.

(A) Each refresher course shall review the curriculum topics of the full-length course listed under 83.204, as appropriate. In addition, to become accredited to offer refresher training courses, training providers shall ensure their course of study include, at a minimum, the following:

(1) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(2) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(3) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(B) Each refresher course, except for the project designer course, shall last a minimum of 8 training hours. The Project Designer refresher course shall last a minimum of 4 training

hours.

(C) For each refresher course offered, the training provider shall conduct both a hands-on assessment (if applicable), and at the completion of the course, a course test.

(D) A training provider may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in 83.202. If so, in addition, the minimum requirements contained in 83.203 [except for the requirements in 83.203 (F) and 83.205 (A)(B)(C)] shall also apply.

(E) A training provider seeking accreditation to offer refresher training courses shall submit to the Secretary a written application containing the following information:

(1) The refresher course training provider's name, address, and telephone number.

(2) A list of courses for which it is applying for accreditation.

(3) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in 83.203, except for the requirements in 83.203 (F). If a training program uses EPA developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA, to develop its refresher course materials, the training provider shall include written evidence of these certifications as well.

(4) If the refresher training course materials are not based on EPA-developed training materials or training materials approved by an authorized State or Indian Tribe, the training provider's application for accreditation shall include:

(a) A copy of the student and instructor manuals to be used for each course.

(b) A copy of the course agenda for each course.

(5) All refresher training providers shall include in their application for accreditation the following:

(a) A description of the facilities and equipment to be used for lecture and hands-on training.

(b) The name, address and location of the training facility.

(c) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(d) A copy of the quality control plan [as described in 83.203(I)]

(e) A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

(6) The requirements in 83.203 (A-E) and (G-L) apply to refresher training providers.

(7) If a refresher training program meets these requirements, the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the refresher training provider. In the case

of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Secretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary within the 90 day period may also request additional materials. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a refresher training provider's application is disapproved, the program provider may reapply for accreditation at any time. Application fees for disapproved refresher training programs will not be refunded.

83.206 Re-accreditation of training programs.

(A) Unless re-accredited, a training provider's accreditation (including refresher training accreditation) shall expire two (2) years after the date of issuance. If a training program meets the requirements of this section, the training provider shall be re-accredited.

(B) A training provider seeking re-accreditation shall submit an application no later than 180 days before its accreditation expires.

(C) The training provider's application for re-accreditation shall contain:

(1) The training provider's name, address, and telephone number.

(2) A list of courses for which it is applying for re-accreditation.

(3) A description of any material changes to the training facility, equipment or course materials since its last application was approved.

(4) A statement signed by the program manager stating:

(a) That the training program complies at all times with all requirements in 83.203 - 205, as applicable; and

(b) The record keeping and reporting requirements of 83.209 shall be followed.

(D) The training provider and training manager shall allow the Secretary to conduct either announced or unannounced audits of the training program to verify the contents of the application for re-accreditation described in 83.206(C) of this section.

83.207 Suspension, revocation and modification of accredited training programs.

(A) The Secretary may, after notice, and an opportunity for hearing, suspend, revoke, or modify training provider accreditation (including refresher training accreditation) if a training provider, training manager, or other person with supervisory authority over the training program has:

(1) Misrepresented the contents of a training course.

(2) Failed to submit required information or notifications in a timely manner.

(3) Failed to maintain required records.

(4) Falsified accreditation records, instructor qualification, or other accreditation related information or documentation.

(5) Failed to comply with the training standards and requirements in this section.

(6) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(7) Made false or misleading statements in its application for accreditation or re-accreditation.

(B) In addition to an administrative or judicial finding or violation in any jurisdiction, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

83.208 Procedures for suspension, revocation, or modification of training program accreditation.

(A) Prior to taking action to suspend, revoke, or modify the accreditation of a training provider, the Secretary shall notify the affected entity in writing of the following:

(1) The legal and factual basis for the suspension, revocation, or modification.

(2) The anticipated commencement date and duration of suspension, revocation, or modification.

(3) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(4) The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify accreditation.

(5) Any additional information which the Secretary may provide.

(B) If a hearing is requested by the accredited training provider, the Secretary shall:

(1) Provide the affected entity an opportunity to offer written statements in response to the Secretary's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(2) Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.

(3) Appoint an official Hearing Officer. No person shall serve as Hearing Officer if he or she has had any prior involvement with the specific matter.

(C) The Hearing Officer appointed pursuant to paragraph 83.208(B) shall:

(1) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(2) Consider all relevant evidence, explanation, comment, and argument submitted.

(3) Notify the Secretary in writing within 90 days of completion of the hearing of his or her decision. The

Secretary shall either accept or reject the decision. If accepted, the Secretary shall issue a final order. Such an order is a final agency action, which may be subject to judicial review.

(D) If the Secretary determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training provider prior to the opportunity for a hearing, it shall:

(1) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in 83.207(A). If a suspension, revocation, or modification notice has not previously been issued pursuant to 83.207(A), it shall be issued at the same time the emergency suspension notice is issued.

(2) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension revocation or modification hearing.

(3) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(4) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(E) Any notice, decision, or order issued by the Secretary under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training provider in a hearing under this section shall be available to the public. Any such hearing at which oral testimony is presented shall be open to the public, except that the Hearing Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment.

(F) The Secretary shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

83.209 Training program record keeping requirements.

(A) Accredited training providers shall maintain, and make available to the Secretary, upon request, the following records:

(1) All documents specified in 83.203(D) that demonstrate the qualifications of the training manager and principal instructors listed in 83.203(A) & (B).

(2) Current curriculum/course materials and documents reflecting any changes made to these materials.

(3) Information regarding how the hands-on assessment is conducted, including, but not limited to:

(a) Who conducts the assessment.

(b) How the skills are graded.

(c) What facilities are used.

(d) The pass/fail rate.

(4) The quality control plan as described in 83.203(I).

(5) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(6) Any other material not listed above in 83.209(A) that was submitted to the Secretary as part of the program's application for accreditation.

(B) The training provider shall retain these records at the address specified on the training provider accreditation application [or as modified in accordance with 83.209(C) of this section] for a minimum of 3 years and 6 months.

(C) The training provider shall notify the Secretary in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

SECTION 83.3

CERTIFICATION OF INDIVIDUALS AND FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITIES

83.301 Certification of individuals.

(A) Individuals seeking certification to engage in lead-based paint activities must either:

(1) Submit to the Secretary, an application demonstrating that they meet the requirements established in 83.302 & 83.303 for the particular discipline for which certification is sought; or (2) Submit to the Secretary, an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by the EPA.

(B) Individuals may first apply to the Secretary for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(C) Following the submission of an application demonstrating that all the requirements of this section have been met, the Secretary shall certify an applicant as a Inspector, Risk Assessor, Supervisor, Project Designer, or Abatement Worker, as appropriate.

(D) Upon receiving certification from the Secretary, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in Section 83.4 of these regulations.

(E) It shall be a violation for an individual to conduct any of the lead-based paint activities described in Section 83.4 after August 30, 1999, if that individual has not been certified by the Secretary, pursuant to this section to do so.

83.302 Inspector, Risk Assessor, Supervisor, Abatement worker and Project designer.

(A) To become certified as an Inspector, Risk Assessor, or Supervisor, Abatement Worker or Project Designer an individual must:

(1) Successfully complete an accredited course in the appropriate discipline and receive a course completion

certificate from an accredited training provider.

(2) Pass the course test in the appropriate discipline; and,

(3) Meet or exceed the following experience and education requirements:

(a) Inspectors.

(i) No experience or education requirements.

(b) Risk Assessors

(i) Successful completion of an accredited training course for Inspectors; and

(ii) Bachelor's degree and 1 year of experience in a related field (e.g. lead, asbestos, environmental remediation work, or construction) or an Associates degree with 2 years experience in a related field; or

(iii) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g. safety professional, environmental scientist); or

(iv) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g. lead, asbestos, environmental remediation work or construction).

(c) Supervisor:

(i) One year of experience as meeting the standards of a certified lead-based paint Abatement Worker; or

(ii) At least 2 years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

(d) Abatement Workers:

(i) Successful completion of an accredited training course in the appropriated discipline and receive a course completion certificate from an accredited training provider.

(ii) No additional experience or education requirements.

(e) Project Designers:

(i) Successful completion of an accredited training course for Supervisors.

(ii) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or,

(iii) Four years of experience in building construction and design or a related field.

(B) The following documents shall be recognized by the Secretary as evidence of meeting the requirements listed in 83-302:

(1) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(2) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(3) Course completion certificates from lead-specific or other related training courses, issued by accredited training

programs, as evidence of meeting the training requirements.

(C) In order to take the course test for a particular discipline an individual must:

(1) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider.

(2) Meet or exceed the education and experience requirements in 83.302(A).

(D) After passing the appropriate course test and submitting an application demonstrating that he/she meets the appropriate training, education, and experience prerequisites described in 83.302(A) and paying the associated fee, an individual shall be issued a certificate by the Secretary. To maintain certification, an individual must be re-certified as described in 83.304.

(E) An individual may take the course test no more than two times within 6 months of the date of the initial certification test for that discipline.

(F) If an individual does not pass the course test within 6 months, the individual must retake the appropriate course from an accredited training provider before reapplying for certification.

83.303 Certification based on prior training.

(A) Any individual who received training in a lead-based paint activity prior to the March 1, 1999 shall be eligible for certification under the alternative procedures in this section. Individuals who have received lead-based paint activities training at from an EPA authorized State or Tribal accredited training program, or from a State or Tribe with an EPA authorized program shall also be eligible for certification under the following alternative procedures.

(1) Applicants for certification as an Inspector, Risk Assessor, or Supervisor shall:

(a) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduction of a lead based paint activity, and

(b) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in 83.302(A)(3) (a, b, and c), and

(c) Successfully completed an accredited refresher training course for the appropriate discipline, and

(d) Pass a course test administered for the appropriate discipline.

(2) Applicants for certification as an Abatement Worker or Project Designer shall:

(a) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduction of a lead based paint activity, and

(b) Demonstrate that the applicant meets the education and/or experience requirements in 83.302 (A)(3) (d & e), and

(c) Successfully complete an accredited refresher training course for the appropriate discipline.

(B) Individuals who received training in a lead-based paint activity prior to March 1, 1999 shall have until August 30, 1999 to apply for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in 83.301 according to the discipline for which certification is sought.

83.304 Re-certification of Individuals.

(A) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the Secretary in that discipline by either:

(1) Every 2 years if the individual completed an approved training course with a course test and hands-on assessment; or

(2) Every 5 years if the individual completed an approved training course with a proficiency test provided and that the individual has remained involved in the duties of that discipline as his/her primary means of income.

(a) An individual desiring to sit for the proficiency test is to have completed three (3) lead abatement projects during the past 12 months without a potential lead license revocation/suspendable discrepancy issued by the Delaware Department of Health and Social Services.

(b) The proficiency test is an essay type test with five (5) parts: (1) Safe Lead Abatement work practices; plus four (4) selected elements from the following list:

(i) health hazards,

(ii) lead safe containment,

(iii) specialized equipment designed to minimize human exposure to lead,

(iv) waste disposal regulations and guidelines,

(v) hazardous waste management policies and applications,

(vi) construction safety,

(vii) scaffold safety,

(viii) ladder safety,

(ix) electrical safety, or

(x) hand tool safety.

(B) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course, submits a valid copy of the appropriate refresher course completion certificate and pays the associated fee.

(C) An individual may maintain re-certification for multiple disciplines by successfully completing the appropriate highest discipline accredited refresher training course and meeting the experience and education parameters defined in 83.302 for those disciplines.

83.305 Certification of abatement firms.

(A) All firms which perform or offer to perform any of the lead-based paint activities described in Section 83.4 after August 30, 1999 shall be certified by the Secretary.

(B) A firm seeking certification shall submit to the Secretary, a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in Section 83.4 for conducting lead-based paint activities.

(C) From the date of receiving the firm's letter requesting certification and the associated fee, the Secretary shall have 45 days to approve or disapprove the firm's request for certification. Within that time, the Secretary shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(D) The firm shall maintain all records pursuant to requirements in Section 83.4.

(E) On March 1, 1999 may apply to the Secretary for certification to engage in lead-based paint activities.

83.306 Suspension, revocation, and modification of certifications of individuals engaged in lead-based-paint activities.

(A) The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(1) Obtained training documentation through fraudulent means.

(2) Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

(3) Obtained certification through misrepresentation of certification requirements of related documents dealing with education, training, professional registration, or experience.

(4) Performed work requiring certification at a job site without having proof of certification.

(5) Permitted the duplication or use of the individual's own certificate by another.

(6) Performed work for which appropriate certification has not been received.

(7) Failed to comply with the appropriate work practice standards for lead-based paint activities in Section 83.4.

(8) Failed to comply with Federal, State or local lead-based paint statutes or regulations.

(B) In addition to an administrative or judicial finding or violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

83.307 Suspension, revocation, and modification of certification of firms engaged in lead-based paint activities.

(A) The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(1) Performed work requiring certification at a job

site with individuals who are not certified.

(2) Failed to comply with the work practice standards established in Section 83.4.

(3) Misrepresented facts in its letter of application or certification.

(4) Failed to maintain required records.

(5) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(B) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

83.308 Procedures for suspension, revocation, or modification of the certification of individuals or firms.

(A) Prior to taking action to suspend, revoke, or modify the certification of any individual or firm, the Secretary shall notify the affected entity in writing of the following:

(1) The legal and factual basis for the suspension, revocation, or modification.

(2) The anticipated commencement date and duration of the suspension, revocation or modification.

(3) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(4) The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify certification.

(5) Any additional information which the Secretary may provide.

(B) If a hearing is requested by the certified individual or firm, the Secretary shall:

(1) Provide the affected entity an opportunity to offer written statements in response to the Secretary's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(2) Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.

(3) Appoint an official Hearing Officer. No person shall serve as Hearing Officer if he or she has had any prior involvement with the specific matter.

(C) The Hearing Officer appointed pursuant to paragraph 83.308(B) shall:

(1) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(2) Consider all relevant evidence, explanation, comment, and argument submitted.

(3) Notify the Secretary in writing within 90 days of completion of the hearing of his or her decision. The Secretary shall either accept or reject the decision. If accepted, the Secretary shall issue a final order. Such an order is a final

agency action, which may be subject to judicial review.

(D) If the Secretary determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(1) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in 83.308 (A). If a suspension, revocation, or modification notice has not previously been issued pursuant to 83.308 (A), it shall be issued at the same time the immediate suspension notice is issued.

(2) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's certification before an opinion for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(3) Notify the affected entity of the commencement date and duration of the immediate suspension.

(4) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(E) Any notice, decision, or order issued by the Secretary under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public. Any such hearing at which oral testimony is presented shall be open to the public, except that the Hearing Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment.

SECTION 83.4

WORK PRACTICE STANDARDS FOR CONDUCTING LEAD-BASED PAINT ACTIVITIES.

83.401 Effective date, applicability, and terms.

(A) Beginning on March 1, 1999, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(B) When performing any lead-based paint activity described by a certified abatement firm or a certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(C) Documented methodologies that are appropriate for this section are found in the following: The U. S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing; the EPA Guidance on Residential Lead-based Paint, Lead Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 747-R-95-001); and other methods and guidelines deemed equivalent by EPA or HUD.

(D) Clearance levels that are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other methods and guidelines deemed equivalent by the EPA or HUD.

83.402 Inspection.

(A) An inspection shall be conducted only by a person certified by the Secretary as an Inspector or Risk Assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(B) When conducting an inspection, the following locations shall be selected according to documented methodologies listed in 83.401 and tested for the presence of lead-based paint:

(1) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the Inspector or Risk Assessor determines to have been replaced after 1978, or not to contain lead-based paint; and

(2) In a multi-family dwelling and in a child-occupied facility each component, in addition to the requirements of 83.402 (B) (1), every common area with a distinct painting history, except those components that the Inspector or Risk Assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(C) Paint shall be sampled in the following manner:

(1) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in 83.401 which incorporate adequate quality control procedures; or

(2) All collected paint chip samples shall be analyzed according to 83.406, to determine if they contain detectable levels of lead that can be quantified numerically.

(D) The certified Inspector or Risk Assessor shall prepare an inspection report which shall include the following information:

(1) Date of each inspection.

(2) Address of building.

(3) Date of construction.

(4) Apartment numbers (if applicable).

(5) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(6) Name, signature, and certification number of each certified Inspector and/or Risk Assessor conducting testing.

(7) Name, address and telephone number of the certified abatement firm employing each Inspector and/or Risk Assessor, if applicable.

(8) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray

fluorescence (XRF) device.

(9) Specific locations of each painted component tested for the presence of lead-based paint.

(10) The results of the inspection expressed in terms appropriate to the sampling method used.

83.403 Lead hazard screen.

(A) A lead hazard screen shall be conducted only by a person certified by the Secretary as a Risk Assessor.

(B) If conducted, a lead hazard screen shall be conducted as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or a child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(2) A visual inspection of the residential dwelling that is a child-occupied facility or a child-occupied facility shall be conducted to:

(a) Determine if any deteriorated paint is present, and

(b) Locate at least two dust sampling locations.

(3) If deteriorated paint is present, each surface with deteriorated paint that determined, using documented methodologies listed in 83.401, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(4) In residential dwellings and child-occupied facilities, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age 6 and under, are most likely to come in contact with dust.

(5) In multi-family dwellings and in child-occupied facilities, in addition to the floor and window samples required in 83.403(B)(4), the Risk Assessor shall collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(C) Dust samples shall be collected and analyzed in the following manner:

(1) All dust samples shall be taken using documented methodologies listed in 83.401 that incorporate adequate quality control procedures.

(2) All collected dust samples shall be analyzed according to 83.407 of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(D) Paint shall be sampled in the following manner:

(1) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in 83.401 that incorporate adequate quality control procedures; or

(2) All collected paint chip samples shall be analyzed according to 83.406 of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(E) The Risk Assessor shall prepare a lead hazard screen report, which shall include the following information:

(1) The information required in a risk assessment report as specified in 83.404, including 83.404(K) (1) through (14), and excluding 83.404(K) (15 - 18). Additionally, any background information collected pursuant to 83.403(B)(1) shall be included in the risk assessment report; and

(2) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

83.404 Risk assessment.

(A) A risk assessment shall be conducted only by a person certified by the Secretary as a Risk Assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(B) A visual inspection of risk assessment of the residential dwelling or a child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(C) Background information regarding the physical characteristics of the residential dwelling or the child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(D) Each surface with deteriorated paint, that is determined, using documented methodologies listed in 83.401, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies listed in 83.401, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead.

(E) In residential dwellings, dust samples (either composite or single-surface samples) from the window and floor shall be collected in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(F) For multi-family dwellings and child-occupied facilities, the samples required in 83.404(E) of this section shall be taken. In addition, window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(1) Common areas adjacent to the sampled residential dwelling and ~~or~~ child-occupied facility; and

(2) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(G) For child-occupied facilities, window and floor dust samples (either composite or single-surface samples) or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the Risk Assessor determines one or more children, age 6 and under, are likely to come into contact with dust.

(H) Soil samples shall be collected and analyzed for lead

concentrations in the following locations:

- (1) Exterior play areas where bare soil is present;

and

- (2) Dripline/foundation areas where bare soil is present.

(I) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies listed in 83.401 and 83.406 that incorporate adequate quality control procedures.

(J) Any collected paint chip, dust or soil samples shall be analyzed according to 83.406 to determine if they contain detectable levels of lead that can be quantified numerically.

(K) The certified Risk Assessor shall prepare a risk assessment report which shall include the following information:

- (1) Date of assessment.
- (2) Address of each building.
- (3) Date of construction of each building.
- (4) Apartment number (if applicable).
- (5) Name, address, and telephone number of each owner of each building.
- (6) Name, signature, and certification of the certified Risk Assessor conducting the assessment.
- (7) Name, address, and telephone number of the certified abatement firm employing each certified risk assessor, if applicable.
- (8) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, if applicable.
- (9) Results of the visual inspection.
- (10) Testing method and sampling procedure for paint analysis employed.
- (11) Specific locations of each painted component tested for the presence of lead.
- (12) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.
- (13) All results of laboratory analysis on collected paint, soil, and dust samples.
- (14) Any other sampling results.
- (15) Any background information collected pursuant to 83.404(C) of this section.

(16) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(17) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(18) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring

schedule for the encapsulant or enclosure.

83.405 Abatement.

(A) An abatement shall be conducted only by a certified individual and if conducted, shall be conducted according to the procedures in these regulations.

(B) A certified Supervisor is required for each abatement project and shall be on site during all abatement work.

(C) The certified Supervisor and the certified abatement firm employing that supervisor, if any shall ensure that all abatement activities are conducted according to the requirements of these regulations and all other Federal, State and local requirements.

(D) Written notification of the commencement of lead-based paint abatement activities in a residential dwelling or as a result of a Federal, State, or local order shall be given to the Secretary five (5) government working days prior to the commencement of abatement activities.

(E) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(1) The occupant protection plan shall be unique to each residential dwelling or a or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(2) A certified Supervisor or Project Designer shall prepare the occupant protection plan.

(F) The work practices listed below shall be restricted during an abatement as follows:

(1) Open-flame burning or torching of lead-based paint is prohibited;

(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(3) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots total no more than 2 square feet in any one room, hallway or stairwell or total no more than 20 square feet on exterior surfaces; and,

(4) Operating a heat gun on lead-based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.

(G) If conducted, soil abatement shall be conducted in one of the following ways:

(1) If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or

(2) If soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in Section 83.1.446.

(H) The following post-abatement clearance procedures

shall be performed only by a certified Inspector or Risk Assessor:

(1) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and visible amounts of dust, debris or residue are present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present these conditions must be eliminated prior to the continuation of the clearance procedures.

(2) Following the visual inspection and any post-abatement cleanup required by 83.405(H) (1), clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(3) Dust samples for clearance purposes shall be taken using documented methodologies listed in 83.401 that incorporate adequate quality control procedures.

(4) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

(5) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to a residential dwelling or a child-occupied facility or a child-occupied facility;

(a) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one window (if available) and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(b) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the residential dwelling or a child-occupied facility. One dust sample shall be taken from one window (if available) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(c) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

(6) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented

methodologies listed in 83.401.

(7) The certified Inspector or Risk Assessor shall compare the residual leadlevels (as determined by the laboratory analysis) from each dust sample with applicable clearance levels for lead in dust on floors and windows. If the residual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be re-cleaned and re-tested until clearance levels are met.

(I) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(1) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in 83.405(H).

(J) An abatement report shall be prepared and signed by a certified supervisor or project designer. The abatement report shall include the following information:

(1) Start and completion dates of abatement.

(2) The names and address of each certified abatement firm conducting the abatement and the name of each Supervisor assigned to the abatement project.

(3) The occupant protection plan prepared pursuant to 83.405(E).

(4) The name, address, and signature of each certified Risk Assessor or Inspector conducting a clearance sampling and the date of clearance testing.

(5) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

(6) A detailed written report describing the abatement, including abatement methods used, locations of rooms and components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures. The report shall also detail any deviations, changes or abnormalities from the original scope of work.

83.406 Collection and laboratory analysis of samples.

Any paint, chip, dust or soil samples collected pursuant to the work practice standards contained in this section shall be:

(A) Collected by persons certified as an inspector or risk assessor; and,

(B) Analyzed by a recognized laboratory that is accredited and proficient toperform analyses for lead compounds in paint chip, dust, and soil samples.

83.407 Composite dust sampling.

Composite dust sampling may only be conducted in the situations specified in 83.403 through 83.405. If such sampling is conducted, the following conditions shall apply:

(A) Composite dust samples shall consist of at least two sub-samples;

(B) Every component that is being tested shall be included in the sampling; and

(C) Composite dust samples shall not consist of sub-samples from more than one type of component.

83.408 Record keeping.

All reports or plans required in this section shall be maintained by the certified individual and firm, if any, who prepared the report for no fewer than 3 years and six months. The certified individual also shall provide a copy of these reports to the building owner who contracted for its services.

83.409 Inspections.

The Secretary may conduct reasonable inspections of work sites to ensure compliance with these regulations.

83.410 Reporting.

All reports or plans required in this section may become subject to quarterly reporting requirements as deemed necessary and appropriate by the Secretary after lawful notification.

SECTION 83.5**CERTIFICATION, FEES AND RECIPROCITY****83.501 Certification of Occupations and Accreditation of Other Training Programs**

(A) Lead-based paint activities as defined by these regulations shall only be conducted according to the procedures and work practice standards contained in these regulations.

(B) No individual or firm shall make offer to perform or perform any lead-based paint activity as defined by these regulations unless certified to perform that activity according to the procedures.

83.502 Fees

(A) Fees shall be remitted by certified check or money order and made payable to the Division of Public Health. Fees are not refundable.

(B) The fee for an initial or a renewal of a certified Abatement Worker shall be \$25.00.

(C) The fee for an initial or a renewal of a Certified Abatement Firm, Contractor, Supervisor, Project Designer, Lead Inspector and Risk Assessor shall be \$50.00.

(D) The fee for an initial or a renewal of an accredited training program shall be \$200 for each type of course for which training will be provided.

(E) Applicants who submit a dishonored check will be charged a service fee in addition to the required application fee that is in accordance with department policy.

83.503 Reciprocity

The Secretary may enter into reciprocal agreements with other states and jurisdictions that have established accreditation and certification requirements similar to those set forth in these regulations.

SECTION 83.6**COMPLIANCE AND ENFORCEMENT PROCEDURES****83.601 General**

(A) The failure or refusal to comply with any requirement of these regulations is a prohibited act.

(B) The failure or refusal to establish, maintain, provide copy or permit access to records or reports as required in these regulations is a prohibited act.

(C) The failure or refusal to permit entry or inspection as required by these regulations is a prohibited act.

(D) In addition to the above, any individual or certified abatement firm that performs any of the following acts shall be deemed to have committed a prohibited act. These include but are limited to the following :

(1) Obtaining certification through fraudulent representation.

(2) Failing to obtain certification from the Secretary and performing work at a job site.

(3) Fraudulently obtaining certification and engaging in any lead based paint activity requiring certification.

83.602 Penalty

Violators are subject to sanctions pursuant to 16 Del. C. 107 for each violation of the requirements established in these regulations.

APPENDIX A**Supplementary Information**

Delaware Health and Social Services (DHSS) began a review of the EPA national model requirements in May 1997 by utilizing a 16 member Lead Regulation Advisory Group. The group's membership consisted of consumer, medical, real estate, environmental, training, organized labor and business interests, as well as, local and state regulatory agencies. After reviewing the initial draft of these regulations (which were based upon the model federal regulations promulgated pursuant to section 402 of TSCA, 15 U.S.C. 2682 as amended on October 28, 1992), the advisory group was critical of what they deemed the limited scope and purpose of the federal regulations. Their opposition was based in two (2) key areas: (1) the federal regulations do not contain training and

certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in building types other than pre-1978 housing stock and buildings occupied by children, i.e. public buildings (except child-occupied facilities), commercial buildings, superstructures and bridges; and, (2) the federal regulations are specifically targeted to lead-based paint abatement work and do not provide training and certification requirements and work practice standards pertaining to certain areas of lead-paint activities, such as renovation and remodeling.

The advisory group strongly suggested that the underlying purpose of DHSS's proposed regulations should be to reduce the incidence of blood lead poisoning in Delaware children and adults. Consequently, to accomplish this reduction, the group recommended that DHSS's proposed regulations be expanded to address the aforementioned key areas of concern. The group met five (5) additional times between June 1997 and January 1998 in an attempt to develop requirements beyond the federal model to address their key concerns. The meetings resulted in proposed requirements that impacted renovation and remodeling activities in private homes, as well as the establishment of training and certification requirements of contractors and work practice standards for building and home repairs.

DHSS used two (2) criteria to evaluate the group's recommendations: (1) Senate Bill (SB) 448, the enabling legislation; and, (2) the scope and purpose of similar regulations in place in other states. The evaluation concluded that DHSS did not have the infrastructure in place to support the additional requirements proposed by the group. Fundamentally, amendments to Delaware Code in the areas of liability protection, provision of insurance, and the enabling legislation itself, would be necessary to implement the group's recommendations. Additionally, the absence of nationally recognized and accepted standards in the areas of renovation and remodeling and, contractor training and certification standards were impediments to including the advisory group's recommendations into these regulations. Consequently, these regulations do not contain training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, superstructures and bridges. Additionally, these regulations do not provide training and certification requirements and work practice standards pertaining to activities associated with contractors engaged renovation and remodeling activities.

However, it is important to note that DHSS supports the underlying concept of the additional requirements proposed by the advisory group. From a practical viewpoint, the regulation of lead-based paint activities and the management of lead-based paint hazards is imperative to reduce human exposure to environmental lead hazards. Therefore, for educational and awareness outcomes, DHSS elects to include these group's additional requirements in a non-binding

appendix. Individuals and firms that create lead-based paint hazards not specifically associated with abatement projects, as defined by these regulations, are encouraged to function in a manner consistent with these recommendations.

Persons or entities interested in lead training and lead sensitive work practices beyond the abatement of lead-based paint hazards are encouraged to contact the Office of Lead Poisoning and Prevention at 302-739-4731

SECTION 83.1 GENERAL PROVISIONS

83.1.400 Definitions

Recommendation #1-To amend the definition of "Abatement"

83.1.401 "Abatement" means any activity that creates a lead-based paint hazard, including any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(A) The disturbance or removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of leadpainted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

(B) All preparation, cleanup, disposal, as well as post-abatement or post construction clearance testing activities associated with such measures.

(C) Specifically, abatement includes, but is not limited to:

(1) Projects for which there is a written contract or other documentation, which provides that an individual or certified abatement firm will be conducting activities in or to a residential dwelling or a child-occupied facility that:

(a) Shall result in the creation of or the permanent elimination of lead-based paint hazards; or

(b) Are designed to permanently eliminate lead-based paint hazards and are described in paragraph (A) and (B) of this definition;

(2) A project that creates a lead-based paint hazard or a project resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with Delaware Health and Social Services regulations for accreditation.

(3) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified abatement firms or individuals who, through their company name or promotional literature represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by these regulations; or

(4) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

Recommendation #2-To establish a definition of

“Contractor/Renovator/Remodeler” means a company or a person whose business purpose is to perform general construction and changes or improvements to existing construction for either residential or commercial buildings.

Recommendation #3-To establish a definition of

“Lead Sensitive Contractor/Renovator/Remodeler” means a company or a person whose business purpose is to perform general construction including new construction and changes or improvement to existing construction for either residential or commercial buildings who has attended a training program designed to introduce the health problems associated with exposure to lead-based paint hazards and also designed to teach basic and minimum work practices/methods and after work clean up intended to minimize workers and building occupants exposure to potential lead contaminated dust or other construction debris.

Recommendation #4-To establish a definition of

“Lead Sensitive Training Program” means a special curriculum, with at least eight hours of classroom instruction, designed to acquaint general construction firms, also known as contractors/renovators/remodelers, with the potential health problems related to human exposure to lead-based paint and surfaces covered with lead-based paint which may be disturbed during renovation or remodeling activities in target housing. This special curriculum also introduces recommended work practices designed to minimize workers and building occupants to potential exposure to lead-based paint contaminated dust and other construction debris.

Recommendation #5-To establish a definition of

“Renovation/remodeling” means the performance of general construction including new construction and changes or improvement to existing construction for either residential or commercial buildings.

SECTION 83.2

APPLICATION AND RENEWAL REQUIREMENTS

Recommendation #6-To include lead sensitive contractors/renovators/remodelers within the scope of regulated training programs

83.201 Accreditation of training programs

(C) A training provider may seek accreditation to offer lead-based paint activities courses in any of the following disciplines; *Lead Sensitive Contractor/Renovator/Remodeler*,

Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. A training provider may also seek accreditation to offer refresher courses for each of the above listed disciplines.

83.203 Requirements for the accreditation of training programs.

(F) To become accredited in the following disciplines, the training provider shall provide training courses that meet the following training hour requirements.

(5) Lead Sensitive Contractor/Renovator/Remodeler course - a minimum of 8 training hours. The minimum curriculum requirements for the Lead Sensitive Contractor/Renovator/Remodeler course are contained in 83.204(A) of this appendix.

83.204 Minimum training curriculum requirements.

(F) Lead Sensitive Contractor/Renovator/Remodeler.

(1) Background information on lead including the history of lead use and sources of environmental lead contamination including paint, surface dust and soil, water, air, and food.

(2) Background information on the health effects lead on the human body including how lead enters and affects the body, symptoms of lead in the body and diagnosis, level of concern and treatment.

(3) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(4) General industry, use of lead, and construction standards.

(5) Personal protection equipment including respiratory equipment selection, air purifying respirators, care and cleaning of respirators, respiratory fit testing, protective clothing.

(6) Disposal Techniques

(7) Personal hygienic practices.

(8) Legal liability and insurance issues.

(9) Overview of abatement.

83.205 Requirements for the accreditation of refresher training programs.

A training provider may seek accreditation to offer refresher training courses in any of the following disciplines; *Lead Sensitive Contractor/Renovator/Remodeler*, Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. To obtain accreditation to offer refresher training, a training program must meet the following minimum requirements.

SECTION 83.3

CERTIFICATION OF INDIVIDUALS AND FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITIES

Recommendation #7-To include lead sensitive contractors/

renovators/remodelers within the scope of regulated certification programs.

83.301 Certification of individuals.

(A) Individuals seeking certification to engage in lead-based paint activities must either:

(1) Submit to the Secretary, an application demonstrating that they meet the requirements established in 83.302 & 83.303 for the particular discipline for which certification is sought; or (2) Submit to the Secretary, an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by the EPA.

(B) Individuals may first apply to the Secretary for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(C) Following the submission of an application demonstrating that all the requirements of this section have been met, the Secretary shall certify an applicant as a *Lead Sensitive Contractor/Renovator/Remodeler*, Inspector, Risk Assessor, Supervisor, Project Designer, or Abatement Worker, as appropriate.

83.302 *Lead Sensitive Contractor/ Renovator/ Remodeler*, Inspector, Risk Assessor, Supervisor, Abatement worker and Project designer.

(A) To become certified as a *Lead Sensitive Contractor/Renovator/Remodeler*, Inspector, Risk Assessor, or Supervisor, Abatement Worker or Project Designer an individual must:

(1) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider.

(2) Pass the course test in appropriate discipline; and,

(3) Meet or exceed the following experience and/or education requirements:

(f) *Lead Sensitive Contractor/Renovator/Remodeler*.

(i) No experience or education requirements.

SECTION 83.4

WORK PRACTICE STANDARDS FOR CONDUCTING LEAD-BASED PAINT ACTIVITIES.

Recommendation #8-To include renovation and remodeling activities within the scope of regulated work practice standards

83.411 Renovation and Remodeling.

(A) All renovation and remodeling activities in targeted housing and child occupied facilities should be performed by Contractors, Renovators or Remodelers that have successfully completed a *Lead Sensitive Contractor/Renovator/Remodeler* program.

(B) All renovation and remodeling activities should be performed in accordance with the work practice standards for conducting lead-based paint activities detailed in this section.

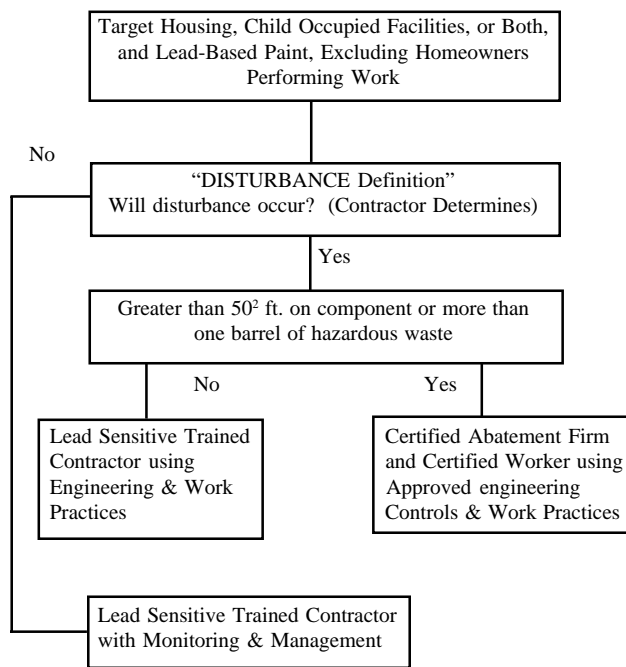
(C) Contractors desiring to perform these activities may wish to refer to the: "Disturbance Decision Tree" in Appendix B; definition of Contractor/Renovator/Remodeler; definition of a *Lead Sensitive Contractor/Renovator/Remodeler*; and, the recommended training curriculum for a *Lead Sensitive Contractor/Renovator/Remodeler*.

(D) Lead sensitive work practice are designed to control, reduce, or, eliminate Lead-based Paint Hazards in the property (involving more or equal to 50 square feet of Lead-based Painted surface and generate no more that one (1) barrel of Hazardous Waste (see 83.1.432), such as: lead sensitive surface preparation for encapsulation; and/or, lead sensitive renovation and remodeling techniques designed to remove or remodel the Lead Based Painted surface(s) substantially intact followed by post construction clean up techniques again designed to control, reduce, minimize or eliminate Lead-based Paint Hazards in the property.

(E) Certified Abatement Firms or *Lead Sensitive Contractors* may perform interim control, operation and maintenance activities, or, other measures and activities designed to temporarily, but not permanently reduce, lead-based paint hazards when those activities do not disturb the Lead-based Paint surface.

APPENDIX B

Disturbance Decision Tree



**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

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

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) is amending its eligibility manual.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than July 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

PROPOSED REGULATION

Eligibility Manual

270.10 Eligibility Decision

The agency must include in each applicant's case record facts to support the agency's decision on his application.

The agency must dispose of each application by a finding of eligibility or ineligibility, except under the following circumstances:

1. There is an entry in the case record that the applicant voluntarily withdrew the application, and that the agency sent

a notice confirming his decision;

2. There is a supporting entry in the case record that the applicant has died.

3. There is a supporting entry in the case record that the applicant cannot be located.

4. Certain factors of eligibility must be verified according to specific eligibility groups. If all information requested is not received, DSS cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility

Section 301.25 Federal Poverty Level Related Programs

Excluded Income

- Earned Income Tax Credits (EITC)
- First \$50 of the total child support payments
- Governmental (federal, state, or local) rent and housing subsidies, including payments made directly to the applicant/recipient for housing or utility costs, e.g., HUD utility allowances
- Income owned by or received for the benefit of the siblings not included in the budget unit
- 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. Also exclude other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.
- One half of the gross parental income for minor pregnant teens
- Payments made by a third party directly to landlords or other vendors
- SSI benefits
- ~~Wages of an individual (under age 19) who is a full-time student or a part-time student but not a full-time employee attending a school, college, university, or a course of vocational or technical training~~
- Earned income of a minor child regardless of student status
- Earned income of an 18 year old or an emancipated minor who is a full time student or a part time student but not a full time employee attending a school, college, university, or a course of vocational or technical training

307.60 Qualifying Individuals

Section 4732 of the Balanced Budget Act of 1997 establishes a capped allocation for each of five years beginning January 1998, to states for payment of Medicare Part B premiums for two new mandatory eligibility groups of low-income Medicare beneficiaries, called Qualifying Individuals or QIs. This provision amends section 1902(a)(10)(E) of the Social Security Act concerning Medicare cost-sharing for Qualified Medicare Beneficiaries (QMBs) and Specified Low Income Medicare Beneficiaries (SLMBs). It also amends section 1905(b) of the Social Security Act concerning the Federal Medical Assistance Percentage (FMAP) by incorporating reference to and establishing a new section 1933, for QIs.

QIs are individuals who would be QMBs but for the fact that their income exceeds the income levels established for QMBs and SLMBs. This means that QIs must meet all the technical and financial eligibility requirements of the QMB program except for the income limits.

Unlike QMBs or SLMBs, who may be determined eligible for Medicaid benefits in addition to their QMB/SLMB benefits, QIs cannot be otherwise eligible for Medicaid.

Qualifying Individuals 1

Individuals in the first group of QIs, called QI-1s, must have income that exceeds 120% of the Federal Poverty Level (FPL) but the income must be at or below 135% of the FPL. The benefit for QI-1s consists of payment of the full Medicare Part B premium. They do not receive any Medicaid services.

Qualifying Individuals 2

Individuals in the second group of QIs, called QI-2s, must have income that exceeds 135% of the FPL, but the income must be at or below 175% of the FPL. The benefit for QI-2s consists only of the portion of the Medicare Part B premium that is attributable to the shift of some home health benefits from Part A to Part B. The amount of this benefit in 1998 is \$1.07 per month. This is equivalent to 1/7 of the cost of the home health shift. The amount will increase by an additional 1/7 in each of the following years.

COLA Disregard

Social Security COLA increases will be excluded in determining the eligibility of recipients during the first three months of a calendar year.

Retroactive Coverage

Retroactive eligibility does apply to this group unlike the QMB

program. Benefits may begin with the month of application. Retroactive coverage is available for the three months prior to the month of application. Coverage cannot be effective prior to January 1, 1998.

Capped Allocation

This provision is effective for premiums payable beginning with January 1998 and ending with December 2002. Each state will receive a specific capped allocation for QIs.

Because of the capped allocation, we must limit the number of QIs selected in a calendar year so that the amount of benefits provided to these individuals does not exceed our state allocation. QIs will be selected on a first-come, first-served basis. This means the QIs are selected in the order in which they apply for benefits.

Once a QI is approved, the QI is entitled to receive assistance for the remainder of the calendar year, provided the individual meets the eligibility requirements. However, the fact that an individual receives assistance at any time during the year does not necessarily entitle the individual to continued assistance for any succeeding year. We will give preference to individuals who were QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year.

Redetermination of Eligibility

A redetermination of eligibility must be completed at least every 12 months. We will promptly redetermine eligibility when information is received about changes in circumstances that may affect eligibility.

PUBLIC NOTICE**Medicaid / Medical Assistance 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 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual as follows:

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than July 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all

written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

PROPOSED REGULATION

301.25 C. Adult Expansion Population: Non Categorically Related Individuals

Section 1902(a)(10)(A)(i) of the Social Security Act requires states to provide medical assistance to certain mandatory categories of individuals and allows states to cover optional categories. On May 17, 1995, HCFA approved a Section 1115 Demonstration Project, entitled Diamond State Health Plan. This demonstration waiver extends Medicaid coverage to uninsured individuals age 19 or over with income at or below 100% of the FPL who are not categorically eligible. ~~Individuals who receive long term care services (nursing facility and home and community based waivers), who have accessible managed care coverage, or who are entitled to Medicare are excluded from this category of assistance created under the demonstration waiver. Medicaid coverage for this new group is effective March 1, 1996. Adults are not eligible for Medicaid benefits until the first of the month in which they are enrolled in a Managed Care Organization (MCO). Enrollment in a MCO is a technical eligibility requirement for these clients under the demonstration waiver. Adults will not receive Medicaid services until they are enrolled in a MCO.~~

Individuals who receive long term care services (nursing facility and home and community based waivers), who have comprehensive health insurance as defined in this section, who are entitled to or eligible to enroll in Medicare, or who have coverage through CHAMPUS are excluded from this eligibility group created under the demonstration waiver. Medicaid coverage for this group is effective March 1, 1996.

Adults are not eligible for Medicaid benefits until the first of the month in which they are enrolled in a Managed Care Organization (MCO). Enrollment is a technical eligibility requirement for adults in the expanded population.

D. General Assistance (GA) Recipients

General Assistance is a cash assistance program available to families and unemployable individuals who meet certain

financial and technical eligibility requirements.

An individual age 18 and under who receives GA is categorically eligible for Medicaid. An individual between age 18 and 19 who receives GA is categorically eligible under the poverty level related program for children. An individual age 19 or over who receives GA must be uninsured as defined in this section in order to be found eligible for Medicaid. Enrollment in a MCO is a technical eligibility requirement for individuals age 19 and over who receive GA. GA recipients who are age 19 or over will not receive Medicaid benefits until the first of the month in which they are enrolled in a MCO.

All GA adults must be enrolled in a MCO effective March 1, 1996. Enrollment in a MCO is a technical eligibility requirement for GA adults under the demonstration waiver. GA adults will not receive Medicaid services unless they are enrolled in a MCO as of March 1, 1996.

Uninsured Individual: This is a separate technical eligibility requirement for the non categorically related adults (GE, GF, GG) who have income at or below 100% FPL. The individual must be uninsured. An uninsured individual is defined as an individual who does not have Medicare or accessible managed care coverage. An adult who is entitled to Medicare or who has accessible managed care cannot be eligible for Medicaid under the demonstration waiver. The Third Party Liability Unit will determine if an individual has accessible managed care coverage.

A managed care organization (MCO) is an organization that is licensed as an HMO, Health Services Corporation, or "like entity" and that requires the insured to go to a primary care provider who manages medical care for the insured. Payment to the primary care provider by the MCO can be fee for service or a capitated rate. An individual who is enrolled in a Delaware MCO but not through the Diamond State Health Plan is in an accessible managed care plan provided the MCO is licensed to do business in the insured's county of residence. See Section 600 for more information on managed care.

Uninsured Individual: This is a separate technical eligibility requirement for non categorically related adults age 19 or over, including those who receive General Assistance. The individual must be uninsured. An uninsured individual is defined as an individual who does not have Medicare, CHAMPUS, or other comprehensive health insurance. An adult who is entitled to or eligible to enroll in Medicare or who has CHAMPUS or who has any comprehensive health insurance, cannot be eligible for Medicaid as a non categorical adult under the demonstration waiver. The Third Party Liability Unit will determine if an individual has comprehensive health insurance.

PROPOSED REGULATIONS

Comprehensive Health Insurance: A benefit package comparable in scope to the “basic” benefit package required by the State of Delaware’s Small Employer Health Insurance Act at Title 18, Chapter 72 of the Delaware Code. This package covers hospital and physician services as well as laboratory and radiology services. The term “comprehensive” does not mean coverage for benefits normally referred to as “optional,” e.g., prescription drugs.

Enrollment in Managed Care: Medicaid eligible individuals (with a few exceptions) must enroll with a managed care organization. Individuals entitled to Medicare, receiving Medicaid long term care services, or who already have accessible managed care cannot enroll in the Diamond State Health Plan.

Enrollment in a managed care organization is a separate technical eligibility requirement for the non categorically related adults (GE, GF, GG) with income at or below 100% FPL. An adult in this non categorical group, who is otherwise eligible, cannot receive Medicaid until he or she is enrolled in a Diamond State Health Plan MCO.

Enrollment in Managed Care: Medicaid eligible individuals, with a few exceptions, must enroll with a MCO in the Diamond State Health Plan. The following individuals cannot enroll in the Diamond State Health Plan:

- individuals entitled to or eligible to enroll in Medicare
- individuals who have CHAMPUS
- individuals who are receiving Medicaid long term care services, and
- individuals who already have accessible managed care coverage.

A managed care organization (MCO) is an organization that is licensed as an HMO, Health Services Corporation, or “like entity” and that requires the insured to go to a primary care provider who manages medical care for the insured. Payment to the primary care provider by the MCO can be fee for service or a capitated rate. An individual who is enrolled in a Delaware MCO but not through the Diamond State Health Plan is in an accessible managed care plan provided the MCO is licensed to do business in the insured’s county of residence.

Enrollment in a Diamond State Health Plan MCO is a separate technical eligibility requirement for the non categorically related adults including adults who are receiving General Assistance. The adult must join a MCO before the 20th day of the approval month in order for Medicaid coverage to begin the first day of the next month. If the adult joins a MCO after the 20th day of the approval month, Medicaid coverage will start the second month following the approval month. The

approval month is the month in which the notice to approve Medicaid is sent to the applicant.

Certain individuals, who are excluded from the Diamond State Health Plan, may be found eligible for retroactive Medicaid. Individuals who may be found eligible for retroactive Medicaid are:

- those entitled to Medicare ~~those entitled to Medicare or eligible to enroll in Medicare~~ (e.g., a pregnant woman who has Medicare),
- those who have accessible managed care coverage,
- those receiving long term care services (nursing facility and the home and community based waivers), and
- those living out-of-state but considered Delaware residents, such as a child placed out-of-state by DSCYF.

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State’s Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Long Term Care, Pharmacy, Home Health, Ground Ambulance, and Hospice provider manuals.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than July 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

PROPOSED REGULATION

VIII. NON-EMERGENCY TRANSPORTATION

AMBULANCE

Long Term Care Provider Specific Policy Manual

IV. FINANCIAL ELIGIBILITY FOR ALL INSTITUTIONAL PROGRAMS

Criteria for Non-Emergency Ambulance Transportation for
Medicaid Clients Residing in a Nursing Facility

Approvals

- A ~~nursing home budget sheet~~ notice which indicates the amount of the recipient's monthly income due to the facility, the amount to be retained for medical insurance and personal needs, the effective date of the Medicaid coverage and the recipient's Delaware Medical Assistance ID number to be used for billing. Collection of the patient pay amount from the resident or his/her representative is the responsibility of the facility.

If the resident has no income except an SSI (Supplemental Security Income) check, there will be no patient pay amount. Generally, residents retain ~~thirty-six dollars (\$36.00)~~ forty-two dollars (\$42.00) for personal needs. If they are involved in training or educational programs outside of the facility, personal needs allowances increase and will be so noted on the ~~budget sheet~~ notice. There is no supplementation for recipients who receive a thirty dollars (\$30.00) SSI check.

- A Delaware Medical Assistance card will follow shortly after the opening notices. The facility should not bill the fiscal agent until both the ~~budget sheet~~ notice and the Medical Assistance card has been received.

Changes

The payments may resume if the representative cooperates and provides the necessary verification. Another ~~budget sheet~~ notice will be ~~mailed~~ issued to the facility when the case is reopened.

Change In Patient Pay - Any increase or decrease in a resident's income or personal needs necessitates a change in the patient pay to the facility. When such changes occur a ~~budget sheet~~ notice will be ~~mailed~~ issued to the facility and family explaining the change and giving the effective date.

Protection Requests - Provider(s) will be notified ~~as to which month or months protection is effective via the budget sheet.~~ of any change in the patient pay as a result of a protection of income.

- if facility transport is not available; ~~or~~ and

Pharmacy Provider Specific Policy Manual

II. SPECIFIC CRITERIA

~~Some OTC products do not have an eleven (11) digit National Drug Code (NDC) on the package, but do contain a Universal Pricing Code (UPC), these numbers often have less than 11 digits. Most resources such as Blue Book (used by the DMAP), Red Book, and Medispan have UPC numbers converted to a uniform 11 digit code. The 11 digit code must be used when billing the DMAP. The provider should consult such resources especially when the product dispensed does not contain an NDC on the label.~~

III. LIMITATIONS

Drugs Used For Cosmetic Purposes

Drugs used for cosmetic purposes are not routinely covered by the DMAP. Currently, those drugs include Minoxidil Lotion and Retin A for adults. [NOTE: Retin A is covered for DMAP recipients under the age of 21 years (through the 20th year).]

Fertility Drugs

The DMAP will not routinely reimburse for drugs such as Clomid that are prescribed to stimulate fertility.

Medical Necessity/Investigational Drugs

The DMAP will only cover drugs that have an FDA approved indication. The indication must have medical necessity. Drugs that have investigational status only are not routinely covered.

The DMAP does not routinely cover injectable or oral medications that are used to correct sexual disfunctions.

Drugs for Obesity

Drugs indicated for the treatment of obesity are not routinely covered by the DMAP.

Home Health Provider Specific Policy Manual

VII. OBTAINING PRIOR AUTHORIZATION

Prior authorization is required for the following home health services:

8. For individuals residing in adult foster/residential homes

Ground Ambulance Provider Specific Policy Manual

Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility

- if facility transport is not available; ~~or and;~~

Hospice Provider Specific Policy Manual

VI. NURSING HOME ROOM/BOARD WITH ROUTINE OR CONTINUOUS HOME CARE

Patient Pay

~~The Long Term Care Medicaid Unit Medicaid's fiscal agent, Electronic Data System (EDS), will send a budget sheet patient pay notice to both the hospice organization and the nursing home for any hospice nursing home patient. The budget sheet notice will indicate the amount of income received by the patient, the amount due to the facility (the patient pay amount); the amount to be retained for medical insurance and personal needs; the effective date, and the Medicaid number to be used for billing.~~

Please note the following:

- Non SSI recipients retain \$36 42.00 for personal needs.
- Additional amounts of income may be protected from the recipient's income to cover medically necessary services not normally covered by Medicaid. These amounts may vary from month to month. A new ~~budget sheet patient pay notice~~ will be generated whenever the patient pay amount changes.
- If the hospice organization is billing for a whole month, the monthly patient pay amount shown on the ~~budget sheet patient pay notice~~ is used. If the hospice organization is billing for a partial month, a daily patient pay must be calculated. To calculate the daily patient pay for a specific month, take the monthly amount shown on the ~~budget sheet patient pay notice~~ and divide it by the number of days in that particular month.

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

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

Delaware Health and Social Services is considering revising certain regulations contained in DSSM Section 9092. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.

The proposed regulations:

- allow the agency to use the food stamp allotment along with the ABC benefit in determining the number of hours a household is required to participate in workfare, which is a work experience program in which participants work to earn their benefits.

Any person who wished to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, Delaware, by June 30, 1998.

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

NATURE OF PROPOSED REVISIONS:
9092 Simplified Food Stamp ProgramWORKFAREWork for your welfare (workfare) program

Work for Your Welfare (workfare) is defined as a work experience program in which participants work to earn their benefits. Workfare is a requirement for those ABC recipients who are able to work but, for whatever reason, are not working after receiving ABC benefits for 24 months. Those in workfare must participate for a predetermined number of hours each week and complete 10 hours of job search activities per week.

The number of hours required is based on the ABC grant and the food stamp allotment divided by the minimum wage. Each benefit will separately be divided by the minimum wage (\$5.15/hour). The hours from each benefit will be totaled and then divided by 4.33. For every hour that a participant fails to perform, the ABC check will first be reduced by \$5.15. If

the ABC grant reduces to zero, any workfare sanction amount will be used to reduce the food stamp allotment. The failure to do job search will also result in a progressive 1/3 grant and allotment reduction sanction.

One-parent households will be required to work the hours determined by dividing the grant and food stamps by the minimum wage. The maximum participation hours is 25 hours per week and, in addition, each participant is required to complete 10 hours of job search activities every week. The maximum required work hours for one-parent families will increase to 30 hours per week for FFY 1999.

Two-parent households will be required to work the hours determined by dividing the grant and food stamps by the minimum wage. The number of participation hours for the two-parent family is 35 hours per week if they do not receive child care and 55 hours per week if they do receive child care. One parent may participate for the whole 35 hours, or both parents may share. If child care is provided, the 55 hours can be shared by both parents with one parent working at least a minimum of 20 hours, such as 35/20 or 30/25. (10/45 is not acceptable.)

The food stamp allotment will only be used as necessary to require the one and two-parent households to work a maximum of 25 or 35 hours per week. The ABC benefits will be reduced to zero before the food stamp is affected. The food stamp benefits will only be reduced according to the portion of the allotment used in the calculation of the hours. If the food stamp allotment is reduced by \$5.15 for each hour not worked and the remaining benefit is less than \$1, no benefit will be issued.

Workfare households will not be double penalized for the same violation. Households that fail to work the required number of hours, while meeting job search requirements, will have their benefits reduced by \$5.15 for each hour not worked. There is no noncompliance sanction applied for failure to work the required number of hours.

Households that fail to work the required number of hours and fail to complete the job search activities will have their benefits reduced by \$5.15 for each hour it fails to work. The household will also have the 1/3 grant/allotment reduction sanction applied for failing to complete job search activities.

When calculating the number of hours, fractions will be rounded down to the nearest quarter hour. When calculating the amount of the benefits to be removed, the exact amount is subtracted from the grant or food stamp allotment. The remaining benefit is rounded down to the nearest dollar to determine the amount of the benefit the household will receive.

For the ABC grants, if the household fails to work at all, no ABC benefit will be issued. For the food stamp allotments, only the portion of the allotment used to require the number of hours of participation will be subtracted.

In the process, the worker first reduces the grant and allotment by the workfare sanction and then applies any applicable 1/3 sanctions, plus other sanctions.

CALCULATION PROCESSES

To determine the hours of participation:

1. The pre-sanctioned ABC grant is divided by minimum wage of \$5.15, and the result is rounded down to the nearest ¼ hour.
2. The food stamp allotment is divided by minimum wage of \$5.15, and the result is rounded down to the nearest ¼ hour.
3. The two results (#1 and #2), added together, are the monthly number of hours for which the family/household is required to participate.
4. The monthly number of hours (#3) is divided by 4.33 to get a weekly number of hours, rounded down to the nearest ¼ hour.
5. Compare the weekly number of hours (#4) to the maximum required for a one or two-parent household. Use the lesser number for the weekly number of hours.
6. The weekly number of hours (#5) is divided by 5 to get the daily participation requirement, rounded down to the nearest ¼ hour.
7. Consult the yearly table for the number of days the participant is required to do workfare. Multiply that number by the daily participation rate (#6) to determine the monthly required participation rate. (1998 table is attached to this section.)

Determination of the workfare sanction amount:

1. Subtract the actual hours of participation for a month from the required hours for the same month.
2. Any amount greater than zero is multiplied by \$5.15, resulting in the workfare sanction amount.
3. Subtract the workfare sanction amount (#2) from the ABC grant amount.

PROPOSED REGULATIONS

4. Subtract any 1/3 E& T/school attendance sanctions from amount in #3 before subtracting any \$68 or \$50 sanctions.
5. If the subtraction of the workfare sanction amount reduces the ABC benefit to zero and there is a remaining amount, this amount will be subtracted from the food stamp allotment after the application of any aligned sanctions.*

*Only the portion of the food stamp allotment used to determine the participation hours can be subtracted from the food stamp allotment. (If there is a \$100 workfare sanction amount left over after the grant reduced to zero, but only \$75 of the allotment was used to determine the hours of participation, only \$75 can be subtracted from the allotment.)

Examples of the Workfare Process:

1. One-parent family receives \$338 in ABC benefits and a \$321 food stamp allotment. \$338 divided by \$5.15 equals 65.5 hours. \$321 divided by \$5.15 equals 62.25 hours. The total hours equal 127.75. The 127.75 monthly number of hours is divided by 4.33 to get a weekly number of 29.5 hours per week. The one-parent family is only required to work 25 hours per week, divided by 5 equals 5 hours per day. There is also a 10 hour per week job search activity requirement. The client will be doing workfare hours between March 12 and April 11 which is 22 days. 22 days multiplied by 5 hours per day equals 110 hours per month.
- a) Parent only worked 88 hours for the month and completed job search activities. The 20 hours (110 - 88 = 22) multiplied by \$5.15 equals \$113.30. The \$338 grant is reduced by \$114. The household receives a \$224 grant and \$321 in food stamps.
- b) Parent only worked 88 hours for the month and failed to complete the job search activities. The grant is reduced by \$114 and then the 1/3 grant/allotment reduction is applied to the remaining grant and food stamps. The grant reduces to \$42 and the food stamps to \$214.
- c) Parent worked all the required hours but failed to complete the job search activities. The 1/3 grant/allotment reduction is applied to each benefit. The grant reduces to \$225 and food stamps to \$214.
- d) Parent only worked 28 hours. 80 hours multiplied by \$5.15 equals \$422.25. The grant of \$338 is reduced to zero. The number of hours to apply to the food stamp benefit is determined by subtracting the number of grant hours from the total monthly hours the parent was required to work (110 - 65.5 = 44.5) 44.5 hours multiplied by \$5.15 equals \$229.18. The \$321 in food stamps is reduced by \$229 which

equals a benefit of \$92.

2. Two-parent family of six receives \$544 in ABC benefits and \$534 in food stamps. \$544 divided by \$5.15 equals 105.5 hours. \$534 divided by \$5.15 equals 103.5 hours. The combined hours total 209. 209 divided by 4.33 equal 48.25 hours a week. The family does not receive child care and is only required to work 35 hours per week and 10 hours of job search. 35 hours divided by 5 days equals 7 hours per day. The family will be doing workfare hours between March 12 and April 11, which has 22 days. Multiply 7 hours a day by 22 days which equals 154 hours for the month.
- a) The family only works 100 hours, and completes the job search activities. 154 hours minus 100 hours equal 54 hours not worked. 54 hours multiplied by \$5.15 equals \$278.10. The grant is reduced by \$278 which leaves a grant of \$266. The food stamps increase to \$582 because the reduction of the grant for failure to work is not a sanction.
- b) The family works 50 hours, and fails to complete job search activities. 104 hours multiplied by \$5.15 equals \$535.60. The grant is reduced to \$8, and then a 1/3 sanction is applied, making the grant \$5. A 1/3 sanction is applied to the food stamps, which leaves a \$388 benefit.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT WASTE MANAGEMENT SECTION

1. TITLE OF THE REGULATIONS:
Delaware Regulations Governing Hazardous Waste (DRGHW).
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:
The State of Delaware is authorized by the U. S. Environmental Protection Agency to administer its own hazardous waste management program. To maintain this authorization, the State must remain equivalent to and no less stringent than the federal program. To accomplish this, the State regularly amends the DRGHW by adopting regulations previously promulgated by EPA.
3. POSSIBLE TERMS OF THE AGENCY ACTION:
NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapter 63, §6305.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday, June 23, 1998, beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY: Donald Short (302) 739-3689

**1998 AMENDMENTS TO
DELAWARE REGULATIONS GOVERNING
HAZARDOUS WASTE**

This package incorporates certain Federal Resource Conservation and Recovery Act amendments into Delaware's hazardous waste management program. The amendments comprising this package include both Hazardous and Solid Waste Act and non-Hazardous and Solid Waste Act requirements. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act program delegation and remain current with the Federal hazardous waste program.

The State is also making certain technical changes for the purpose of correcting errors and to add consistency or clarification. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The regulatory amendments are listed below and organized by the promulgating Federal Register notice, and provide a brief description of the amendment.

1. 60 Federal Register 33912-33915; Promulgation Date: 6/29/95

Title: Removal of Obsolete Rules

On June 29, 1995 Environmental Protection Agency, promulgated amendments that removed several sections of 40 Code of Federal Regulations pertaining to solid waste, hazardous waste, oil discharges and Environmental Protection Agency's Superfund program that were no longer legally in effect. Deleting these rules helped clarify the legal status of Environmental Protection Agency's regulations for both the regulated community and the public. Only those rules

effecting Delaware's hazardous waste program are part of this change.

2. 60 Federal Register 35703-35706; Promulgation Date: 7/11/95

Title: Liquids in Landfills III

This rule adds a third test to the two already allowed under existing Federal regulations. On November 18, 1992, Environmental Protection Agency promulgated a rule that added two tests that could be used to demonstrate non-biodegradability (Delaware adopted the two tests in 1995). The rule provides increased flexibility by adding Organization for Economic Cooperation and Development 301B (Modified Sturm Test) to demonstrate that a sorbent is non-biodegradable.

3. 60 Federal Register 63417-63434; Promulgation Date: 12/11/95

Title: Resource Conservation and Recovery Act Expanded Public Participation

This rule promulgates new regulations that effect the process for permitting Treatment, Storage and Disposal Facilities by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and operational lives of facilities. This change requires the prospective applicant to hold an informal public meeting before submitting an application for the permit and to advertise the meeting in the newspaper, through broadcast media, and on a sign post at or near the property. This would also require Department of Natural Resources and Environmental Control to mail a notice to interested parties when the applicant submits its application and, as we deem necessary, to require the facility owner or operator to set up an informational repository that will hold all information and documents that we decide is necessary. Finally, this change requires all combustion facilities that burn hazardous wastes to notify the public before they hold a trial burn.

4. 61 Federal Register 13103-13106; Promulgation Date: 3/26/96

Title: Recovered Oil Exclusion, Correction

This rule corrects an Environmental Protection Agency error in the regulatory exclusion, from the definition of solid waste, for recovered oil that is inserted into the petroleum refining process. The current text of the exclusion contains a factual error as to the location in the refining process at which recovered oil can be inserted. This error inappropriately restricted legitimate recycling of recovered oil.

5. 61 Federal Register 15566-15660; Promulgation Date: 4/8/96;

61 Federal Register 15660-15668; Promulgation Date: 4/8/96;

61 Federal Register 19117; Promulgation Date: 4/30/96;

61 Federal Register 33680-33690; Promulgation Date: 6/28/96;

61 Federal Register 36419-36421; Promulgation Date: 7/10/96;

61 Federal Register 43924-43931; Promulgation Date: 8/26/96; and

61 Federal Register 7502-7600; Promulgation Date: 2/19/97

Title: Land Disposal Restrictions Phase III - Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

Changes in this rule establish treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production under Land Disposal Restrictions. Also, it amends treatment standards for hazardous waste that exhibit characteristic of reactivity and begins the process of amending existing treatment standards for wastewaters which are hazardous because they display the characteristic of ignitability, corrosivity, reactivity or toxicity. Finally, Environmental Protection Agency codified its existing enforcement policy that combustion of inorganic wastes is an impermissible form of treatment. They contend that the hazardous constituents are being diluted rather than effectively treated.

6. 61 Federal Register 16290-16316; Promulgation Date: 4/12/96;

Title: Imports and Exports of Hazardous Waste: Implementation of Organization for Economic Cooperation and Development Council Decision

This rule identifies those wastes that are subject to a graduated system of procedural and substantive controls when they move across national borders.

EPA has deemed that adoption of this rule by states is optional. However, Environmental Protection Agency has strongly urged states that have already adopted Part 262, Subpart E and F provisions to incorporate this rule into their regulations.

7. 59 Federal Register 62896-62953; Promulgation Date: 12/6/94;

60 Federal Register 26828-26829; Promulgation Date: 5/19/95;

60 Federal Register 50426-50430; Promulgation Date: 9/29/95;

60 Federal Register 56952-56954; Promulgation Date: 11/13/95;

61 Federal Register 4903-4916; Promulgation Date: 2/9/96;

61 Federal Register 28508-28510; Promulgation Date: 6/5/96; and

61 Federal Register 59932-59997; Promulgation Date: 11/25/96;

Title: Consolidated Air Emission Standards for Tanks, Surface Impoundments, and Containers

This change consolidates previous Federal Registers regarding Subpart CC standards. These changes complete the second phase of EPA's efforts to control organic air emissions. The State adopted the first phase in 1995.

8. 62 Federal Register 6622-6657; Promulgation Date: 2/12/97

Title: Military Munitions Rule

Changes in this rule identify when conventional and chemical military munitions become a hazardous waste, amends existing regulations regarding emergency responses, and exempts generators and transporters of these wastes from manifest requirements when transporting the waste on public or private right-of-ways on or along the border of contiguous properties, under control of the same person. This is seen as a reduction in paperwork.

9. 62 Federal Register 25998-26040; Promulgation Date: 5/12/97;

Title: Land Disposal Restrictions - Phase IV

This change finalizes the treatment standards for hazardous waste generated from wood preserving operations and makes a uniform change to the standard for wastes from products of chlorinated aliphatics which carry the waste code F024. It also revises the Land Disposal Restrictions to reduce paperwork, finalizes the decision to employ polymerization as an alternative treatment method, clarifies an exemption for de minis amounts of characteristic wastewaters, and excludes processed printed circuit boards and scrap metal from regulation. This rule also discusses Environmental Protection Agency's decision not to ban certain wastes from biological treatment.

10. 62 Federal Register 32452-32463; Promulgation Date: 6/13/97;

Title: Testing and Monitoring Activities Amendment III

This rule continues the amendments to SW-846, Third Edition by deleting several obsolete methods and incorporates revisions and amendments from Updates I, II and III.

11. 62 Federal Register 32974-32980; Promulgation Date: 6/17/97;

Title: Conformance with Carbamate Vacatur

This change amends regulations to conform with the federal appeals court ruling that invalidated Environmental Protection Agency regulations listing certain carbamate wastes as hazardous. The amendments remove K160 from §261.32 and revises the entries for K156, K157 and K158. It also removes a list of carbamate related wastes from §261.33(f), removes 2 listings from part 261, Appendix VIII and adds a list of carbamate related wastes.

Report form;

- Sections 264.221 and 265.221 - Adds date for which existing surface impoundments must comply with new unit requirements or stop hazardous waste activity;
 - Sections 265.51(a) and 265.53 are being revised to clarify the requirement of having a printed copy of the facility's contingency plan on site and readily available upon request.
-

12. 62 Federal Register 37694-37699; Promulgation Date: 7/14/97;

Title: Land Disposal Restriction Phase III - Emergency Extension of the K088 National Capacity Variance, Amendment

This rule extends the National capacity variance for spent potliners from primary aluminum production to October 8, 1997. Environmental Protection Agency took the action because it believed that insufficient treatment capacity existed and it provided time for generators to make contractual and other logistical arrangements relating to utilization of the treatment capacity.

13. 62 Federal Register 4556845576; Promulgation Date: 8/28/97;

Title: Emergency Revision of the Carbamate Land Disposal Restrictions

This rule extends the time that the alternative carbamate treatment standards are in place by an additional year because analytical problems associated with the measurement of constituent levels in carbamate waste residues have not yet been resolved.

14. Technical Amendments:

- Section 260.2(c) - is amended to require any person submitting information to Environmental Protection Agency to submit copies of the information to the Secretary of the Department of Natural Resources and Environmental Control;
- Sections 261.5(f)(3)(iv) & (g)(3)(iv) are amended to clearly reflect prohibition of disposal of hazardous waste at non-hazardous solid waste landfills by conditionally exempt small quantity hazardous waste generators;
- Section 261.21(a)(3) & (4) and 261.23(a)(8) are revised to correct references to 49 Code of Federal Regulations Part 173;
- Section 262.41 - deletes language about off site shipment of hazardous waste and revises designation for Annual

PROPOSED REGULATIONS

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. 121(b))

NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001, and to rescind Regulation No. 5.853.0001.P. Proposed revised regulation 5.751.0013 (“Procedures Governing the Dissolution of a State Chartered Bank or Trust Company”) was amended to delete the reference to §750 of Title 5 of the Delaware Code, which was deleted by Senate Bill 336, signed by the Governor on May 2, 1996. Proposed revised regulation 5.852.0002 (“Application to Become a Delaware Bank Holding Company”) makes technical changes to clarify the regulation, and to conform the public notice provisions to other similar notice provisions in the State’s banking laws and regulations. Proposed revised regulation 5.1403.0001 (“Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch or Foreign Bank Agency”), 5.1403.0002 (“Application By a Foreign Bank for a Certificate of Authority to Establish a Foreign Bank Limited Purpose Branch or Foreign Bank Agency Pursuant to 5 Delaware Code, §1403”), 5.1403/1101.0003 (“Regulations Governing the Organization, Chartering, Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office”), and 5.1422.0004 (“Application By a Foreign Bank for a License to Establish a Foreign Bank Representative Office Pursuant to Subchapter II, Chapter 14, Title 5, Delaware Code”) amend the regulations governing foreign banking activities in the State under Chapter 14 of Title 5 of the Delaware Code. Proposed revised regulations 5.1403.0001, 5.1403.0002, 5.1403/1101.0003 and 5.1422.0004 add references to foreign bank limited purpose branches, pursuant to Senate Bill 207, signed by the Governor on June 28, 1995, conform the public notice provisions to other similar notice provisions in the State’s banking laws and regulations, add references to the separation of assets of the foreign bank’s business in this State, as provided in Senate Bill 255, signed by the Governor on March 30, 1998, and make other technical and conforming changes. Proposed revised regulation 5.3404.0001 (“Preneed Funeral Contracts Regulations Governing Irrevocable Trust Agreements”) makes technical changes to conform to section number changes provided in Senate Bill 44 (“SB 44”), signed by the Governor on April 23, 1997. Regulation 5.853.0001.P (“Procedures Governing the Registration of Delaware Bank Holding Companies with the Bank Commissioner Pursuant to the Provisions of Section 853 of Title 5, Delaware Code”) is proposed for rescission because Section 853, which provided for registration of Delaware bank holding companies existing as of May 18, 1987, was deleted as unnecessary in SB 44. Proposed amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 replace existing Regulation Nos. 5.750/751.0013, 5.852.0002, 5.1403.0001.P, 5.1403.0002.P, 5.1403/1101.0003.NC, 5.1422.0004.P, and 5.304(b).0001, respectively. Proposed amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 would be adopted, and Regulation No. 5.853.0001.P would be rescinded, by the State Bank Commissioner on or after July 13, 1998. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed revised regulations, and of the regulation proposed to be rescinded, are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by July 13, 1998.

Public Hearing:

A public hearing on the proposed new regulations will be held in Room 113, Tatnall Building, William Penn Street,

Dover, Delaware 19901, on Monday, July 13, 1998 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Regulation No.: 5.751.0013
Proposed

PROCEDURES GOVERNING THE DISSOLUTION OF A STATE CHARTERED BANK OR TRUST COMPANY
5 Del. C. §751

The procedure governing the dissolution of a state chartered bank or trust company are set forth in Chapter 1 of Title 8 (§§103 and 275) of the Delaware Code. In addition, no bank or trust company shall file a Certificate of Dissolution of the Bank with the Secretary of State until approval, both in form and substance, is granted by the State Bank Commissioner. The Commissioner may require such information as to the assets and liabilities and condition of the bank(s) concerned as necessary.

Letter of Intent

A letter stating the intent to dissolve a bank or trust company and the target date for dissolution shall be filed with the Commissioner thirty (30) days prior to the anticipated dissolution. Included in the letter shall be a detailed description of the method used to dissolve the bank, including, but not limited to, the following:

1. Proposed or contracted terms of all asset sales including: loans, securities, fixed assets and other assets;
2. Proposed or contracted terms for the assumption of deposit liabilities;
3. Proposed or contracted terms for disposition of other liabilities including contingent liabilities;
4. Proposed disposition of capital accounts including, if any, settlements with dissenting shareholders.

In addition, the Applicant shall provide in timely manner verified copies of the following:

1. Consent of shareholders of the dissolution;
2. Letter of intent regarding the purchase and assumption of assets and liabilities as submitted to the Federal Deposit Insurance Corporation or other federal regulatory authorities;
3. Letters of approval from appropriate federal regulatory authorities.

Findings and Decision of the Commissioner

A review and analysis of the proposed dissolution shall be performed by the State Bank Commissioner. Upon making a determination, the Commissioner shall issue his approval of dissolution pursuant to 5 Del. C. §751, if appropriate.

Certificate of Dissolution

Applicant shall file in timely manner a certified copy of the Certificate of Dissolution, signed by the Secretary of State, with the Office of the State Bank Commissioner.

Document Control No.:

Regulation No.: 5.852.0002

Proposed

APPLICATION TO BECOME A DELAWARE BANK HOLDING COMPANY

5 DEL. C. §852

I. Scope of Regulation

This regulation establishes procedures governing the creation of a Delaware bank holding company. A bank holding company with bank subsidiaries in Delaware whose operations are principally conducted within this state is required to become a Delaware bank holding company. A bank holding company is deemed to be principally conducting operations in Delaware when the total deposits of all bank subsidiaries in this State are greater than in any other state (See 5 Del. C. §851(3)). Except as provided in §852(a), no bank holding company other than a Delaware bank holding company may own a Delaware bank.

II. Application

Notice of Intent to become a Delaware Bank Holding Company constitutes an application. Said Notice of Intent shall be filed in duplicate with the Office of the State Bank Commissioner. The Notice of Intent shall include:

- A) Name of Applicant and address of principal office.
- B) The State in which the Applicant is (or will be) incorporated. If the Applicant is incorporated outside of the State of Delaware, identify the name and address of a resident of Delaware designated as the Applicant's agent for the service of any paper or notice of legal process.
- C) If applicable, the corporate title and the address of the bank to be acquired; the number of voting shares to be acquired; and the percentage of said shares this number represents.
- D) The name, address and telephone number of the person(s) to whom inquiries may be directed.
- E) The Notice of Intent shall include the following exhibits:
 - 1) A copy of the Resolution by the Board of Directors of the Applicant authorizing the establishment of a Delaware bank holding company.
 - 2) A description of the Applicant and the transaction.
 - 3) A description of the financial and managerial resources of the proposed Delaware bank holding company.
 - 4) The future prospects of the bank holding company and the bank whose assets or shares it will acquire, if applicable, to include a statement in narrative form of a three (3) year business plan of the Applicant for the proposed bank holding company and, if applicable, the bank to be acquired.
 - 5) The financial history of the Applicant:
 - a) Provide a narrative description of the financial history of the Applicant and its bank and deposit taking non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of the Delaware State Bank Commissioner.
 - b) Provide for the past three calendar years, copies of all Form 10-Ks.
 - c) Describe regulatory action taken or anticipated or any agreements in lieu thereof entered into with a regulatory agency, either federal or state, with regard to any bank subsidiary within the holding company.
 - 6) The effects of the proposed acquisition on competition in Delaware.
 - 7) Describe how this transaction will better meet the needs and convenience of the public in the State of Delaware.
 - 8) A copy of the application filed with the Board of Governors of the Federal Reserve System to become a Bank Holding Company.

III. Publication

A proposed form of public notice shall be filed at the time the Notice of Intent (Application) is submitted for the Commissioner's approval. Said public notice shall include: the name and address of the Applicant, the subject matter of the application, the name and address of the bank to be acquired, and a statement indicating: a) for a period of 20 days commencing with the second date of publication, interested parties may submit written comments to the State Bank Commissioner at 555 E.

Loockerman Street, Dover, Delaware 19901; and b) the application is on file in the Office of the State Bank Commissioner and the non-confidential portions thereof will be available for examination by interested parties during regular office hours.

Upon written notice from the Commissioner that the proposed public notice is satisfactory, the Applicant shall cause said public notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the community in which the head office of the bank of which shares are to be acquired is located. An affidavit of publication shall be submitted to the Commissioner for the record.

IV. Additional Information

Upon review and consideration of the application, the Commissioner may require any additional information deemed necessary.

V. Confidential Information

An Applicant may request that specific information included in the Notice of Intent be treated as confidential. Any information or exhibits of which the applicant claims the designation of confidential shall be segregated at the end of the application as a separate exhibit designated as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the Applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of the Notice of Intent which the Commissioner does not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law with the exception of the copy of the Application filed with the Federal Reserve.

VI. Fees

The Notice of Intent (Application) shall be accompanied by a filing fee in the amount of five thousand seven hundred and fifty dollars (\$5,750.00) for the use of the State and a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the Office of the State Bank Commissioner.

VII. Hearing

If, after the twenty (20) day comment period, the Commissioner determines a public hearing should be conducted, such determination shall be made within ten (10) days after the conclusion of the 20-day comment period. Notice fixing the time, place and date for the holding of a hearing on the application shall be published at least twenty (20) days prior to the day it is to be held. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the Delaware Code.

VIII. Findings and Decision of the Commissioner

The Findings and Decision approving or disapproving the Application will be issued in accordance with Chapter 101 of Title 29, Delaware Code.

Document Control No.:

Regulation No.: 5.1403.0001
Proposed

PROCEDURES GOVERNING FILINGS AND DETERMINATIONS RESPECTING
APPLICATIONS FOR A FOREIGN BANK LIMITED PURPOSE BRANCH
OR FOREIGN BANK AGENCY
5 DEL. C. §1403

1. Application Process

A. Form of Application - An Applicant to establish a limited purpose branch or agency of a foreign bank in Delaware shall complete the "Application for Chartering of a Delaware Foreign Bank Limited Purpose Branch or Foreign Bank Agency" (Regulation No. 5.1403.0002). Such Application shall not be regarded as having been received by the Commissioner for the purposes of these regulations unless (1) all information solicited is provided in satisfactory form; (2) all documents which are required are attached to the application; (3) a duly empowered executive officer has signed and certified to the Application; and the Application is accompanied by a certified check made payable to the "State of Delaware" in the amount of \$2,000.00.

B. Notice of Receipt of Application - Within seven (7) days of the date on which the Commissioner shall deem an Application to have been received, he shall cause to be published, at the expense of the Applicant, once a week for two consecutive weeks in a publication of general circulation within the County where the office of said Agency is to be located a notice acknowledging receipt of the Application, which further recites:

- (i) The location of the proposed office of the Foreign Bank Limited Purpose Branch or Agency;
- (ii) A statement regarding where members of the general public may view, for a period of twenty (20) days, a copy of that portion of the Application which is not deemed to be "confidential".
- (iii) A statement requesting any objections to the application be filed with the State Bank Commissioner in writing within twenty (20) days of the first publication.

2. Hearing

If after the twenty (20) day comment period, the Commissioner determines a public hearing shall be conducted:

- (a) Such determination shall be made within ten (10) days after the conclusion of the 20-day comment period;
- (b) The Commissioner shall fix a time, place, and date for the holding of a hearing for the presentation of data, views or arguments pertinent to the application. In no event may the date fixed be less than twenty (20) days after publication of notice of the hearing. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the Delaware Code.

3. Findings and Decision of the Commissioner

The Commissioner shall issue his Findings and Decision relative to the application within sixty (60) days from the receipt of an Application, or within thirty (30) days of a hearing on such Application, whichever shall later occur.

Document Control No.:

Regulation No.: 5.1403.0002
Proposed

APPLICATION BY A FOREIGN BANK FOR A CERTIFICATE OF AUTHORITY TO ESTABLISH
A FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY
PURSUANT TO 5 DELAWARE CODE, §1403

Any application made to the State Bank Commissioner pursuant to §1403 of Title 5, Delaware Code, shall be submitted on the form appended hereto and accompanied by all documents called for by such form as well as by a duly authenticated copy of its charter and bylaws. A non-refundable filing fee of \$2,000 - payable to "State of Delaware", must accompany the filing of the attached application (5 Del. C., §1403(c)).

PROPOSED REGULATIONS

1943

Attachment

Document Control No.:

State of Delaware
OFFICE OF THE STATE BANK COMMISSIONER
Application of a Foreign Bank for a
Certificate of Authority to Establish a Foreign Bank Limited Purpose Branch
or Foreign Bank Agency
Pursuant to 5 Del. C. §1401

APPLICANT (Foreign Bank)

Name of Bank

Address of Principal Office (Street, City/Town, County, Country and Zip Code)

Country Organized in

Date Incorporated

Duration of Corporation

Type of Business: Commercial Banking Merchant Bank Other Foreign Institution

PROPOSED (please indicate)

 FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY

Proposed Location (Street), City/Town, County, State and Zip Code)

I, the undersigned, President of _____,
being duly authorized by a resolution of the Board of Directors (copy herewith submitted), hereby apply for a Certificate of Authority with respect to the proposed ___ foreign bank limited purpose branch or ___ foreign bank agency (please indicate). In making this application, I am not acting as an agency for other persons undisclosed to the State Bank Commissioner.

In support of the application, I hereby make the following statements and representations and submit the following information for the purpose of inducing the State Bank Commissioner to issue such Certificate of Authority:

The UNDERSIGNED HEREBY CERTIFIES that the statements contained herein are true to my best knowledge and belief.

(Print or Type Name of President)_____
Signature_____
Date

Sworn and Subscribed before me this _____ day of _____,

Notary Public

Part I. APPLICANT

1. List the States and Countries into which the Applicant has been admitted or is qualified to transact business. Provide the title and address of the appropriate regulator in each case.

PROPOSED REGULATIONS

2. Provide an opinion of a member of the Bar of the State or Country of origin that:
 - (a) applicant's charter authorizes it to carry on the business contemplated by the application;
 - (b) applicant has at all times conducted, and is now conducting, its business as authorized by its charter and bylaws and in compliance with the laws of the State or Country of origin; and
 - (c) the application complies with the laws of the State or Country of origin.

3. If the Applicant is required to make filings with the Securities and Exchange Commission under Section 14 or 15(d) of the Securities Exchange Act of 1934, the Applicant shall file with this application copies of all such filings made within the three year period immediately preceding the date of this application (provided that 10Q filings need not be included if 10K filings for the applicable year are provided). If no such filings are made, then there shall be attached to this application copies of the applicant's annual certified financial statements for the most recent three fiscal years for which they are available and the latest available quarterly statement. If the Applicant is a subsidiary of a bank holding company, the annual financial statements for such bank holding company for the most recent three fiscal years for which they are available and for the latest available fiscal quarter shall also be attached (provided that if the Applicant's annual financial statements are prepared on a consolidated basis with those of its parent bank company, only the consolidated financial statements need be attached).

Also attach a listing of all persons who are directors or executive officers of the Applicant Bank, listing as to each: his or her name and business address, present principal business activity, occupation or employment (including office held) and, if carried on with an organization other than that the applicant, the name, principal business and address of such other organization.

4. The attached statement of financial condition should be prepared as of the date within 120 days prior to the date of the application.

INSTRUCTIONS

This statement of the financial condition of your institution should be prepared as at the date within 120 days prior to the date of the application.

1. It is requested that the statement form be carefully reviewed before preparing the figures, and that all assets, liabilities and capital accounts be segregated and reported in the appropriate printed titles, wherever possible. If you have items which cannot properly be classified under these titles, use the additional lines, and indicate clearly the nature of each such item by attaching explanations where necessary.
2. All "reserves" or "provisions" should be analyzed and reported as follows:
 - (a) Reserves or provision for known or expected losses on assets should be deducted from such asset accounts;
 - (b) Reserves or provision for known or expected liabilities should be reported in Liability items 9 or 14, as the case may be; and
 - (c) Reserves or provision for future contingencies or unforeseen losses should be included in Liability item 18.
3. Include in Asset item 3 only balances on deposit by your institution with other banks. Do not include overdrafts by other banks in their accounts with your institution, or "call loans" or other extensions of credit to them. All such advances should be included as loans, Asset item 6, or should be reported separately below in Asset item 15, with appropriate explanations.
4. Include in Asset item 4 all obligations of National governments, such as short term "treasury bills" discounted, as well as bonds or other securities issued by them. Securities included in both Asset items 4 and 5 should be reported at net book values, less the allocated "reserves" or "provisions". The current market value (at the statement date) must also be reported in the footnote to the statement.
5. Include in Liability item 17 all "reserves" or "surplus" paid in or accumulated from prior periods, and all profits carried forward at previous closings of the books, less amounts actually appropriated for dividends already declared. Current earnings and profits, less expenses and losses incurred since the latest closing of the books, should also be included in this item.

PROPOSED REGULATIONS

1945

6. Unpaid dividends, including amounts declared by the directors out of current or prior profits should be included in Liability item 14.

7. All “per contra” accounts such as “collections for account of customers,” “securities held for account of customers,” “customers’ liability on letters of credit,” “guarantees,” et cetera, should be omitted from the statement of assets, liabilities and capital accounts, but should be reported separately as “contingent assets and liabilities.”

8. This statement should be verified by the oath of a principal executive officer of the bank. If that officer is unable to verify, the reasons for his failure to execute the affidavit should be recited in and made a part of the verification. The required oath may be administered without the United States by an ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, a charge d’affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States within his jurisdiction. The seal of his office or the seal of the consulate or legation to which he is attached should be affixed.

BEFORE PREPARING THIS STATEMENT
PLEASE READ THE INSTRUCTIONS ON THE PREVIOUS PAGE
STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE
ASSETS

ASSETS	FOREIGN AMOUNT	CONVERSION RATE*	U.S. DOLLARS
1. Cash on hand (currency, coin, and bullion)	_____	_____	_____
2. Exchanges and checks for next day’s clearings	_____	_____	_____
3. Deposits in other banking institutions (See Instruction No. 3)	_____	_____	_____
4. Securities of National Governments** (See Instruction No. 4)	_____	_____	_____
5. Other readily marketable securities** (See Instruction No. 4)	_____	_____	_____
6. Loans and discounts, including overdrafts and mortgages	_____	_____	_____
7. Bills rediscounted or sold with endorsement	_____	_____	_____
8. Customers’ liability on acceptances	_____	_____	_____
9. Investments in banking premises, furniture and fixtures	_____	_____	_____
10. Investments in affiliated and subsidiary companies	_____	_____	_____
11. Loans and advances to affiliated and subsidiary companies	_____	_____	_____
12. Accrued interest and commissions receivable	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other cash items	_____	_____	_____
15. Other assets	_____	_____	_____
16. Total assets	_____	_____	_____

*Conversion rate should be as of the date of the statement

**Current market value of:

(Item 4) Securities of National Governments	_____	_____	_____
(Item 5) Other readily marketable securities	_____	_____	_____

PROPOSED REGULATIONS

STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE LIABILITIES AND CAPITAL ACCOUNTS

LIABILITIES AND CAPITAL ACCOUNTS	FOREIGN AMOUNT	CONVERSION RATE	U.S. DOLLARS
1. Deposits secured by pledge of assets	_____	_____	_____
2. Deposits of National Governments and political subdivisions	_____	_____	_____
3. Deposits of banking institutions	_____	_____	_____
4. Other demand deposits, including certified and officers' checks	_____	_____	_____
5. Other time deposits, including certificates of deposits and savings accounts	_____	_____	_____
6. Total deposits (total of items 1 to 5, inclusive)	_____	_____	_____
7. Currency in circulation	_____	_____	_____
8. Bills rediscounted or sold with endorsement	_____	_____	_____
9. Other liabilities for borrowed money, however represented	_____	_____	_____
10. Acceptances outstanding	_____	_____	_____
11. Accrued interest, taxes and expenses payable	_____	_____	_____
12. Unearned interest and commissions	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other liabilities	_____	_____	_____
15. Total liabilities (total of items 6 to 14 inclusive)	_____	_____	_____
16. Capital stock	_____	_____	_____
17. Surplus and undivided profits (See Instruction No. 5)	_____	_____	_____
18. Reserves for contingencies (See Instruction No. 2)	_____	_____	_____
19. Total capital accounts (items 16 to 18 inclusive)	_____	_____	_____
20. Total liabilities and capital (item 15 plus item 19)	_____	_____	_____

Part II. PROPOSED (please indicate)

____ FOREIGN BANK LIMITED PURPOSE BRANCH OR

____ FOREIGN BANK AGENCY

1. Provide the name and title of the individual(s) who shall be in charge of the business and affairs of the proposed ____ foreign bank limited purpose branch or ____ foreign bank agency (please indicate).

2. List the address of the proposed registered office in this State and the name of the proposed registered agent in this State at that address for service of any paper, notice or legal process upon the applicant.

3. PRO FORMA STATEMENT OF CONDITION - BEGINNING OF BUSINESS

Assets		Liabilities and Capital	
<u>Description</u>	<u>Amount</u>	<u>Description</u>	<u>Amount</u>
Cash and due from banks	_____	Liabilities	_____
Securities	_____		
Loans	_____		
Bank premises	_____	Total Liabilities	_____
Furniture, fixtures and equipment	_____		

PROPOSED REGULATIONS

1947

Other Assets _____

Net organization expense

Total Assets _____

4. OFFICE(S)

Instructions: Complete all appropriate sections below. Where not applicable, insert "none." When the disclosure of any information may adversely affect ongoing negotiations, include such information in the Confidential Section of this application. Copies of any completed contracts should be submitted for the confidential use of the State Bank Commissioner.

a. Type of Occupancy (Check all which apply to indicate both type of quarters at opening and contemplated permanent quarters.)

_____ Permanent quarters leased (Complete b and c below)

_____ Temporary quarters (Complete e below)

_____ Permanent quarters owned (Complete b and d below)

b. Description of Premises

Dimensions
of Lot

Dimensions
of Building

Number of
Stories

Number of
Parking Spaces

Type of construction of building:

Details of building interior (mention all employee facilities and size of lobby area):

c. PREMISES LEASED

Name of Owner: _____

Cost or appraised value of premises: _____

Cost and description of leasehold improvements: _____

Terms of Lease (Include renewal options): _____

Insurance to be carried: _____

Annual Rental: _____

Annual Amortization: _____

Copies of any lease should be submitted for the confidential use of the State Bank Commissioner. Except where State law obviates the need, a clause similar to the following should be incorporated in all leases drawn for the term exceeding one year in connection with this application:

"Notwithstanding any other provisions contained in this lease, in the event the lessee is closed or taken over by the banking authority in the State of Delaware, or other bank supervisory authority, the lessor may terminate the lease only with the concurrence of such banking authority or other bank supervisory authority, and any such authority shall in any event have the election either to continue or to terminate the lease: Provided, that in the event this lease is terminated, the maximum claim of Lessor for damages or indemnity for injury resulting from the rejection or abandonment of the unexpired term of the lease shall in no event be in any amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the Lessor, or the date of re-entry of the Lessor, whichever first occurs, whether before or after the

PROPOSED REGULATIONS

closing of the lessee, plus an amount equal to the unpaid rent accrued, without acceleration up to such date.”

d. PREMISES OWNED

Existing Structure

Name of Seller: _____
 Date Constructed: _____
 Cost to Bank: _____
 Cost and description of necessary repairs and alterations: _____

Assessed Valuation:
 Insurance to be Carried:
 Estimated Annual Depreciation:
 Depreciation Method:

Proposed Structure

Important: In estimating cost of construction, include architect’s fee, site preparation, paving and landscaping.

Name of Seller of lot: _____
 Cost of lot to bank: _____
 Construction Cost: _____
 Estimated Assessed Valuation: _____
 Insurance to be carried: _____
 Estimated Annual Depreciation: _____
 Depreciation Method: _____
 Is the bank structure to be designed to permit additions to the building at a later date? _____ yes _____ no

e. Temporary Quarters

Name of Owner: _____
 Cost or monthly rental: _____
 Location (Include distance and direction from permanent quarters): _____

Insurance to be carried: _____

Description of facilities and services offered (submit copies of lease or other contracts):

Comments: _____

PROPOSED REGULATIONS

1949

5. PROPOSED INVESTMENT IN AND RENTAL OF FURNITURE, FIXTURES AND EQUIPMENT

Description:

ITEM	Total Cost (if owned)	Annual Rental (if leased)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTALS	_____	_____

Total Insurance to be Carried	Total Annual Depreciation	Depreciation Method
-------------------------------	---------------------------	---------------------

Do proponents plan to contract for off-premise electronic data processing service? yes no (If yes, list servicer(s) if known and the applications that would be processed off-premise. Attach copies of any electronic data processing agreements that have been executed.)

6. ORGANIZATION EXPENSES

INSTRUCTIONS: List all expenses related to the organization of the foreign bank limited purpose branch or foreign bank agency. Include all expenses paid, additional costs anticipated prior to the opening date, and include any expenses for work performed during the organization phases for which disbursement has been deferred beyond the opening date.

IMPORTANT: If legal or other fees appear to be excessive in volume or amount, supportive documentation will be required.

	ASSOCIATION WITH BANK	TYPE OF RELATIONSHIP (Specify Director, Officer, 5% Stockholder, or their relatives. Designate any business interests of the aforementioned.)	
NAME OF RECIPIENT	<input type="checkbox"/> Direct <input type="checkbox"/> Indirect <input type="checkbox"/> None		AMOUNT

Attorney Fees:

1. TOTAL ATTORNEY FEES _____

Consultant Fees:

- 2. TOTAL CONSULTANT FEES _____
- 3. TOTAL PRE-OPENING SALARIES _____
- 4. TOTAL PRE-OPENING TRAVEL AND ENTERTAINMENT _____

PROPOSED REGULATIONS**5. TOTAL APPLICATION AND INVESTIGATION FEES** _____

Other Expenses: (Describe in detail any item in excess of \$1,000)

6. TOTAL OTHER EXPENSES _____

Total Organization Expenses (Sum of lines 1-6 above.)

Pre-opening income

NET TOTAL

DESCRIBE SOURCE OF PRE-OPENING INCOME

DESCRIBE HOW ORGANIZATION EXPENSES WILL BE PAID

PROPOSED FOREIGN BANK LIMITED PURPOSE BRANCH OR
FOREIGN BANK AGENCY
PROJECTED AVERAGE ASSETS AND LIABILITIES

<u>ASSETS</u>	YEAR 1	YEAR 2	YEAR 3
1. Cash & Cash Items in Process of Collection	_____	_____	_____
2. Due from U.S. Office of Banks (including placements of \$) (1)	_____	_____	_____
3. Due from Foreign Offices of Banks (1)	_____	_____	_____
4. Investment Securities	_____	_____	_____
5. Securities Purchased under Resale Agreements	_____	_____	_____
6. Loans, Advances, Overdrafts (1)	_____	_____	_____
7. Federal Funds Sold (1)	_____	_____	_____
8. Customers' Liability on Acceptances and Deferred Payment Credits (1)	_____	_____	_____
9. Bank Premises, Leasehold Improvements	_____	_____	_____
10. Furniture, Fixtures and Equipment	_____	_____	_____
11. Other Assets (1)	_____	_____	_____
12. TOTAL ASSETS (Excluding Head Office, Branches & Wholly Owned Subsidiaries)	_____	_____	_____
13. Due from Head Office, Branches, Wholly Owned Subsidiaries (Including loans, overdrafts, def. pay't credits, accept., FF sold, etc.)	_____	_____	_____
14. TOTAL ASSETS	_____	_____	_____

(1) Excluding Due from Head Office, Branches and Wholly Owned Subsidiaries

PROPOSED REGULATIONS

1951

PROPOSED FOREIGN BANK LIMITED PURPOSE BRANCH OR
FOREIGN BANK AGENCY
PROJECTED AVERAGE ASSETS AND LIABILITIES

<u>LIABILITIES</u>	YEAR 1	YEAR 2	YEAR 3
CREDIT BALANCES (1)			
15. Domestic IPCs	_____	_____	_____
16. U.S. Offices of Banks	_____	_____	_____
17. U. S. Government	_____	_____	_____
18. Foreign IPCs	_____	_____	_____
19. Foreign Offices of Banks	_____	_____	_____
20. Foreign Governments, Official Institutions	_____	_____	_____
21. Other Credit Balances	_____	_____	_____
22. TOTAL CREDIT BALANCES	_____	_____	_____
23. Borrowings from Banks (Outside U.S. \$) (1)	_____	_____	_____
24. Securities Sold Under Repurchase Agreements (1)	_____	_____	_____
25. Federal Funds Purchases (1)	_____	_____	_____
26. Acceptances & Deferred Payments Credits	_____	_____	_____
27. Other Liabilities (1)	_____	_____	_____
28. SUBTOTAL LIABILITIES	_____	_____	_____
29. Accrued Expenses Payable	_____	_____	_____
30. Due to Head Office, Branches, Wholly Owned Subsidiaries (including borrowings of \$)	_____	_____	_____
31. Reserves for Loan Losses	_____	_____	_____
32. Other Reserves (Specify)	_____	_____	_____
33. TOTAL LIABILITIES	_____	_____	_____

(1) Excluding Due to Head Office, Branches and Wholly Owned Subsidiaries

PROJECTION OF INCOME AND EXPENSE TO BE FILED IN CONNECTION
WITH APPLICATION BY FOREIGN BANKING CORPORATION TO OPEN AND
MAINTAIN A FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY

<u>OPERATING INCOME</u>	YEAR 1	YEAR 2	YEAR 3
1. Interest & Fees on Loans Income On:	_____	_____	_____
2. Federal Funds Sold	_____	_____	_____
3. Time Placements and C/Ds Purchased	_____	_____	_____
4. Securities Purchased Under Agreements to Resell	_____	_____	_____
5. Interest & Dividends on Investment Securities	_____	_____	_____
6. Service Charges, Commissions and Fees Foreign Exchange	_____	_____	_____
7. Service Charges, Commissions and Fees All Other	_____	_____	_____
8. Net Profit on Foreign Exchange Trading	_____	_____	_____
9. Other Operating Income (Itemized categories aggregating \$5,000 and over)	_____	_____	_____
10. TOTAL OPERATING INCOME	_____	_____	_____
<u>OPERATING EXPENSE</u>			
11. Salaries and other employee benefits	_____	_____	_____

PROPOSED REGULATIONS

12. Interest on time certificates of deposit of \$100,000 and over	_____	_____	_____
13. Interest on all other deposits or credit balances	_____	_____	_____
EXPENSE INCURRED ON:			
14. Federal funds purchased	_____	_____	_____
15. Securities Sold Under Agreements to Repurchase	_____	_____	_____
16. Interest on borrowings (Other than Head Office Branches and Wholly Owned Subsidiaries)	_____	_____	_____
17. Interest on borrowings from Head Office, Branches and Wholly Owned Subsidiaries	_____	_____	_____
18. Occupancy Expense - Banking Premises	_____	_____	_____
19. Furniture & Equipment Expense - Include Deprec.	_____	_____	_____
20. Amortization of start-up costs	_____	_____	_____
21. Travel Expense	_____	_____	_____
22. Insurance Expense	_____	_____	_____
23. Legal Expense	_____	_____	_____
24. Audit Expense	_____	_____	_____
25. Communication Expense (Tel., Telex, Postage)	_____	_____	_____
26. Promotional Expense	_____	_____	_____
27. Other Operating Expense (Itemize categories aggregating \$5,000 and Over)	_____	_____	_____
28. Provision for Loan Losses	_____	_____	_____
29. TOTAL OPERATING EXPENSE	_____	_____	_____
30. INCOME BEFORE INCOME TAXES AND SECURITIES GAINS OR LOSSES	_____	_____	_____
31. Applicable Income Taxes	_____	_____	_____
32. INCOME BEFORE SECURITIES GAINS OR LOSSES	_____	_____	_____
33. Net Securities Gains or Losses (Net of Related Tax Effects)	_____	_____	_____
34. NET INCOME	_____	_____	_____

* If projection does not show profitable operation (including provision for interest on borrowings from Head Office, branches and wholly owned subsidiaries) by year 3, please indicate when profits are expected.

9. FIDELITY COVERAGE

The applicant bank will at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and will at all times maintain an excess employee dishonesty bond in the amount of \$1,000,000 or more.

10. PUBLIC CONVENIENCE AND ADVANTAGE

INSTRUCTIONS: The proponents are responsible for developing the Legal factor Public Convenience and Advantage in a way which clearly shows the economic support and justification for the Proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency. Submit such data relating to the trade area which you feel is relevant to the proposal. If an economic survey or feasibility study has been prepared it may provide most of the information requested. Such information submitted in support of your application will be included in the public file.

A. Briefly describe the geographical and product markets which the proposed Agency will principally serve.

B. Briefly indicate the reasons for submitting this Application and how the proposed Agency will become an economically viable institution.

PROPOSED REGULATIONS

1953

PART III

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY - CONFIDENTIAL SECTION

In preparing your application, keep in mind that the State Bank Commissioner deems that public policy warrants making all information submitted to him in connection with this application available for public review, unless it qualifies for confidential treatment under 29 Del. C. §§ 10002(d), 10112(b)(4), and Superior Court Rule of Civil Procedure 26(c). The Commissioner has determined that trade secrets, proprietary information and confidential financial information useful to the applicant in its business will ordinarily qualify for such protection.

However, specific determinations of the question of confidentiality and non-disclosure rests in the first instance in the discretion of the Commissioner and the specific information you include in the following section may be available for public review in the discretion of the Commissioner.

I. FINANCIAL HISTORY AND CONDITION

Outline below information with regard to fixed assets which you believe, if disclosed to the public, would adversely affect ongoing negotiations.

Outline below, in detail, the basis for cost estimates for premises shown in the public section.

If fixed assets are to be purchased from a related party, evidence of the reasonableness of the cost(s) must be provided. Attach copies of bids, independent appraisals and/or other supporting evidence.

If an insider is a party to any lease contract in connection with the application, explain the manner in which lease payments were determined.

Specify the time required to prepare the foreign bank limited purpose branch or foreign bank agency premises for occupancy. If temporary quarters are anticipated, estimate the probable term of occupancy and describe the disposition of such quarters.

II. FUTURE EARNINGS PROSPECTS

ESTIMATE OF SALARIES AND WAGES

POSITION	FIRST YEAR	SECOND YEAR	THIRD YEAR
Officers	_____	_____	_____
Other Employees	_____	_____	_____
Total	_____	_____	_____

ESTIMATED LOAN DIVERSIFICATION

TYPE OF LOAN	<u>FIRST YEAR</u>		<u>SECOND YEAR</u>		<u>THIRD YEAR</u>	
	Estimated Average Volume	Average Percent Return	Estimated Average Volume	Average Percent Return	Estimated Average Volume	Average Percent Return
Commercial	_____	_____%	_____	_____%	_____	_____%
Installment	_____	_____%	_____	_____%	_____	_____%

PROPOSED REGULATIONS

Real Estate	_____	_____ %	_____	_____ %	_____	_____ %
Term	_____	_____ %	_____	_____ %	_____	_____ %
Purchased Participations	_____	_____ %	_____	_____ %	_____	_____ %

Exchange and Service charge policies to be followed.

COMMENTS (Include other information supporting income and expense estimates reported in the Public Section of this application).

III. PROPOSED OFFICERS

NOTE: Attach a copy of the financial report and biographical information to include educational and business background for each individual in charge of the business and affairs of the Proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

PROPOSED OFFICERS OF THE FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY

<u>NAME</u>	<u>ADDRESS</u>	<u>AGE</u>	<u>OCCUPATION</u>	<u>TITLE</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- A. Has any proposed director, officer, or employee been convicted of any criminal offense involving dishonesty or a breach of trust? _____ yes _____ no (If yes, explain in Comments below.)
- B. List names and addresses of all correspondent banks.
- C. Are bonus, management or director compensation, or other similar plans in effect or anticipated?
 ___ yes ___ no (If yes, attach copies.)

COMMENTS:

IV. PUBLIC CONVENIENCE AND ADVANTAGE

List the proposed hours of operation for the proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

Regulation No.: 5.1403/1101.0003
Proposed

REGULATIONS GOVERNING THE ORGANIZATION, CHARTERING, SUPERVISION, OPERATION AND AUTHORITY OF A DELAWARE FOREIGN BANK LIMITED PURPOSE BRANCH, A DELAWARE FOREIGN BANK AGENCY AND A DELAWARE FOREIGN BANK REPRESENTATIVE OFFICE

I. Statement of Authority.

These regulations are promulgated pursuant to the authority vested in the Commissioner under the provisions of Chapter 14, Title 5, Delaware Code, including without limitation §1403 (relating to the foreign bank limited purpose branch or foreign bank agency application process); §1404(a)(2) (relating to the taking and maintenance of deposits by a foreign bank limited purpose branch or foreign bank agency); §1405 (maintenance of assets by a foreign bank limited purpose branch or foreign bank agency within Delaware); §1406(a) (relating to the making of written reports to the Commissioner by a foreign bank limited purpose branch or foreign bank agency); §1407 (relating to the rule-making power of the Commissioner generally); §1420 (relating to the licensing and operation of a foreign bank representative office); §1422(a) (relating to the application fee); and §1424(b) (relating to the fee which must accompany certain reports). The Commissioner is authorized to adopt appropriate regulations regarding the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency or federal branch or agency located in Delaware pursuant to the provisions of §1101(a) of Title 5. Additionally, §121(b) authorizes the Commissioner to prescribe regulations to carry out the purposes of Title 5.

II. General Powers.

A. Foreign Bank Agency.

A “foreign bank agency”, as defined in §101 of Title 5 of the Delaware Code, shall be entitled to engage within the State of Delaware in the general business of banking in the State of Delaware, subject, however, to the limitations set forth in 5 Del. C. §1404(a)(1). The deposit taking authority of such agency, in addition to the authority expressly granted under §1404, shall be co-extensive with the full authority which a federal agency operating in this State would have pursuant to the provisions of the International Banking Act of 1978 as amended.

B. Foreign Bank Limited Purpose Branch

A “foreign bank limited purpose branch”, as defined in §101 of Title 5 of the Delaware Code, shall be entitled to engage in all the activities of a foreign bank agency and, in addition, may accept such deposits as would be permissible for a corporation organized under §25A of the Federal Reserve Act (12 U.S.C. §611 et seq.).

C. Foreign Bank Representative Office.

A foreign bank representative office may conduct within the State of Delaware representative activities intended to promote banking services offered by and originating from an office or offices of the foreign bank located outside the State of Delaware. A foreign bank representative office is prohibited from either offering or contracting for any product or service within the State of Delaware which would constitute the doing of a general banking business in Delaware.

III. General Regulations.

A. Application Fees.

1) A foreign bank shall apply for a certificate of authority for a foreign bank limited purpose branch or foreign bank agency on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a filing fee in the amount of \$2,000.00 for the use of the State made payable to the State of Delaware.

2) A foreign bank shall apply for a license to establish a representative office on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a license fee of \$500.00 and a processing fee of \$500.00 made payable to the State of Delaware.

B. Records.

In addition to such records as the Commissioner may from time to time require with respect to the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency, each foreign bank limited purpose branch, foreign bank agency and foreign bank representative office shall maintain at its place of business in Delaware in the English language and in United States dollar equivalents a correct and complete set of books and records of account of all business transacted by such office.

C. Reports.

1) Whenever the Commissioner shall require, the foreign bank limited purpose branch or foreign bank agency shall make a written report in the English language and in United States dollar equivalents in such form as he shall from time to time prescribe and verified by a duly authorized executive officer of the foreign bank limited purpose branch or foreign bank agency. Such report shall show the actual financial condition of the business of the foreign bank limited purpose branch or foreign bank agency in the State of Delaware at the close of any past day designated by the Commissioner. The verification of such Report shall state that the person making it on behalf of the foreign bank limited purpose branch or foreign bank agency solemnly swears or affirms that the information set forth therein is a true and correct statement of the condition of the Delaware foreign bank limited purpose branch or foreign bank agency to the best of his knowledge, information and belief.

Additionally, the Commissioner may from time to time request from a foreign bank limited purpose branch or foreign bank agency a copy of any report of condition or the like filed by the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part with any other State, the Federal Deposit Insurance Corporation, or the Federal Reserve Board.

2) Every licensed foreign bank representative office shall file annually a written report of activities conducted during the previous twelve-month period, in the English language and in United States dollar equivalents in such form as the Commissioner shall prescribe. Said report shall be accompanied by a \$500.00 fee.

D. Maintenance of Assets in Delaware; Separate Assets.

A foreign bank limited purpose branch or foreign bank agency shall maintain within the State of Delaware currency, real estate (at net book value or appraised value, whichever is less), precious metals (to the extent of 75% of market value), bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds, or, with the prior approval of the Commissioner, in funds freely convertible into United States funds, or also with the prior approval of the Commissioner, such other assets as the Commissioner may permit, in an amount which shall be equal to one hundred percent (100%) of the liabilities of the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part which are payable at or through the foreign bank limited purpose branch or foreign bank agency, including acceptances, but excluding (without duplication) (1) accrued expenses, (2) amounts due and other liabilities to other offices, agencies or branches of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, (3) liabilities maintained on the books of an international banking facility located at such foreign bank limited purpose branch or foreign bank agency, and (4) such other liabilities as the Commissioner shall determine. The valuation of securities shall be in the manner provided in §1405. Each foreign bank limited purpose branch or foreign bank agency shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

E. Deposit of Assets.

The Commissioner may by order direct a foreign bank limited purpose branch or foreign bank agency to deposit all or a portion of the assets which the foreign bank limited purpose branch or foreign bank agency is required to maintain in this State with such banks or trust companies or national banks located in this State as the Commissioner may from time to time designate where the Commissioner finds such order necessary or desirable for the maintenance of the sound financial condition of the foreign bank limited purpose branch or foreign bank agency, the protection of depositors, creditors and the public interest, and the maintenance of public confidence in the business of a foreign bank limited purpose branch or foreign bank agency.

Where deposits constituting liabilities for purposes of paragraph (D) of this Article III are fully insured by the Federal Deposit Insurance Corporation, such deposits shall be excluded from the definition of liabilities for the purpose of determining the amount of assets which must be maintained by the foreign bank limited purpose branch or foreign bank agency within the

State of Delaware.

IV. Revocation of Certificate of Authority or License.

A. Revocation of Foreign Bank Limited Purpose Branch or Foreign Bank Agency Certificate of Authority.

1. Determination of Cause.

Whenever the Commissioner shall have cause to believe that a foreign bank limited purpose branch or foreign bank agency has engaged in conduct which, pursuant to Section 1410, would constitute cause for the revocation of the certificate of authority of such foreign bank limited purpose branch or foreign bank agency, he shall notify such foreign bank limited purpose branch or foreign bank agency in writing of the alleged violation, and, by means of informal fact-finding, determine whether an order should be issued directing such foreign bank limited purpose branch or foreign bank agency to cease and desist from the conduct giving rise to the violation by a date certain.

2. Violation of Order.

If the Commissioner shall determine that a foreign bank limited purpose branch or foreign bank agency which is the subject of a cease and desist order has not, within the time established, discontinued or rectified the conduct which was the subject of the violation order, he shall give written notice in the manner provided by the provisions of 29 Del. C. §10122 to the foreign bank limited purpose branch or foreign bank agency of the date, time and place of a formal hearing at which the foreign bank limited purpose branch or foreign bank agency shall appear and show cause why its certificate of authority should not be revoked. In addition to witnesses appearing on behalf of the foreign bank limited purpose branch or foreign bank agency, the Commissioner shall, by either informal or formal fact finding, take such testimony and gather such evidence as he deems necessary and appropriate in reaching a decision. Within thirty (30) days following the adjournment of such hearing, the Commissioner shall issue his findings and order revoking the certificate of authority, imposing a lesser sanction, or determining that the order to show cause should be retired without action. The foreign bank limited purpose branch or foreign bank agency shall have such right of appeal from such findings and order as is provided for in Subchapter V of Chapter 101, Title 29, Delaware Code.

B. Revocation of Foreign Bank Representative Office License.

Upon a preliminary determination by the Commissioner that a foreign bank representative office may have engaged in conduct which would constitute cause for the revocation of the license of such foreign bank representative office under the provisions of §1425, he shall give notice in writing to such foreign bank representative office setting forth the alleged violation, and directing such foreign bank representative office to appear at a place, on a date and at a time certain to show cause why its license should not be revoked. At such hearing, the foreign bank representative office shall be accorded the right to appear and be heard. The Commissioner shall, by either informal or formal fact finding and within thirty (30) days from the adjournment of such hearing, issue findings and order directing the revocation of the license of the foreign bank representative office, some lesser sanction, or the retirement of the notice to show cause without action. The foreign bank representative office shall have such rights of appeal from such findings and order as are provided in Subchapter V of Chapter 101, Title 29, Delaware Code.

V. Allocation of Income and Expenses for Purposes of Determining Delaware Tax Liability of Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

A. Method of Allocation.

Although technically a part of the foreign bank, a Delaware foreign bank limited purpose branch or foreign bank agency is to be treated for purposes of assessing and collecting the Delaware Bank Franchise Tax on taxable income (5 Del. C. §1101 et seq.) as if it were a bank having separate corporate existence (§1101(a)). To that end, and in order to derive the amount of "net operating income before taxes" for purposes of §1101(a), a foreign bank limited purpose branch or foreign bank agency shall maintain at all times separate books of account in its Delaware office which fully segregate and portray:

1. With respect to income:

(a) all receipts directly attributable to an asset carried on the books of the foreign bank limited purpose branch or foreign bank agency; and

(b) all receipts arising from a transaction entered into or a service provided by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware;

provided, that the foreign bank limited purpose branch or foreign bank agency may exclude from its accounting of income

otherwise properly allocated to Delaware such receipts as are directly or indirectly subject to taxation in any state other than Delaware by reason of either: (1) the existence of a taxable nexus under the laws of any such state between such state and the transaction of service giving rise to such receipts; or (2) the required inclusion under the laws of any such state of such receipts in the numerator of a receipts factor of a formula used to calculate the income of the foreign bank subject to tax in such state.

2. With respect to expenses:

- (a) all costs directly incurred in the start up, maintenance and operation of the Delaware office;
- (b) all other costs attributable to the generation of income allocated to Delaware pursuant to subsection 1. above;

and

(c) to the extent not included in paragraph (a) and (b) of this subsection 2. above, an aliquot portion of indirect costs incurred by the foreign bank (in both the United States and the home country) with respect to the start up, maintenance and operation of the foreign bank limited purpose branch or foreign bank agency.

Costs under subparagraphs (b) and (c) of this subsection 2. shall be allocated to Delaware in the same ratio as the gross receipts of the foreign bank are allocated to Delaware, or in such other fair, equitable and consistent manner as the Commissioner shall, upon request of a foreign bank limited purpose branch or foreign bank agency, approve.

B. Commissioner's Right of Examination

The Commissioner shall have the right from time to time to examine the books and records of a foreign bank limited purpose branch or foreign bank agency for the purpose of determining whether all or any portion of the income of the foreign bank limited purpose branch or foreign bank agency has been properly allocated to Delaware, and to issue such findings and orders as he deems necessary and appropriate regarding the reallocation of income which he shall find to have been improperly allocated to a state or states other than Delaware.

VI. Change of Location, Name or Business.

A foreign bank limited purpose branch or foreign bank agency may, pursuant to the provisions of §1408, make written request of the Commissioner to change its place of business (accompanied by a filing fee of \$500.00) or to change its corporate name for the duration of its corporate existence (no filing fee required). Upon the receipt of such application, the Commissioner shall grant such application within twenty (20) days thereof unless he shall have determined by informal fact finding or otherwise that there exists cause for denying such application. If the Commissioner should determine that facts or circumstances exist constituting cause for denying such application, he shall provide notice and opportunity to be heard to the applicant foreign bank limited purpose branch or foreign bank agency in the manner provided for under the provisions of 29 Del. C. §10123. Not less than thirty (30) days after the adjournment of such hearing, the Commissioner shall issue his final order and findings with respect to the grant or denial of the requested change of location or change of name. An applicant foreign bank limited purpose branch or foreign bank agency aggrieved by the determination of the Commissioner shall have such right of appeal as is granted pursuant to the provisions of Subchapter V, Chapter 101, Title 29, Delaware Code.

Document Control No.:

Regulation No.: 5.1422.0004
Proposed

APPLICATION BY A FOREIGN BANK FOR A LICENSE
TO ESTABLISH A FOREIGN BANK REPRESENTATIVE OFFICE
PURSUANT TO SUBCHAPTER II, CHAPTER 14, TITLE 5, DELAWARE CODE

Any application made to the State Bank Commissioner pursuant to §1422 of Title 5, Delaware Code, shall be submitted on the form appended hereto and accompanied by all documents called for by such form as well as by a duly authenticated copy of the foreign bank's charter and bylaws. A non-refundable processing fee of \$500 payable to "State of Delaware" must accompany the filing of the attached application. Upon approval of the application, an additional \$500 fee must be remitted prior to issuance of the license.

The Commissioner may, without notice or hearing, issue the requested license; provided that, at his discretion, the Commissioner may require public notice and a hearing on the application.

PROPOSED REGULATIONS

1959

All portions, except for the financial report requested in item 5, of this application shall be considered public information.

Document Control No.:

State of Delaware
OFFICE OF THE STATE BANK COMMISSIONER
Application of a Foreign Bank
for a License to Establish a Foreign Bank Representative Office
Pursuant to 5 Del. C. Chapter 14 Subchapter II

~~APPLICANT (Foreign Bank)~~ _____

Name of Bank _____

Address of Principal Office (Street, City/Town, County, Country and Zip Code) _____

Country Organized in _____ Date Incorporated _____ Duration of Corporation _____

Type of Business: _____ Commercial Banking _____ Merchant Bank _____ Other Foreign Institution _____

~~PROPOSED FOREIGN REPRESENTATIVE OFFICE~~ _____

Proposed Location (Street), City/Town, County, State and Zip Code)

I, the undersigned, President of _____,
being duly authorized by a resolution of the Board of Directors (copy herewith submitted), hereby apply for a License with respect to the proposed foreign bank representative office. In making this application, I am not acting as an agent for other persons undisclosed to the State Bank Commissioner.

In support of the application, I hereby make the following statements and representations and submit the following information for the purpose of inducing the State Bank Commissioner to issue such License:

The UNDERSIGNED HEREBY CERTIFIES that the statements contained herein are true to my best knowledge and belief.

(Print or Type Name of President)

Signature

Date

Sworn and Subscribed before me this _____ day of _____, _____.

Notary Public

1. List the States and Countries into which the Applicant has been admitted or is qualified to transact business. Provide the title and address of the appropriate regulator in each case.

2. Provide an opinion of a member of the Bar of the State or Country of origin that:

- (a) applicant's charter authorizes it to carry on the business contemplated by the application;
- (b) applicant has at all times conducted, and is now conducting, its business as authorized by its charter and bylaws and in compliance with the laws of the State or Country of origin; and
- (c) the application complies with the laws of the State or Country of origin.

3. If the Applicant is required to make filings with the Securities and Exchange Commission under Section 14 or 15(d) of the

PROPOSED REGULATIONS

Securities Exchange Act of 1934, the Applicant shall file with this application copies of all such filings made within the three year period immediately preceding the date of this application (provided that 10Q filings need not be included if 10K filings for the applicable year are provided). If no such filings are made, then there shall be attached to this application copies of the applicant's annual certified financial statements for the most recent three fiscal years for which they are available and the latest available quarterly statement. If the Applicant is a subsidiary of a bank holding company, the annual financial statements for such bank holding company for the most recent three fiscal years for which they are available and for the latest available fiscal quarter shall also be attached (provided that if the Applicant's annual financial statements are prepared on a consolidated basis with those of its parent bank company, only the consolidated financial statements need be attached).

Also attach a listing of all persons who are directors or executive officers of the Applicant Bank, listing as to each: his or her name and business address, present principal business activity, occupation or employment (including office held) and, if carried on with an organization other than that the applicant, the name, principal business and address of such other organization.

4. The attached statement of financial condition should be prepared as of the date within 120 days prior to the date of the application.
5. Attach the name and title as well as a biographical and financial report of the individual(s) who shall be in charge of the business and affairs of the proposed representative office. Additionally, three personal references are required.
6. Describe the scope and nature of the business to be conducted by the representative office.
7. Pursuant to §1422(b)(3), provide sufficient data as to how the convenience and needs of the public shall be served by the establishment of the representative office.

INSTRUCTIONS

This statement of the financial condition of your institution should be prepared as at the date within 120 days prior to the date of the application.

1. It is requested that the statement form be carefully reviewed before preparing the figures, and that all assets, liabilities and capital accounts be segregated and reported in the appropriate printed titles, wherever possible. If you have items which cannot properly be classified under these titles, use the additional lines, and indicate clearly the nature of each such item by attaching explanations where necessary.
2. All "reserves" or "provisions" should be analyzed and reported as follows:
 - (a) Reserves or provision for known or expected losses on assets should be deducted from such asset accounts;
 - (b) Reserves or provision for known or expected liabilities should be reported in Liability items 9 or 14, as the case may be; and
 - (c) Reserves or provision for future contingencies or unforeseen losses should be included in Liability item 18.
3. Include in Asset item 3 only balances on deposit by your institution with other banks. Do not include overdrafts by other banks in their accounts with your institution, or "call loans" or other extensions of credit to them. All such advances should be included as loans, Asset item 6, or should be reported separately below in Asset item 15, with appropriate explanations.
4. Include in Asset item 4 all obligations of National governments, such as short term "treasury bills" discounted, as well as bonds or other securities issued by them. Securities included in both Asset items 4 and 5 should be reported at net book values, less the allocated "reserves" or "provisions". The current market value (at the statement date) must also be reported in the footnote to the statement.
5. Include in Liability item 17 all "reserves" or "surplus" paid in or accumulated from prior periods, and all profits carried forward at previous closings of the books, less amounts actually appropriated for dividends already declared. Current earnings and profits, less expenses and losses incurred since the latest closing of the books, should also be included in this item.
6. Unpaid dividends, including amounts declared by the directors out of current or prior profits should be included in Liability

PROPOSED REGULATIONS

1961

item 14.

7. All “per contra” accounts such as “collections for account of customers,” “securities held for account of customers,” “customers’ liability on letters of credit,” “guarantees,” et cetera, should be omitted from the statement of assets, liabilities and capital accounts, but should be reported separately as “contingent assets and liabilities.”

8. This statement should be verified by the oath of a principal executive officer of the bank. If that officer is unable to verify, the reasons for his failure to execute the affidavit should be recited in and made a part of the verification. The required oath may be administered without the United States by an ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, a charge d’affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States within his jurisdiction. The seal of his office or the seal of the consulate or legation to which he is attached should be affixed.

BEFORE PREPARING THIS STATEMENT
PLEASE READ THE INSTRUCTIONS ON THE PREVIOUS PAGE

STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE
ASSETS

ASSETS	FOREIGN AMOUNT	CONVERSION RATE*	U.S. DOLLARS
1. Cash on hand (currency, coin, and bullion)	_____	_____	_____
2. Exchanges and checks for next day’s clearings	_____	_____	_____
3. Deposits in other banking institutions (See Instruction No. 3)	_____	_____	_____
4. Securities of National Governments** (See Instruction No. 4)	_____	_____	_____
5. Other readily marketable securities** (See Instruction No. 4)	_____	_____	_____
6. Loans and discounts, including overdrafts and mortgages	_____	_____	_____
7. Bills rediscounted or sold with endorsement	_____	_____	_____
8. Customers’ liability on acceptances	_____	_____	_____
9. Investments in banking premises, furniture and fixtures	_____	_____	_____
10. Investments in affiliated and subsidiary companies	_____	_____	_____
11. Loans and advances to affiliated and subsidiary companies	_____	_____	_____
12. Accrued interest and commissions receivable	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other cash items	_____	_____	_____
15. Other assets	_____	_____	_____
16. Total assets	_____	_____	_____
*Conversion rate should be as of the date of the statement			
**Current market value of:			
(Item 4) Securities of National Governments	_____	_____	_____
(Item 5) Other readily marketable securities	_____	_____	_____

PROPOSED REGULATIONS

STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE LIABILITIES AND CAPITAL ACCOUNTS

LIABILITIES AND CAPITAL ACCOUNTS	FOREIGN AMOUNT	CONVERSION RATE	U.S. DOLLARS
1. Deposits secured by pledge of assets	_____	_____	_____
2. Deposits of National Governments and political subdivisions	_____	_____	_____
3. Deposits of banking institutions	_____	_____	_____
4. Other demand deposits, including certified and officers' checks	_____	_____	_____
5. Other time deposits, including certificates of deposits and savings accounts	_____	_____	_____
6. Total deposits (total of items 1 to 5, inclusive)	_____	_____	_____
7. Currency in circulation	_____	_____	_____
8. Bills rediscounted or sold with endorsement	_____	_____	_____
9. Other liabilities for borrowed money, however represented	_____	_____	_____
10. Acceptances outstanding	_____	_____	_____
11. Accrued interest, taxes and expenses payable	_____	_____	_____
12. Unearned interest and commissions	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other liabilities	_____	_____	_____
15. Total liabilities (total of items 6 to 14 inclusive)	_____	_____	_____
16. Capital stock	_____	_____	_____
17. Surplus and undivided profits (See Instruction No. 5)	_____	_____	_____
18. Reserves for contingencies (See Instruction No. 2)	_____	_____	_____
19. Total capital accounts (items 16 to 18 inclusive)	_____	_____	_____
20. Total liabilities and capital (item 15 plus item 19)	_____	_____	_____

Regulation No.: 5.3404.0001
Proposed

PRENEED FUNERAL CONTRACTS REGULATIONS GOVERNING IRREVOCABLE TRUST AGREEMENTS 5 DEL. C. §3404

Disclosure Requirements for the Irrevocable Trust Document

The trust document establishing the irrevocable trust permitted by §3404 shall contain, at a minimum, the following mandatory provisions:

- (a) A provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary;

PROPOSED REGULATIONS

1963

(b) A provision for the disposition of trust funds to an alternate trustee upon discontinuation of business or inability to provide goods or services by the original trustee in accordance with the terms of the trust;

(c) A provision that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary;

(d) A provision that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary;

(e) A provision that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000;

(f) A provision which shall state "In no event shall the principal amount of the trust exceed \$10,000 plus interest."

Document Control No.:

~~Regulation No.: 5.853.0001.P~~

~~Effective Date: 7/31/89~~

~~PROCEDURES GOVERNING THE REGISTRATION OF DELAWARE BANK HOLDING COMPANIES WITH THE BANK COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION 853 OF TITLE 5, DELAWARE CODE~~

~~Subchapter V of Chapter of Chapter 8 of Title 5, Delaware Code provides for the regulation of Delaware bank holding companies. A Delaware bank holding company is defined in 5 Del. C. §851(3) as a bank holding company with bank subsidiaries whose operations are principally located in Delaware. The operations of a bank subsidiary or subsidiaries are deemed to be "principally located" in Delaware if the total deposits of all such subsidiaries in Delaware are greater than in any other state. (Note that non-Delaware bank holding companies may be subject to regulation by the Delaware Bank Commissioner under other Subchapters of Title 5: see, for example, 5 Del. C. §845, regarding the regulation and examination of out-of-state bank holding companies which acquire a Delaware bank or bank holding company).~~

~~Filing Deadline. Any bank holding company which was a Delaware bank holding company as of May 18, 1987 shall complete and file this registration form not later than September 1, 1989. Any bank holding company which became or intends to become a bank holding company after May 18, 1987 shall comply with the registration requirement by making application to become a Delaware bank holding company pursuant to the provisions of Section 852 of Title 5, Delaware Code.~~

Registration Information:

1. Name of Delaware bank holding company: _____

2. Date on which bank holding company formed: _____

Date on which bank holding company became a Delaware bank holding company (if different): _____

3. Principal address of Delaware bank holding company: _____

4. Name and address of Delaware agent for the service of any paper, notice of legal process, etc.: _____

5. Name and address of each Delaware bank subsidiary of the Delaware bank holding company: _____

PROPOSED REGULATIONS

- 6: Name and address of all non-bank subsidiaries of either the Delaware bank holding company of the Delaware bank:
- 7: Name and address of each bank subsidiary of the Delaware bank holding company located in a state other than Delaware:
- 8: Identify by government, region and address each regulatory authority (other than the Delaware Bank Commissioner) having jurisdiction over the Delaware bank holding company or any bank subsidiary thereof. With respect to each such regulator, identify each report filed by the Delaware bank holding company or bank subsidiary.

(Signed)

 Keith H. Ellis
 State Bank Commissioner

CERTIFICATION

I, (Name) _____

(Title or designation)

of _____, a Delaware bank holding company, do hereby certify that I have been duly authorized to execute and file this registration; and I further certify that, to my knowledge, information and belief, the information provided as part of this registration is true and correct. Finally, I certify that _____

(Name of Delaware Bank Holding Company) _____ will fully comply with the reporting obligations imposed upon it by the provisions of 5 Del. C. §854.

SWORN TO AND SUBSCRIBED BEFORE me, a Notary Public, this _____ day of _____, 198__

(NOTARY PUBLIC)

Symbol Key

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

Final Regulations

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

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

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

Statutory Authority: 24 Delaware Code,
Section 2509, (24 **Del.C.** 2509)

ORDER**Nature of the Proceedings**

Pursuant to 24 Del. C. §2509 the Board proposed to amend Regulation I and Regulation V, copies of the proposed amendments as published in the October 1, 1997 Register of Regulations are attached hereto, to amend the continuing education requirements to conform to changes in statute, waive the requirement for a log under certain circumstances, and to permit a student intern participating in an approved college of pharmacy practical program to engage in activities defined as the practice of dispensing. The Notice provided for a public hearing on January 14, 1998 at which time the hearing was held as scheduled. A quorum of the board was present.

Summary of the Evidence

No written or oral comment was received by the Board.

Findings of Fact

The Board finds that the adoption of the proposed amendments is in public interest for the following reasons:

1. The amendment to Regulation 1C is necessary to conform to the change in the biennial license period set in accordance with a statutory change relating to the Division of Professional Regulation.

2. The amendment to Regulation VD3c wives the requirement of a log being maintained if the policies and procedures in place ensure adequate checks by the pharmacist in accordance with the regulations. The Board finds that this requirement of a log was a duplication unnecessary to protect the public health if the adequate checks were in place.

3. The amendment to Regulation VB will allow a student participating in an approved college of pharmacy coordinated, practical experience program to perform the same functions as an intern and allow the student to gain the practical experience under the supervision of a pharmacist in the

structure of an approved college of pharmacy program.

Decision and Order

The Board having found that the proposed amendments to Regulations I and V are in the public interest, the board hereby adopts the proposed amendments as noticed in the November 1, 1997 Register of Regulations, a copy of which is attached hereto, to be effective 10 days after publication of this Order in the Register of Regulations.

IT IS SO ORDERED this 11th day of February, 1998.

DELAWARE STATE BOARD OF PHARMACY

REGULATION I PHARMACIST LICENSURE REQUIREMENTS

C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial license period. No carry over of credit from one registration period to another period is permitted. For the period from January 1, 1998, through and including September 30, 1998, no continuing education will be required and continuing education credits received during this time period may be credited to the next biennial renewal.

2. Grace Period – Pharmacists who have not submitted evidence of having completed the C.E. requirements by the renewal date will be granted an extension of time to comply with the requirements of the Act, not to exceed sixty days (i.e., March 1 of the renewal year.)

3. 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. The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.

Criteria for Hardship Exemption as Recommended by the Continuing Education Advisory Council:

a. 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.

b. The Continuing Education Advisory Council will review requests and send recommendations to the Board.

c. The Board will notify the registrant of its decision.

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)

REGULATION V DISPENSING

B. 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 under the immediate and personal supervision of a pharmacist, or student participating in an approved College of pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

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.)

D. Supportive personnel

1. Qualifications and training

a) 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.

b) 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:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal

Statutes and Regulations

- 12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) 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.

2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities

of these persons.

3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) 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:

1) Obtaining the medication from stock.

2) Typing the label after the pharmacist has interpreted the directions.

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 such selection is properly checked by the pharmacist before the dose is authorized.

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

1) The formulation is developed by the pharmacist before proceeding with the compounding.

2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

4) The finished product is checked by the pharmacist before dispensing.

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.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

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

Statutory Authority: 24 Delaware Code,
Section 3007(a)(1) (24 **Del.C.** 3007(a)(1))

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 19th day of May, 1998, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Professional Counselors of Mental Health (hereinafter "the Board") enters this Order adopting Rules and Regulations.

NATURE OF THE PROCEEDINGS

Pursuant to due notice and to its authority under 24 *Del. C.* § 3007, the Board proposed new Rules and Regulations to replace the existing Rules and Regulations. The public hearing on the Board's proposal was originally scheduled for March 6, 1998. This hearing was rescheduled and noticed for April 3, 1998 (see attached Notice of Public Hearing). The public hearing was held as noticed on that date and in accordance with 29 *Del. C.* § 10117.

**EVIDENCE AND INFORMATION SUBMITTED AT
PUBLIC HEARING**

At the April 3, 1998 public hearing, the Board considered two written comments received from Beth A. Dewson and Representative Stephanie A. Ulbrich, Chair of the Joint Sunset Committee. There was minimal public attendance at the hearing, and no members of the public offered oral comments on the proposed Rules and Regulations or on the written comments received.

Ms. Dewson's written comment, a letter to the Members of the Board dated March 1, 1998, was marked as Exhibit No. 1 and made part of the record of the Public Hearing. Ms. Dewson suggested that the Board's new Rules and Regulations should include public notice of the Board's decisions in disciplinary proceedings as a means of both protecting the public and deterring unprofessional conduct by licensed counselors. She suggested that such notice could be included in the legal notice section of area newspapers and could be limited to decisions that change the status of a counselor's professional license.

Representative Ulbrich's comments, in the form of a letter dated January 22, 1998, were included in the hearing record as Exhibit No. 2. Representative Ulbrich suggested that the Board's current statutory authority does not include

the power to impose continuing education requirements on licensees as a condition of license renewal, so that the proposed Rules and Regulations should not impose such a requirement. Representative Ulbrich also noted that the Joint Sunset Committee plans to draft legislation that would expand the Board's authority to include the power to require continuing education of licensees.

FINDINGS OF FACT AND CONCLUSIONS

The Board concludes that the Proposed Rules and Regulations should be adopted as noticed except that the Rule VI(2)(b) and (c), imposing a continuing education requirement on licensees, shall be deleted and Rule VI(2)(d) renumbered as (b).

Specifically, the Board finds that Ms. Dewson's suggestions relating to the publication of the Board's decisions on disciplinary matters may exceed the scope of the Board's authority in certain cases and that the procedures currently in place protect the public comparatively as well as newspaper publication. 29 Del. C. § 3016 allows the Board to take action against a licensee as "permitted under [chapter 30]" and directs only that the Board's decisions be sent to the complaining party and the licensee. While Section 3015 of Title 29 grants the Board the authority to publicly censure a practitioner, the lack of specific statutory authority to publish all decisions is of concern to the Board. The Board also notes that any regulation requiring publication of the Board's decisions would impact the procedures and practices of the Division of Professional Regulation and further notes that information about the status of an individual's license is available to the public from the Division on request. The Board appreciates the concerns Ms. Dewson has raised, but concludes that current procedures adequately protect the public from unsound practices.

The Board does adopt Representative Ulbrich's suggestion that the Board is currently without statutory authority to adopt continuing education requirements and, accordingly, finds that Rule VI(b) and (c) should be deleted in their entirety, and Rule VI(d) renumbered as Rule VI(b). On advise from the Board's legal counsel, and pursuant to 29 Del. C. § 10113(b)(5) and § 10118(c), the Board concludes that the deletion of a proposed rule exceeding the Board's legal authority is not a substantive change in the proposal and, thus, that the Board is not required to repropose the rule.

In sum, the Board concludes that the proposed Rules and Regulations, as modified by removing continuing legal education requirements, are supported by the comments, evidence and materials presented as part of the public comment and are in the public interest. The Board also concludes that its approval of the proposed Rules and Regulations are within the Board's authority under 24 Del. C. § 3007(a)(1).

ORDER

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Professional Counselors of Mental Health, **IT IS HEREBY ORDERED** that:

1. The proposed Rules and Regulations are modified by deleting Rules VI(2)(b) and (c) in their entirety and renumbering Rule VI(2)(d) as Rule VI(2)(b).
2. The proposed Rules and Regulations as modified are approved in the exact text attached hereto as Exhibit "B."
3. The effective date of this Order is eleven (11) days from the date of its publication in the Register of Regulations, pursuant to 29 Del. C. § 10118(e).
4. The Board reserves the jurisdiction and authority to issue such other or further orders in this matter as may be necessary or proper.

BY ORDER OF THE BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH:

Lori K. Sansbury, Board President
Michael D. Betts, Board Vice-President
Arnold J. Swygert, Board Member
Susan Eichler, Board Member
H. Davis Shockley, Board Member

FINAL RULES & REGULATIONS

I. MEETINGS AND ELECTIONS

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

(2) Election of Officers - The Board shall elect officers annually at the regular December meeting

II. LICENSURE BY CERTIFICATION

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

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

Certifying Organization - A certifying organization shall be defined as a national mental health specialty certifying organization acceptable to the Board. This shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), and other organizations that meet all of the following criteria:

(a) The organization shall be a national professional mental health organization recognized as setting national

standards of clinical competency.

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

(c) The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

(d) The organization shall require the minimum of a master's degree in the counseling or behavioral science field.

This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

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

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

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

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

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

(4) Supervised Clinical Experience - Supervised clinical experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised clinical experience acceptable to the Board shall be defined as

follows:

(a) Supervised clinical experience shall consist of 1,600 hours of clinical experience concurrent with 100 hours of clinical supervision over a period of no more than four (4) years.

(b) In no case shall the applicant have less than 1,600 hours of the required post- master's degree supervised professional clinical experience.

Clinical Supervision - Clinical supervision shall be ongoing, regularly scheduled meetings with a designated, approved clinical supervisor for the purpose of oversight, guidance and review of clinical practice. Consultation and/or informal case reviews are not acceptable as clinical supervision. Clinical supervision may take place in individual and/or group settings, defined as follows:

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

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

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

Supervision shall be verified by the "Clinical Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor .

III. LICENSURE BY RECIPROCITY

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

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

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

(3) Determination of Equivalency - The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state require him/her to meet all educational, experience and supervision requirements set forth in Title

24, Delaware Code, Chapter 30. Based upon the information presented, the Board shall make a determination regarding equivalency of the requirements of Title 24, Delaware Code, Chapter 30, and those of the applicant's licensing state.

(4) Non-Equivalency LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the required 1,600 hours of supervised experience, then the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to obtain the balance of the supervised experience required. The applicant shall be given full credit for such supervised experience as was required for licensure in his/her licensing state. In such situation, the Board shall allow for disruption in the requirements that the applicant's supervised experience be completed within a four (4) year period.

IV. LICENSURE OF ASSOCIATE COUNSELORS OF MENTAL HEALTH

(1) Written Plan - The applicant shall submit a written plan for supervised professional experience, written according to the "Licensed Associate Counselor of Mental Health Guidelines for Written Plan for Supervision," and signed by the approved professional supervisor.

V. APPLICATION AND FEE, AFFIDAVIT AND TIME LIMIT

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

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

(2) Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health; and that he/she has not been convicted of any felony or misdemeanor involving dishonesty or for any offense.

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

VI. RENEWAL OF LICENSURE

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

(2) Requirements for Renewal - Requirements for licensure renewal are as follows:

(a) Certification - The candidate for renewal shall hold current certification in good standing as of the date of

licensure renewal in NBCC, ACMHC or other certifying organization. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

~~[(b) Continuing Education]~~

~~[1] Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.~~

~~[2] Acceptable Continuing Education - Acceptable continuing education shall include the following:~~

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

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

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

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

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

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

VII. REACTIVATION OF LICENSURE

(1) Reactivation - An expired license shall be reactivated as follows:

(a) Within Five (5) Years - An expired license shall

be reactivated within five (5) years following the expiration date upon fulfillment of the following requirements:

[1] Written Request - Written request to the Board requesting reactivation of licensure.

[2] Certification - Current certification in good standing, as of the date of the request for licensure reactivation in NBCC, ACMHC or other certifying organization.

[3] Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for reactivating.

[4] Fees - Payment of renewal fees for any licensure renewal periods which have elapsed since expiration of licensure, plus a late charge of fifty percent (50%) of the most recent licensure renewal fee.

VIII. RETURN TO ACTIVE STATUS

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

(a) Written Request - Written request to the Board requesting return to active status.

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

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

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

IX. TEMPORARY SUSPENSION PENDING HEARING

No order temporarily suspending a practitioner's license shall be issued by the Board with less than twenty-four (24) hours prior written or oral notice to the practitioner or the practitioner's attorney, so that the practitioner or the attorney may be heard in opposition to the proposed suspension and unless at least four (4) members of the Board vote in favor of such a temporary suspension.

An order of temporary suspension pending a hearing shall remain in effect for a period of time no longer than sixty (60) days from the date of the issuance of said order, unless the suspended practitioner requests a continuance of the date for the convening of the hearing panel. In such event, the order of temporary suspension pending a hearing shall remain in effect until the hearing panel has convened and a decision rendered.

DEPARTMENT OF EDUCATION

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

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

THE SCHOOL HEALTH TUBERCULOSIS (TB) CONTROL PROGRAM

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation The School Health Tuberculosis (TB) Control Program found on page 82 in The School Nurse, A Guide to Responsibilities and on pages A-47 - A-50 of the Handbook for K-12 Education must be amended. This regulation requires all school employees, substitutes, student teachers, contract employees and volunteers in frequent contact with students to receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first fifteen days of employment. All new school enterers must also show proof of a Mantoux tuberculin skin test given within the last 12 months or follow the recommendations of the American Academy of Pediatrics (AAP) 1997. The school nurses must also record the results in the school health record. The amendment is necessary in order to change the time span between the administration of the Mantoux tuberculin skin test for adults from every third year to every fifth year. This change was recommended by both the School Health Advisory Committee and the Division of Public Health. The other change is to remove the last sentence which states, "The above program will replace policies established by the State Board of Education effective on September 1, 1995." and to add the sentence, "School nurses must record the results of the Mantoux tuberculin skin test in the school health record". This amended regulation was not approved at the April meeting of the State Board because of a concern with the lack of clarity as to the requirement that volunteers have the Mantoux tuberculin skin test prior to serving as a volunteer in the schools. The amended regulation now being submitted for approval clarifies the status of school volunteers in relation to the test requirements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because there has been concern expressed by the local school districts about the frequency requirement and the Department of Public Health and the School Health Advisory Committee feel that a five year frequency requirement for repeating the Mantoux tuberculin test is sufficient.

III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on May 21, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of May, 1998.

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of May, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

The School Health Tuberculosis (TB) Control Program

1. All school employees, substitutes, student teachers, and contract employees (including bus drivers) who are in frequent contact with students shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment. **[Volunteers (those persons who give their time to help others for no monetary reward) shall show proof of Mantoux tuberculin skin test results taken within the last twelve months prior to assignment of tasks in the school environment where they share the same air space with students and staff on a regularly, scheduled basis.]** Known positive reactors need verification from private physician or Division of Public Health Clinics for:
 - a. skin test reaction recorded in millimeters
 - b. completion of preventive therapy for TB infection or chemotherapy for TB disease

If documentation is available, the known positive reactor need not have this tuberculin skin test. When documentation is unavailable, the employee should be tested. If documentation does not exist and the employee refuses to be skin tested again, the employee shall be asked to provide a statement in writing that he or she has had a positive skin test result in the past, and that he/she has been counseled about the signs and symptoms of tuberculosis.

2. Present employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15 every ~~third~~ fifth year of employment.

3. Newly infected positive reactors will be referred to the public health clinic or their private physicians for further evaluation. Known positive reactors who have appropriate documentation and are asymptomatic are not required to have another skin test or a chest x-ray.

4. All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP) 1997. Physicians must send documentation of the decisions. Multi-puncture skin tests will not be acceptable. A school enterer is any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from non-public schools. Known positive reactors need verification from their private physician or Division of Public Health clinics for:
 - a. skin test reaction recorded in millimeters

b. completion of preventive therapy for TB infection or chemotherapy for TB disease

Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

REPORTING CASES OF CHILD ABUSE OR NEGLECT

I. SUMMARY OF THE EVIDENCE AND INFORMATION
SUBMITTED

The Secretary seeks the approval of the State Board of Education to repeal the regulation, Reporting Cases of Child Abuse or Neglect, pages A-51 and A-52, section I.M.9.a, b, c, and d in the Handbook for K-12 Education. This regulation repeats the portions of the Delaware Code, Title 16, Sections 902, 903, 906, and 909, that define child abuse, require reporting of child abuse by school employees, describe immunity from liability, and discuss the penalty for not reporting child abuse. It is not necessary for the Department of Education to further regulate what is in the Code.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 17, 1998, in the form attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

This regulation is a repeat of the exact language in the Delaware Code and does not need to be further regulated by the Department of Education.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reason the Secretary concludes that it is necessary to repeal this regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall

be removed from the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on May 21, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of May, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of May, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

Repeal of Regulation for Reporting Cases of Child Abuse
or Neglect

The Secretary seeks the consent of the State Board of Education to repeal the regulation, Reporting Cases of Child Abuse or Neglect, pages A-51 and A-52, section I.M.9.a, b, c, and d in the Handbook for K-12 Education. This regulation repeats the portions of the Delaware Code, Title 16, Sections 902, 903, 906, and 909, that define child abuse, require reporting of child abuse by school employees, describe immunity from liability, and discuss the penalty for not reporting child abuse. It is not necessary for the Department of Education to further regulate what is in the Code.

I.M.9. REPORTING CASES OF CHILD ABUSE OR
NEGLECT

~~Delaware Code, Title 16, Chapter 9 requires that suspected cases of child abuse or neglect be reported to the Division of Social Services. The Code is excerpted here. For a complete copy, see The School Nurse: Guide to Responsibilities (Revised September 1991).~~

~~a. Section 902. Definition of Child Abuse and Neglect~~

For purpose of this chapter the term "child abuse and neglect" means the physical injury by other than accidental means, injury resulting in a mental or emotional condition which is a result of abuse or neglect, negligent treatment, sexual abuse, maltreatment, mistreatment, non-treatment, exploitation or abandonment of a child under the age of 18 or of an individual who appears to be mentally retarded.

b. Section 903. Reports Required

Any physician, and any other person in the healing arts including any person licensed to render services in medicine, osteopathy, dentistry, any intern, resident, nurse, school employee, social worker, psychologist, medical examiner or any other person who knows or reasonably suspects child abuse or neglect shall make a report in accordance with 904 of this chapter.

c. Section 906. Immunity from Liability

Anyone participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might otherwise exist and such immunity shall extend to participation in any judicial proceeding resulting from such report.

d. Section 909. Penalty

Whoever knowingly and willfully violates this chapter shall be fined not more than \$100, shall be imprisoned not more than 15 days or both.

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

MINORS CONSENT TO DIAGNOSTIC PROCEDURES

I. SUMMARY OF THE EVIDENCE AND INFORMATION
SUBMITTED

The Secretary seeks the approval of the State Board of Education to repeal the regulation, Minors Consent to Diagnostic Procedures, page A-52, section I.M.6. in the Handbook for K-12 Education. This regulation repeats a portion of Delaware Code, Chapter 13, Section 708, that states a minor twelve years of age or older who professes to be pregnant or afflicted with contagious, infectious or communicable diseases may give consent for diagnostic, preventative or lawful therapeutic procedures, except abortion, medical or surgical care and treatment. It is not necessary for the Department of Education to further regulate what is in the Code.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 17, 1998, in the form hereto attached as Exhibit A. The notice invited

written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to repeal this regulation because the regulation is simply repeating the Delaware Code, and it does not need to be further regulated by the Department of Education.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to repeal the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on May 21, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of May, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of May, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

EXHIBIT B

Repeal of Regulation for Minors Consent to Diagnostic Procedures

The Secretary seeks the consent of the State Board of Education to repeal the regulation, Minors Consent to Diagnostic Procedures, page A-52, section I.M.6. in the Handbook for K-12 Education. This regulation repeats a portion of Delaware Code, Chapter 13, Section 708, that states a minor twelve years of age or older who professes to be pregnant or afflicted with contagious, infectious or communicable diseases may give consent for diagnostic, preventative or lawful therapeutic procedures, except abortion, medical or surgical care and treatment. It is not necessary for the Department of Education to further regulate what is in the Code.

I.M. 6. MINORS CONSENT TO DIAGNOSTIC PROCEDURES

Delaware Code, Chapter 12, Section 708

~~A minor twelve years of age or over who professes to be either pregnant or afflicted with contagious, infectious or communicable diseases may give written consent for diagnostic, preventative or lawful therapeutic procedures, except abortion, medical or surgical care and treatment.~~

~~The entire law is included in The School Nurse: A Guide to Responsibilities (Revised September 1991) Page 159.~~

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

**GUIDELINES FOR SCHOOL DISTRICTS TO COMPLY
WITH THE GUN FREE SCHOOLS ACT**

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to amend the regulation Guidelines for School Districts to Comply with the Gun Free Schools Act, page A-60, section I.M.15. in the Handbook for K-12 Education. The federal Gun Free School Act requires that each state receiving funds under the Elementary and Secondary Education Act of 1964 have in effect a state law (in Delaware's case a State Department of Education regulation) that requires local education agencies to expel any student for a period of not less than one year who brings a weapon to school. The Department's present Gun Free Schools regulation needs to be amended in order to make some language changes and to

correct the numbering system. The language changes include changing the Department of Public Instruction to the Department of Education, substituting 14 Del. C., Chapter 41, Section 4112, Reporting School Crimes, for the HB 85 reference and changing the annual Suspension and Expulsion Report to the annual suspension and expulsion reporting system. The letters a. and b. will become 1. and 2., the present c. will be deleted, and the present d. will become 2.a. under the amended numbering system.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 17, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend this regulation because language changes needed to be made and numbering changes are needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the amended regulation hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in section I.M. of the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on May 21, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of May, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of May, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
 Jean W. Allen, Vice President
 Nancy A. Doorey
 John W. Jardine, Jr.
 Dr. Joseph A. Pika
 Dennis J. Savage
 Dr. Claibourne D. Smith

EXHIBIT B

GUIDELINES FOR SCHOOL DISTRICTS TO COMPLY
 COMPLIANCE WITH GUN-FREE SCHOOLS ACT

The Gun-Free Schools Act was enacted on March 31, 1994, as part of the Goals 2000: Educate America Act. The Gun-Free Schools Act amends the current Elementary and Secondary Act of 1965 (20 USC 2701 *et seq*) ESEA.

a. 1. Each school district requesting assistance under the Elementary and Secondary Act must shall, according to the Federal Statute:

(1) (a) Have a written policy requiring the expulsion from school of not less than one year of any student who brings a weapon (see Section 921 of Title 18, US Code) to a school under the jurisdiction of the district. Modification to the expulsion requirement may be made on a case-by-case basis.

(2) (b) Submit by June 1 (annually) to the Department of ~~Public Instruction~~ Education an assurance that the required policy is in effect. This requirement can be met by submitting a copy of the District Code of Conduct with the requested policy included.

(3) (c) Submit to the Department of ~~Public Instruction~~ Education:

(a) (1) Description of the circumstances of each and every expulsion imposed under the policy through the reporting requirements for ~~HB-85~~ 14 Del. C., Chapter 41, Section 4112 Reporting School Crimes.

(b) (2) Annual report of all expulsions imposed under this policy through the annual ~~Suspension and Expulsion~~ suspension and expulsion reporting system.

b. 2. Each school district requesting assistance under the ESEA shall develop and submit to the Department of ~~Public Instruction by December 1, 1994~~ Education (beginning in December, 1994), for review and approval, a written policy which includes the following at a minimum:

(a) The use of the following definition in the district policy:

The term weapon as used in the Gun-Free Act means a firearm as defined in Section 921 of Title 18, United States

Code.

(1) (b) Expulsion from school of not less than one year (~~180 school days~~) for any student who brings a weapon (firearm) to a school under the jurisdiction of the district.

(2) (c) An outline of the modification process that may be used on a case-by-case basis.

(3) (d) A statement that the policy shall apply to all students; except for students with disabilities, the federal law will be followed and a determination will be made prior to any discipline or change of placement in connection with the policy as to whether or not the violation of the firearm policy was due to the student's handicapping condition.

(4) (e) A system of notification of each student and his/her parent/guardian/custodial adult at the beginning of the school year, and whenever a student enters or re-enters the school during the school year of the policy.

e. Reporting Forms

~~Secure appropriate reporting forms from the Department of Public Instruction~~ Education.

d. ~~The following definition shall apply to the district policies:~~

~~The term weapon as used in the Gun-Free Act means a firearm as defined in Section 921 of Title 18, United States Code.~~

(State Board Approved September, 1994)

BEFORE THE DEPARTMENT OF EDUCATION
 OF THE STATE OF DELAWARE
 REGULATORY IMPLEMENTING ORDER

EXTENDED ILLNESS

I. SUMMARY OF THE EVIDENCE AND INFORMATION
 SUBMITTED

The Secretary seeks the approval of the State Board of Education to readopt the regulation on Extended Illness, page A-51, section I.M.8. in the Handbook for K-12 Education. This regulation states that, Absences due to illness and temporary disability associated with pregnancy shall be treated as any other absence due to illness or temporary disability and shall be subject to the provisions of 14 Del. C., Section 2706. This regulation was adopted by the State Board in 1990 to classify absences due to pregnancy as excused absences. The regulation needs to be readopted because Superintendents decide what absences are excused and what absences are not excused. They need to know that the Department of Education defines illnesses associated with pregnancy as the same as any other legitimate illness and hence constitutes an excused absence.

Notice of the proposed regulation was published in the

News Journal and the Delaware State News on April 17, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

EXHIBIT B

II. FINDINGS OF FACT

The Secretary finds that it is necessary to readopt this regulation because the Department of Education has been given the responsibility in 14 Del. C., Chapter 27, Section 2706, of making rules and regulations defining excused absences.

I.M.8. EXTENDED ILLNESS

Absences due to illness and temporary disability associated with pregnancy shall be treated as any other absence due to illness or temporary disability and shall be subject to the provisions of 14 Del. C., §2706.

III. DECISION TO READOPT THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to readopt the proposed regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby readopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the regulation hereby readopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

IV. TEXT AND CITATION

The text of the regulation readopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in Section I.M. in the Handbook for K-12 Education.

IN THE MATTER OF:

REVISION OF THE REGULATIONS
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on May 21, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to outpatient hospital laboratory services. 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 April 1998 Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 1998 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

IT IS SO ORDERED this 21st day of May, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of May, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective June 10, 1998.

May 12, 1998

Date of Signature

Gregg C. Sylvester, M.D.

Gregg C. Sylvester, M.D.

Secretary

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its outpatient hospital provider manual to remove procedural sections from the policy portion of the manual. These will now appear in appendices.

THE PROPOSED REGULATORY CHANGE WAS PUBLISHED IN 1:10 DEL.R. 1516. THE FINAL REGULATION CONTAINS NO CHANGES, THEREFORE, IT IS NOT REPRINTED

DEPARTMENT OF JUSTICE

DELAWARE SECURITIES ACT

Statutory Authority: 6 Delaware Code, Sections 7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309(c), 7309A(f), 7312, 7314(b)(4), 7317(c), 7325(b) (6 **Del.C.** §§7306(a)(17); 7307; 7309(b)(2), (b)(9), (c); 7309A(f); 7312, 7314(b)(4), 7317(c), 7325(b))

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

In the Matter of:

ADOPTION OF RULES
AND REGULATIONS
PURSUANT TO THE
DELAWARE SECURITIES ACT

May 6, 1998

ORDER ADOPTING RULES AND REGULATIONS
PURSUANT TO THE DELAWARE SECURITIES ACT

On December 30, 1997, the Securities Commissioner issued for notice and comment proposed rules and regulations pursuant to the Delaware Securities Act. The proposed rules and regulations were thereafter filed, together with the required notice, with the Registrar for publication on or about February 2, 1998, in the Register of Regulations pursuant to 29 Del.C. §1134. The proposed rules and regulations were held open for public comment until March 5, 1998, and information was submitted to the Securities Commissioner during that comment period.

WHEREFORE, pursuant to 29 Del. C. §10118, upon consideration of the information submitted to the Securities Commissioner and all prior proceedings had herein,

IT IS HEREBY ORDERED that the following shall constitute the required summary of evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and decision to adopt the rules and regulations in the form attached hereto as Exhibit A.

IT IS FURTHER ORDERED that the effective date of these rules and regulations shall be June 12, 1998.

A. SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED

The following organizations submitted comments to the Securities Commissioner on the proposed rules and regulations:

1. Investment Company Institute
2. Investment Counsel Association of America, Inc.
3. Institute of Certified Financial Planners
4. Saskatchewan Securities Commission
5. Alan Parness of Cadwalader, Wickersham & Taft
6. Standard and Poor's

Copies of the comment letters are on file with the Securities Division and are available for public inspection. Pursuant to 29 Del.C. 10118(b)(2), the comments are summarized below.

1. Investment Company Institute Comments.

The Investment Company Institute (the "ICI") submitted the following comments on the proposed rules and regulations.

Part D. Securities Registration and Notice Filing.

The ICI recommended that proposed Section 403, regarding Notice Filings by Investment Companies, be

amended to provide greater clarity and specificity.

Part E. Exemptions from Registration.

The ICI recommended that proposed Section 500, Federal Covered Securities, be amended to clarify that, rather than being exempt from registration, federal covered securities are not subject to state registration requirements. The ICI recommended that proposed Section 505, Offers of Securities through the Internet, be clarified to include the term "securities"; to state that certain communications are not offers and are therefore not required to be registered; and to delete specific reference to the State of Delaware.

Part F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents.

The ICI recommended that proposed Section 600, Registration of Broker-Dealers; proposed Section 601, Registration of Broker-Dealer Agents; and proposed Section 602, Registration of Issuer Agents, be amended to delete the requirements that applicants file a Form U-2, Uniform Consent to Service of Process. The ICI recommended that proposed Section 603, Continuing Obligation of Registrants to Keep Information Current, be amended to clarify that the obligation to keep current the information in an application applies both to applicants and registrants and that such updating may be done via the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. ("NASD") if the applicant or registrant is registered with the NASD. The ICI recommended that proposed Section 607, Use of the Internet, be amended to conform to the changes recommended to Section 505. The ICI recommended that proposed Section 609(d)(3), Prohibited Practices, be amended to substitute the word "relevant" for "available".

Part G. Investment Advisers and Investment Adviser Representatives.

The ICI recommended that proposed Section 700, Registration of Investment Advisers, proposed Section 701, Registration of Investment Adviser Representatives, and proposed Section 702, Notice Filing Requirements, be amended to delete the requirements that applicants file a Form U-2, Uniform Consent to Service of Process; that the words "with the Commissioner" be inserted after the word is registered" in proposed Section 700(d); and that certain clarifying language be added to proposed Section 702. The ICI recommended that proposed Section 703, Updating Filed Information, be amended to insure that the provisions of the Rule include federal covered advisers. The ICI recommended that proposed Section 704, Minimum Financial Requirements, proposed Section 705, Bonding Requirements, and proposed Section 706, Recordkeeping

Requirements, be amended to conform to the North American Securities Administrators' Association's ("NASAA") Model Rule Amendments to the Uniform Securities Act, along with certain other clarifying amendments. The ICI recommended that proposed Section 707, Use of the Internet, be amended to substitute "a state requiring registration" for "this state". The ICI recommended that proposed Section 709, Prohibited Practices, be retitled "Dishonest or Unethical Practices" and that certain other clarifying amendment be adopted.

Other Comments

The ICI also commented on certain rules governing the agency's organization, practice and procedure.

2. Investment Counsel Association of America, Inc.

The Investment Counsel Association of America, Inc. ("ICAA") commented that proposed Section 706(b)(3) would impose books and records requirements on investment adviser representatives employed by federal covered advisers, and that it was based on a proposed NASAA model rule. The ICAA commented that proposed Section 709 should not apply to federal covered advisers or their supervised persons, and suggested language to be added to clarify that part.

3. The Institute of Certified Financial Planners.

Comments received from the Institute of Certified Financial Planners (the "ICFP") included the following. The ICFP commented with regard to proposed Section 700(d) that the requirement that at least one investment adviser representative be registered with an investment adviser firm be deleted in the case of a sole proprietorship. The ICFP commented with regard to proposed Section 701 that the exam requirement be waived for CFP licenses in good standing with the CFP Board of Standards. With regard to proposed Section 704, the ICFP generally opposed including minimum net worth requirements for investment advisers. With regard to proposed Section 705, the ICFP questioned bonding requirements for investment advisers. The ICFP proposed certain clarifying amendments regarding proposed Section 706, Recordkeeping Requirements. Regarding proposed Section 707, Use of the Internet, the ICFP urged that exceptions be provided for non-profit associations and that limited exemptive relief from disclosure requirements be provided for investment adviser representatives providing impersonal advice without compensation. The ICFP commented that proposed Section 709 be clarified to indicate it applies only to state-licensed investment advisers and representatives, and that certain other clarifying amendments be adopted.

4. Saskatchewan Securities Commission.

The Saskatchewan Securities Commission commented that proposed Section 608, providing a registration exemption for certain Canadian broker-dealers, appears to be the same as that adopted by a number of other states and is similar to a proposed Canadian rule out for comment that would provide reciprocal exemptions for U.S. dealers in Canada.

5. Alan Parness of Cadwalader, Wickersham & Taft.

Alan Parness of Cadwalader, Wickersham & Taft ("Cadwalader") provided the following comments.¹ Parness suggested that proposed Section 400, Registration by Coordination, be revised to recognize that a Form U-2 is required only when required under Section 7327. Parness suggested that proposed Section 405, Quarterly Reports on Registered Securities, be revised where the entire amount offered has been registered in Delaware, and that the reporting requirement be changed to an annual one. Parness suggested that the reference in proposed Section 500 to notice filings under proposed Section 502 be deleted. Parness suggested that the requirement for a Form U-2 be deleted from proposed Sections 600, 601, 602, 700, 701 and 702.

6. Standard and Poor's.

Standard & Poor's endorsed the proposed change to proposed Section 508, Recognized Securities Manuals, pursuant to which the term "manual" is defined to include all commonly recognized formats of publications, including CD-ROM and electronic dissemination over the Internet.

B. SUMMARY OF FINDINGS OF FACT

Pursuant to 29 Del. C. §10118(b)(2), the following is a brief summary of the Securities Commission's findings of fact with respect to the information submitted.

Part D. Securities Registration and Notice Filings.

Section 403 is amended to include those revisions suggested by the ICI. The amendments clarify that an issuer may, consistent with federal law, make a notice filing that consists of those documents filed by the issuer with the SEC, and otherwise clarify filing procedures.

Proposed Section 405 is deleted as burdensome and unnecessary. Consistent therewith, proposed Section 406 becomes Section 405, and proposed Section 407 becomes Section 406.

Part E. Exemptions from Registration.

Proposed Section 500 is revised to be retitled Registration Not Required of Federal Covered Securities,

and the language of the rule is similarly changed to reflect accurately the status of federal covered securities. The reference to Rule 502 is deleted because offerings in compliance with that rule are not federal covered securities.

Proposed Section 502 is revised to include explicit reference to Section 7309(b)(9), the statute under which it is promulgated; and to include the requirement of filing Delaware Form D-1 in the case of an issue not filed with the SEC, as is currently required.

Proposed Section 505 is revised to clarify that securities, products or services subject to the regulation are not subject to registration under the Act, consistent with the Commissioner's jurisdictional authority. The term "securities" is added for clarification, and the reference to "Delaware" is deleted to ease compliance with the regulation.

Part F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents.

Proposed Sections 600, 601 and 602 are amended to delete the requirement that Form U-2 be filed. That requirement is redundant, as a consent to service of process is included in other forms filed with the Commissioner by the applicant.

Proposed Section 603 is amended to explicitly allow filing of updated information through the NASD CRD System, as is currently done by registrants.

Proposed Section 607 is amended in conformity with the amendments to proposed Section 505 noted above.

Proposed Section 609 is retitled "Dishonest or Unethical Practices" to make it consistent with the language of the Act.

Part G. Investment Advisers and Investment Adviser Representatives.

Proposed Sections 700, 701 and 702 are amended to delete the requirement that Form U-2 be filed. That requirement is redundant, as a consent to service of process is included in other forms filed with the Commissioner by the applicant. Proposed Section 701 is amended to state explicitly that good cause of waiver of the exam requirement for an investment adviser representative applicant shall include holding a credential designated by the Commissioner by rule or order, including the designation Certified Financial Planner ("CFP") awarded by the Board of Standards of the Institute of Certified Financial Planners. At least six other states waive the Series 63, 65 or 66 exam requirement for CFP licenses, and to obtain the CFP license an applicant must demonstrate knowledge of investment adviser laws and regulations. Proposed Sections 702 and 703 are amended to clarify procedural requirements.

Proposed Sections 704, 705 and 706 were based on a proposed NASAA model rule which has not been adopted

by the NASAA membership. Subsection (a) of Proposed Rule 704, subsections (a)(1) and (a)(2) of Proposed Rule 705, and subsections (a), (b) and (c) of Proposed Rule 706 are replaced with the 1987 version of the applicable NASAA model rules. Those changes are adopted to promote uniformity; the pending version of the NASAA model rules has not been adopted, and the 1987 version of the model rules has been adopted by other states as well as by NASAA. Other minor changes to these Proposed Rules 704, 705 and 706 have also been made for clarification.

Proposed Section 707 has been amended to delete the reference to “this state” and to substitute the phrase “a state requiring registration,” for ease of compliance.

Proposed Section 709 is retitled “Dishonest or Unethical Practices” to make it consistent with the language of the Act. Subsection (a)(16) is amended to require disclosure of the information required by Part 11 of Form ADV to each client. Other clarifying amendments to that section include additional language setting forth the Division’s jurisdiction under federal law and changes to subsection (a)(7) to track language used by other states.

C. DECISION ADOPTING RULES AND REGULATIONS

Pursuant to 29 Del.C. §10118(b)(3), upon consideration of the information submitted to the Securities Commissioner, and based on the findings of fact with respect to the information submitted, the Rules and Regulations Pursuant to the Securities Act, in the form attached hereto as Exhibit A, are hereby adopted effective June 12, 1998. The Rules and Regulations are adopted pursuant to the authority granted in 6 Del.C. §§7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309A(f), 7312, 7314(b)(4), 7317(c) and 7325(b).

SO ORDERED this 6th day of May, 1998.

Charles F. Walker
 Securities Commissioner

¹ The comments by Parness were received by E-Mail on April 7, 1998. Although the comment period expired on March 5, 1998, Parness’s comments were reviewed and considered by the Commissioner prior to entry of this Order and adoption of the final rules.

RULES AND REGULATIONS PURSUANT TO THE
 DELAWARE SECURITIES ACT

- Part A. Organization and Functions of the Securities Division
- 100 General Statement and Statutory Authority
 - 101 Regulatory Functions
 - 102 General Organization
 - 103 Administrative Hearing Officers

Part B. Practice and Procedure in Administrative Hearings

General Rules

- 200 Construction of Rules of Practice and Procedure
- 201 Appearance and Practice in Administrative Proceedings
- 202 Business Hours
- 203 Delegated Authority of Administrative Hearing Officer
- 204 Disqualification and Recusal of Administrative Hearing Officer
- 205 Ex Parte Communications
- 206 Orders and Decisions of Administrative Hearing Officer

Service and Filing of Papers

- 210 Service of Papers by Parties
- 211 Filing of Papers with the Commissioner: Procedure
- 212 Filing of Papers: Form
- 213 Filing of Papers: Signature Requirement and Effect
- 214 Computation of Time

Pleadings and Prehearing Practice

- 220 Complaints: General
- 221 Complaints: Form and Content
- 222 Complaints: Amendment and Withdrawal
- 223 Order Delegating Authority to Hearing Officer
- 224 Answers to Complaints
- 225 Request for Hearing
- 226 Prehearing Conferences
- 227 Prehearing Submissions
- 228 Disclosure of Evidence by the Parties
- 229 Production of Witness Statements
- 230 Motions
- 231 Motions for Summary Disposition **[on the Pleadings]**
- 232 Default; Motion to Set Aside Default

Administrative Hearings

- 240 Hearings
- 241 Hearings Open to the Public
- 242 Continuance of Hearing
- 243 Procedure
- 244 Testimony
- 245 Evidence: Admissibility
- 246 Evidence: Objections and Offers of Proof
- 247 Evidence: Reference to Delaware Uniform Rules of Evidence
- 248 Proposed Findings of Fact, Conclusions of Law and Post-Hearing Briefs
- 249 Record of Hearings
- 250 Supplementation of Record
- 251 Decision of Administrative Hearing Officer

- 252 Failure to Appear at Hearing: Default
253 Contemptuous Conduct
- Practice and Procedure Regarding Summary Orders Issued Pursuant to Sections 7308(c), 7309(c), 7316(c) and Section 7325(c) of the Act
- 260 Basis for Issuance of Summary Order Postponing or Suspending the Effectiveness of a Registration Statement Pursuant to Section 7308(c)
261 Basis for Issuance of Summary Order Denying or Revoking Exemption Pursuant to Section 7309(c)
262 Basis for Issuance of Summary Order Postponing or Suspending the Registration of a Broker-Dealer, Broker-Dealer Agent, Investment Adviser or Investment Adviser Representative Pursuant To Section 7316(c)
263 Basis for Issuance of Summary Cease and Desist Order Pursuant to Section 7325(c)
264 Application for Issuance of Summary Order
265 Procedure After Issuance of Order
266 Violation of Cease and Desist Order
- Appeal to the Court of Chancery
270 Right to Judicial Review
271 Procedure
272 Application to the Court for Leave to Adduce Additional Material Evidence
- Part C. Investigations
- 300 Scope of Rules Regarding Investigations
301 Nature and Purpose of Investigations
302 Information Obtained in Investigations
303 Rights of Witnesses
304 Subpoenas
305 Testimony Under Oath
306 Production of Things and Documents
307 Written Submissions by Interested Persons
- Part D. Securities Registration and Notice Filings
- 400 Registration by Coordination
401 Registration by Qualification
402 Small Company Offering Registration
403 Notice Filings for Offerings of Investment Company Securities
404 Fees
~~[405 Quarterly Reports on Registered Securities]~~
[406 405] Filing of Sales Literature
[407 406] Notice Filings for SEC Regulation D Offerings
- Part E. Exemptions from Registration
- 500 ~~[Exemptions for Registration Not required of]~~ Federal Covered Securities
501 Designated Exchange Exemption
502 Limited Offering Exemption
503 Accredited Investor Exemption
504 World Class Issuer Exemption
505 Offers of Securities through the Internet
506 Claim of Exemption by Persons Organized Not for Private Profit but Exclusively for Religious Purposes
507 Claim of Exemption for Nine-Month Commercial Paper
508 Recognized Securities Manuals
509 Unsolicited Sales
510 Transactional Exemption for Certain Institutional Buyers
511 Confirmation of Availability of Exemption
- Part F. Broker-Dealers, Broker-Dealer Agents and Issuer Agents
- 600 Registration of Broker-Dealers
601 Registration of Broker-Dealer Agents
602 Registration of Issuer Agents
603 Continuing Obligation of Registrants to Keep Information Current
604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers
605 Bonding Requirements of Intrastate Broker-Dealers
606 Recordkeeping Requirements of Broker-Dealers
607 Use of the Internet for General Dissemination of Information on Products and Services
608 Registration Exemption for Certain Canadian Broker-Dealers
609 ~~[Prohibited Dishonest or Unethical]~~ Practices
- Part G. Investment Advisers and Investment Adviser Representatives
- 700 Registration of Investment Advisers
701 Registration of Investment Adviser Representatives
702 Notice Filing Requirements for Federal Covered Advisers
703 Continuing Obligation of Registrants to Keep Information Current
704 Minimum Financial Requirements for Investment Advisers
705 Bonding Requirements of Certain Investment Advisers
706 Recordkeeping Requirements of Investment Advisers
707 Use of the Internet for General Dissemination of Information on Products and Services
708 Custody of Client Funds or Securities

709 ~~[Prohibited Dishonest or Unethical]~~ Practices

* Please note that the above section numbers refer to the original document, not to sections in the Register.

§101 Regulatory Functions

Following is a brief description of the Securities Division's regulatory functions under the Delaware Securities Act:

(a) Securities Registration and Notice Filings. (1) It is unlawful for any person to sell a security in Delaware unless that security is registered; or the security or transaction is exempt under Section 7309 of the Act; or the security is a federal covered security for which a notice filing has been made pursuant to Section 7309A of the Act. Securities for which a federal registration statement has been filed under the Securities Act of 1933 may be registered by coordination under Section 7305. Any security may be registered by qualification under Section 7306. ~~[Notice To the extent permitted by federal law, notice]~~ filings are required for federal covered securities offered or sold to Delaware investors. A stop order prohibiting the offering of a security, or suspending or revoking the effectiveness of a registration statement, may be issued where the offeror has made a material misstatement or omission in connection with that offer, or otherwise where the public interest so dictates and the statutory criteria of Section 7308 are met. Any registrant or offeror subject to such an order is entitled to a hearing under the Act. Registration or the filing of a notice filing is not a finding by the Commissioner as to the accuracy of the facts disclosed; and it is unlawful to so represent. Moreover, registration of securities or the filing of a notice filing does not imply approval of the issue by the Commissioner or insure investors against loss in their investment, but serves rather to provide information upon which investors may make an informed and realistic evaluation of the ~~[features and]~~ worth of the securities.

(2) Persons responsible for filing false information with the Commissioner or otherwise disseminating false and misleading information in connection with the purchase or sale of securities subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors, officers, and the underwriters and dealers and others may be liable in damages to purchasers of registered securities if disclosures are materially defective. In addition, the statute contains antifraud provisions which apply generally to the ~~[offer and]~~ sale of securities, whether or not registered.

(b) Registration and Licensing of Broker-Dealers, Broker-Dealer Agents and Issuer Agents. The Act provides for registration with, and regulation by, the Commissioner of broker-dealers, broker-dealer agents and issuer agents. Registrations must be renewed annually. The activities of broker-dealers, broker-dealer agents and issuer agents in the

conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices ~~[within or outside the State]~~, and which make unlawful those practices which would constitute fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

(c) Registration and Licensing of Investment Advisers and Investment Adviser Representatives; Notice Filings for Federal Covered Advisers. The Act provides that persons who, for compensation, engage in the business of advising others with respect to securities transactions must register with the Commissioner unless they are registered with the Securities and Exchange Commission ("SEC") or otherwise exempted from registration under the Act. Federal covered advisers (those registered with the SEC) who have a place of business in Delaware or who had more than five Delaware residents as clients in the past 12 months must file a notice filing and filing fee with the Commissioner as provided by Section 7314 of the Act. All investment adviser representatives ~~(whether employed by or associated with a federal covered adviser or~~ of a state-registered adviser) who have a place of business in Delaware must register with the Commissioner. **[In addition, any investment adviser representative of a federal covered advisor must register with the Commissioner if the representative has a place of business in Delaware. As used in the Act and these rules, the terms "investment adviser representative" and "place of business" as used with respect to a representative of a federal covered advisor shall have the same meaning as found in SEC Rule 203A-3 under the Investment Advisers Act of 1940.]** Registrations must be renewed annually. The activities of investment advisers and investment adviser representatives in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices ~~[within or outside the State]~~, and which make unlawful those practices which would constitute a fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

 §102 General Organization

(a) The Securities Division is **[part of a unit within]** the Fraud Division of the State Department of Justice. In addition to the Securities Commissioner, the Securities Division has a staff which includes lawyers, a securities analyst, investigators and examiners, as well as administrative and clerical employees. The Securities Commissioner and other staff members shall perform, in addition to their duties under the Securities Act, such additional duties as the Attorney General may assign from time to time.

(b) The Securities Division is a statewide office with authority over all three counties in Delaware. The Securities Commissioner is located at 820 North French Street, Wilmington, Delaware, 19801. The telephone number is (302) 577-8424. The Securities Division's Kent County mailing address is 45 The Green, Dover, Delaware, 19901.

(c) Enforcement activities are conducted and supervised by Deputy Attorneys General assigned to the Division with the assistance of staff securities investigators. Administrative and injunctive actions may be instituted and prosecuted by a Deputy Attorney General after review and determination that there exists sufficient evidence to support the allegations in any proposed complaint. Criminal charges may be presented to the Grand Jury for indictment after review by the Director of the Fraud Division and/or the State Prosecutor.

(d) Registration and renewal of securities filings are reviewed by the Securities Division for adherence to standards of reporting and financial disclosure under the Securities Act, as well as substantive business requirements of the Act. The staff also reviews exempt securities filings for compliance with the exemptive provisions of Section 7309 and the disclosure requirements of the Act.

(e) Registration of broker-dealers, broker-dealer agents, issuer agents, investment advisers and investment adviser representatives is conducted by staff members in the Division's Firm/Agent Registration Section, with review and oversight by the Securities Commissioner and other Deputy Attorneys General.

(f) Compliance audits and examinations of state-registered investment advisers are undertaken by the Division's investment adviser examiners on a periodic basis. Special examinations of both broker-dealers and investment advisers may also be undertaken by the staff. Access to all books and records is required in any examination pursuant to Section 7315 of the Act. The Securities Division may cooperate, by joint examination or otherwise, with the securities administrators of other states, the SEC, and any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(g) The Securities Division is also responsible for the Attorney General's investor education program. The Program includes, but is not limited to:

(1) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commissioner; and increasing public knowledge of the functions of the Securities Division.

(2) Providing information to investors who inquire about individuals and entities regulated by the Commissioner, the operation of the securities markets, or the functions of the Securities Division.

(h) The Securities Division provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Commissioner and accompanied by a fee of \$75.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or any rule or regulation adopted thereunder.

 §202 Business Hours

The office of the Securities Division, at 820 North French Street, Wilmington, Delaware, 19801, is open each day, except Saturdays, Sundays, and State legal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Wilmington, Delaware. State legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr; **[Presidents Presidents']** Day; **[Good Friday]** Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday by the Governor or the State Legislature.

 §206 Orders and Decisions of Administrative Hearing Officer

(a) Availability for inspection. Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(b) Date of entry of orders. The date of entry of an order shall be the date the order is signed. Such date shall be reflected in the **[caption of the]** order, **[or if there is no caption, in the order itself]**.

 §231 Motion for Summary Disposition **[on the Pleadings]**

(a) After a respondent's answer has been filed and documents have been made available to that respondent for

inspection and copying pursuant to Rule 228, the respondent or the Division may make a motion for summary disposition **[on the pleadings]** of any or all allegations of the complaint with respect to that respondent. Any motion for summary disposition **[on the pleadings]** shall be filed within 30 days after the filing of the respondent's answer ~~[or at such other time as unless otherwise]~~ ordered by the hearing officer. Notwithstanding the provisions of Rule 230, any opposition or response to a motion for summary disposition **[on the pleadings]** shall be filed within 14 days after service of the motion. Reply briefs shall be filed within five days after service of the opposition or response.

(b) A motion for summary disposition **[on the pleadings]** pursuant to paragraph (a) shall be accompanied by ~~[the following: a statement of undisputed facts;]~~ a supporting memorandum of points and authorities.~~[- and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters therein.]~~ The motion for summary disposition~~[- and]~~ supporting memorandum of points and authorities~~[- and any declarations, affidavits or attachments]~~ shall not exceed **[35 25]** pages in length. ~~[Matters outside the pleadings shall not be presented or considered on a motion for summary disposition on the pleadings.]~~

(c) ~~[The hearing officer shall promptly grant or deny the motion for summary disposition on the pleadings or shall defer decision on the motion.]~~ The hearing officer may grant the motion for summary disposition if ~~[there is no genuine issue with regard to any material fact and]~~ the party making the motion is entitled to a summary disposition as a matter of law. ~~[If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, Otherwise]~~ the hearing officer shall deny or defer the motion.

§260 Basis for Issuance of Summary Order Postponing or Suspending the Effectiveness of a Registration Statement Pursuant to Section 7308(c)

[The Except as provided in subsection (i) of this Rule, the] Securities Division may make application for, and an Administrative Hearing Officer may issue, a summary order postponing or suspending the effectiveness of any registration statement, if such an order is in the public interest and any of the following criteria are met:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment or report is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Any provision of the Act or any rule, order, or condition lawfully imposed under the Act has been violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering;

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) The applicant or registrant has failed to pay the proper filing fee; but the hearing officer shall vacate any such order when the deficiency has been corrected;

(h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 7305(b)(4) of the Act.

[(i) A summary order may be issued suspending the offer or sale of a covered security under Section 18(b)(2) of the Securities Act of 1933 only if the order is in the public interest and the issuer has failed to comply with the requirements of Section 7309A.]

§262 Basis for Issuance of Summary Order Postponing or Suspending the Registration of a Broker-Dealer, Broker-Dealer Agent, Investment Adviser or Investment Adviser Representative Pursuant to Section 7316(c)

The Securities Division may make application for, and an Administrative Hearing Officer may issue, a summary order postponing or suspending the registration of a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative if such an order is in the public interest and the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any

material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(b) Has wilfully violated or wilfully failed to comply with any provision of the Act; or

(c) Has been convicted of a felony, infamous crime, or other crime involving moral turpitude; or

(d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(e) Is the subject of a cease and desist order or of an order denying, suspending, or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative; or

(f) Is the subject of an order entered within the past ten years by the securities administrator of any other state or by the Securities and Exchange Commission either ordering the person to cease and desist from engaging in or continuing any conduct or practice involving any aspect of the securities business, or suspending, denying or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative, or the substantial equivalent of those terms as defined in the Act and these rules; or is suspended or expelled from **[or found to have violated a rule of]** a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. §78a et seq.] either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by administrative or judicial order or is the subject of a United States post office fraud order; or

(g) Has engaged in dishonest or unethical practices within or outside this State; or

(h) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; or

(i) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or

(j) Has failed reasonably to supervise (1) his agents or employees, if he is a broker-dealer or broker-dealer agent with supervisory responsibilities; or (2) his adviser representatives or employees if he is an investment adviser or investment adviser representative with supervisory responsibilities, and such failure may be inferred from an agent's, investment adviser representative's, or employee's violations;

(k) Has failed to pay the proper filing fee, but the hearing officer shall vacate any denial or suspension order when the deficiency has been corrected; or

(l) Has violated or failed to comply with any lawful order issued by the Commissioner or by an Administrative Hearing Officer acting pursuant to delegated authority under

Rule 103; or

(m) Has within the past ten years been a partner, officer, director, controlling person or any person occupying a similar status or performing similar functions in a broker-dealer or investment adviser whose registration in this State or any state, or with the SEC, has been revoked for disciplinary reasons, or whose membership in a national securities exchange or national securities association has been terminated for disciplinary reasons.

§263 Basis for Issuance of Summary Cease and Desist Order **[Pursuant to Section 7325(c)]**

Whenever it appears that a person has violated the Delaware Securities Act by failing to register or engaging in fraud or other prohibited conduct, an Administrative Hearing Officer may summarily issue a cease and desist order against that person under Section 7325(c) of the Act.

§264 Application for Issuance of Summary Order

(a) Procedure. A request for entry of a summary order shall be made by application **[in the form of an administrative complaint]** filed by the Division. The application shall **[set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent; and whether the relief is sought ex parte the Administrative Hearing Officer for disposition].**

(b) **[Accompanying documents Information required with application].** The **[application administrative complaint]** shall **[be accompanied by set forth] a [declaration statement] of [the] facts [signed by a person upon which the application is based, together] with [knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, supporting documentation; cite to the relevant statutory provision or rule that each respondent is alleged to have violated;] and, [unless state the summary] relief [is] sought [ex parte, a proposed notice of hearing and order to show cause whether the temporary relief should be imposed against each respondent. If a proceeding for a permanent order has not already been commenced, a complaint instituting proceedings to determine whether a permanent order should be imposed shall also be filed with the** The application **[or shall include a proposed order imposing the summary relief sought and notifying respondent of his right to a hearing] as [provided in Rule soon thereafter as practicable 265].**

(c) Record of proceedings. A record from which a verbatim transcript can be prepared shall be made of all hearings, including ex parte presentations made by the Division.

§265 Procedure After Issuance of Order

(a) Notice. Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor. Notice shall be given by means reasonably calculated to give actual notice of issuance of the order, including telephone notification and service of the order pursuant to Rule 210. Such notice shall include notification that the subject of the order may request a hearing and that if such a request is made in writing the hearing shall be scheduled within 15 days from the date the written request is received.

(b) Request for hearing. Any person who is the subject of a summary order may request a hearing before an administrative hearing officer on an application to set aside, limit or suspend the summary order. **[That The request for hearing is to be filed within 25 days of service of the administrative complaint. If a hearing is requested, that]** hearing shall be scheduled within 15 days from the date the written request is received.

(c) Procedure at hearing. The procedure at a hearing on a summary order shall be determined by the hearing officer, with the understanding that each party shall be entitled to be heard in person or through counsel. The hearing officer shall rule on the admissibility of evidence and other matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs and/or proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submissions.

(d) Decision of Hearing Officer. After hearing evidence pursuant to subsection (c) of this Rule, the hearing officer shall **[, within 30 days of the hearing,]** issue a decision on respondent's application to set aside, limit or suspend the order, and may grant or deny that application; modify or vacate the order; or extend it until final determination. If no hearing has been requested and none has been ordered by the hearing officer, the summary order shall remain in effect until it is modified or vacated by the hearing officer.

(e) Duration. Unless set aside, limited or suspended, either by the hearing officer or a court of competent jurisdiction, a summary order shall remain in effect until the completion of the proceedings on whether a permanent order shall be entered or, if no such proceedings occur, until otherwise modified or vacated by the hearing officer.

§403 Notice Filings for Offerings of Investment Company Securities

(a) Except as provided in subsection (b) hereof, no investment company that is registered under the Investment Company Act of 1940 or that has currently filed a registration statement under the Securities Act of 1933 is required to file with the Commissioner, either prior to the

initial offer or after the initial offer in this state of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the SEC or is part of an amendment to such federal registration statement; provided, however, that **[such if]** an investment company **[shall, prior to the initial offer of such a covered security, file with the Commissioner a Form NF for such security, together with a consent to service of process signed by the issuer and a filing fee equal to one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware in the initial offering, but does]** not **[less than \$200.00 or more than \$1,000.00 file with the Commissioner a copy of its federal registration statement and any amendments thereto, together with a consent to service of process and the fees provided herein, such investment company shall, prior to the initial offer of such a covered security, file with the Commissioner a Form NF for such security, together with a consent to service of process signed by the issuer and a filing fee equal to one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware in the initial offering, but not less than \$200.00 or more than \$1,000.00. An issuer that indicates on the Form NF that it is offering an "indefinite" amount of shares in Delaware shall pay a filing fee of \$1,000.00].**

(b) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the Commissioner and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment of such federal registration statement.

(c) An investment company offering in Delaware will be treated as a separate security where the offering involves a fund with a share price, asset value, class of shareholders, or set of assets that differs from those of other securities for which other notice filings have been made. Generally, this means that separate investment company "series" or "portfolios" will be treated as separate securities for purposes of notice filings under this section.

(d) The initial filing of a Form NF by an investment company pursuant to subsection (a) hereof is effective for one year **[commencing upon the later of receipt by the Commissioner of the Form NF and fees or the effectiveness of the offering with the Securities and Exchange Commission.]** The investment company must renew its notice filing (or notice filings, where multiple filings were made for multiple series or portfolios) annually by filing with the Commissioner **[prior to the expiration of a current notice filing, either a copy of the issuer's registration statement or]** a Form NF and a filing fee in

accordance with subsection (a) hereof. **[A notice filing renewed pursuant to this subsection shall take effect upon the expiration of the notice filing being renewed.]**

~~§405 Quarterly Reports on Registered Securities~~

~~Quarterly reports shall be filed by a person who filed the registration statement as long as the registration is effective in order to keep reasonably current all information contained in the registration statement and to disclose the progress of the offering.]~~

§~~406~~ 405] Filing of Sales Literature

Any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser must be filed with the Securities Commissioner unless the security or transaction is exempted by Section 7309 of the Act or the security is a federal covered security under Section 7309A of the Act.

§~~407~~ 406] Notice Filings for SEC Regulation D Filings

(a) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 shall file with the Commissioner a notice on SEC Form D and a consent to service of process on a Form U-2, Uniform Consent to Service of Process, no later than 15 days after the first sale of such federal covered security in this state.

(b) For purposes of this section, "SEC Form D" is defined as the document adopted by the SEC and in effect on September 1, 1996 (and as may be amended by the SEC from time to time), entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption", including Part E and the Appendix.

Part E. Exemptions from Registration

§500 ~~[Exemptions for Registration Not Required of]~~ Federal Covered Securities

Federal covered securities, as defined in Section 7302(a)(17) of the Act, are ~~[exempt from registration not required to be registered]~~ under Section 7304 of the Act. ~~[Notice Notwithstanding this rule, however, notice]~~ filings are required for registered investment company offerings under Rule 403; ~~[for limited offerings of securities under Rule 502;]~~ and for offers or sales of securities in Delaware pursuant to SEC Rule 506, 17 C.F.R. §230.506.

§501 Designated Exchange Exemption[s]

Any security listed or approved for listing upon notice

of issuance on the Boston Stock Exchange or the Chicago Board Options Exchange is exempted from Sections 7304, 7309A and 7312 of the Act pursuant to Section 7309(a)(8) of the Act.

§502 Limited Offering Exemption[s]

(a) Any offer or sale of securities made in compliance with SEC Rule 505, 17 C.F.R. §230.505 (Exemption for Limited Offers and Sales of Securities Not Exceeding \$5,000,000) of Regulation D under the Securities Act of 1933 and the provisions of this Rule is exempt from registration under ~~[Section 7309(b)(9) of]~~ the Act.

(b) To qualify for the limited offering exemption ~~[under Section 7309(b)(9),]~~ the following conditions and limitations must be met:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered under the Act. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered under the Act.

(2) The limited offering exemption is not available if the issuer, any of its directors, officers, general partners, trustees, beneficial owners of ten percent or more of a class of its equity interests, promoters currently connected with it in any capacity, or any person (other than a broker-dealer currently registered under the Act) that has been or will be paid or given, directly or indirectly, a commission or similar remuneration for the solicitation of a prospective purchaser or in connection with sales of securities under this exemption:

(i) within ten years before the first sale of securities in an offering under this exemption has filed a registration statement or application for exemption from registration that is currently subject to a stop order under any state's securities laws;

(ii) within ten years before the first sale of securities in an offering under this exemption has been convicted of or has pleaded nolo contendere to a felony or misdemeanor in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or with a state securities administrator, or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;

(iii) is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years before the first sale of securities in an offering under this exemption permanently restraining or

enjoining, that person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or a state securities administrator;

(iv) is the subject of any order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(v) is subject to a state administrative order entered by a state securities administrator in which fraud or deceit was found, if the final order was entered within ten years before the first sale of securities in an offering under this exemption.

(3) Not later than 15 days after the first sale of securities under this regulation, the issuer shall file with the Commissioner a manually signed notice on a completed SEC Form D (Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption), as filed with the SEC and as that form may be amended from time to time. That filing shall constitute an affirmation by the issuer that it has complied with SEC Rule 505 and that upon written request the issuer shall furnish to the Commissioner any and all information furnished by the issuer or its agents to the offerees.

(4) [An issuer relying on the exemption from registration under Section 7309(b)(9) of the Act and this regulation that is not filing SEC Form D with the SEC shall file with the Commissioner, not later than 15 days after the first sale of securities under this regulation, or within six months of commencement of the offering (whichever occurs first), a Delaware Form D-1 (Notice of Sale of Securities Pursuant to Delaware Securities Act Section 7309(b)(9)).

([4 5]) In all sales to nonaccredited investors in Delaware, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions **[is are]** satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs.

(ii) The purchaser either alone or with his or her purchaser representative(s) has such knowledge and experience in financial and business matters that he or she is or they are capable of evaluating the merits and risks of the prospective investment.

(c) Neither this regulation nor the Act provide an exemption from the provisions of Section 7303 of the Act.

(d) The burden of proving an exemption under this regulation is on the person claiming the exemption.

(e) The Commissioner may, by rule or order, increase the number of purchasers or waive any other condition of

this exemption.

§505 Offers of Securities Through the Internet

(a) A communication that is placed on the Internet by or on behalf of an issuer that is designed to raise capital and/or to distribute information on **[available securities,]** products or services and that is directed generally to anyone having access to the Internet, whether through postings on "Bulletin Boards," displays on "Home Pages," or otherwise (an "Internet Communication") shall not constitute an offer within the meaning of Section 7302(11)(a) of the Act, and shall therefore **[constitute an exempt transaction not be required to be registered]** under the Act, provided that:

(1) The Internet Communication indicates by a prominent legend at the beginning of the Internet Communication that the securities are not being offered to any person in **[Delaware a state where such offer or sale would be in violation of the law];**

(2) An offer of the issuer's securities is not otherwise directed to any person in Delaware by, or on behalf of, the issuer; and

(3) Unless otherwise exempt under the Act, no sale of the issuer's securities is made in Delaware, as a result of the Internet Communication.

(b) Reliance on the exemption provided by this rule does not preclude an issuer from relying on other available exemptions for offers provided under the Act.

(c) The term "Internet" for the purposes of this rule includes the Internet, the World Wide Web and similar proprietary and common carrier electronic systems.

§508 Recognized Securities Manuals

(a) Each of the following manuals shall be deemed a "Recognized Securities Manual" for the purposes of 6 Del. C. §7309(b)(2):

- (1) Moody's Industrial Manual
- (2) Moody's Transportation Manual
- (3) Moody's Public Utility Manual
- (4) Moody's Bank and Finance Manual
- (5) Standard & Poor's Standard Corporation

[Descriptions Records]

- (6) Fitch's Individual Stock Bulletin
- (7) Moody's OTC Industrial Manual

(b) The term "manual" for purposes of this rule includes all commonly recognized formats of publications, including CD-ROM and electronic dissemination over the Internet.

Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

§600 Registration of Broker-Dealers

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) ~~[Any applicant for a A] broker-dealer [license must also file a Form U-2 (Uniform Consent to Service of Process) registered with the Commissioner shall register at least one agent]~~ with the Commissioner.

~~[(e) A broker-dealer registered with the Commissioner shall register at least one agent with the Commissioner.]~~

~~[(f) e]~~ Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

§601 Registration of Broker-Dealer Agents

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) Any applicant for a broker-dealer agent license

must also ~~[file a Form U-2 (Uniform Consent to Service of Process) with the Commissioner and]~~ successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

(e) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

§602 Registration of Issuer Agents

(a) A person applying for a license as an issuer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an issuer agent shall file his or her application and the fee required by Section 7314 of the Act with the Commissioner, together with such further information as the Commissioner may reasonably require.

(c) Any applicant for an issuer agent license must also ~~[file a Form U-2 (Uniform Consent to Service of Process) with the Commissioner and]~~ successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

§603 Continuing Obligation of Registrants to Keep Information Current

(a) Persons registering **[or registered]** as broker-dealers, broker-dealer agents or issuer agents are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their application for registration. **[An applicant or registrant who is registered with the NASD may notify the Commissioner of such material change by filing an amendment through the NASD CRD. All other persons shall notify the Commissioner directly.]**

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

§607 Use of the Internet for General Dissemination of Information on Products and Services

(a) Broker-dealers and broker-dealer agents who use the Internet to distribute information on **[available securities,]** products **[and or]** services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) the broker-dealer or agent in question may only transact business in **[Delaware a state requiring registration]** if first registered, excluded or exempted from state broker-dealer or agent registration requirements, as the case may be; and

(ii) follow-up, individual responses to persons in Delaware by such broker-dealer, or agent that involve either the effecting or attempting to effect transactions in securities, will not be made absent compliance with state broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitations, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Delaware, said broker-dealer or agent is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer or agent from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities in Delaware over the Internet, but is limited to the dissemination of general information on **[securities,]** products **[and or]** services; and

(4) In the case of an agent:

(i) the affiliation with the broker-dealer is prominently disclosed within the Internet Communication;

(ii) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

(iii) the broker-dealer or investment adviser with whom the agent is associated first authorizes the distribution of information on the **[particular securities,]** products **[and or]** services through the

Internet Communication; and

(iv) in disseminating information through the Internet Communication, the agent acts within the scope of the authority granted by the broker-dealer;

(b) The position expressed in this rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any broker-dealer and agent engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

§609 **[Dishonest or Prohibited Unethical]** Practices

(a) Each broker-dealer and broker-dealer agent registered in Delaware is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices described below in this rule, among others, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by the Act.

(b) Broker-Dealers. For the purposes of 6 Del. C. §7316(a)(7), **[dishonest or]** unethical practices by a broker-dealer shall include, but not be limited to, the following conduct:

(1) Engaging in an unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or failing to notify customers of their right to receive possession of any certificate of ownership to which they are entitled;

(2) Inducing trading in a customer's account that is excessive in size or frequency in view of the customer's investment objective, level of sophistication in investments, and financial situation and needs;

(3) Recommending a transaction without reasonable grounds to believe that such transaction is suitable for the customer in light of the customer's investment objective, level of sophistication in investments, financial situation and needs, and any other information material to the investment;

(4) Executing a transaction on behalf of a customer without prior authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed

written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate and identify customer's free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by SEC regulations;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit (commissions or profits equal to 10% or more of the price of a security are presumed to be unreasonable);

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which, together with the preliminary prospectus, includes all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Charging any fee for which no notice is given to the customer, and consent obtained, prior to the event incurring the fee;

(13) Offering to buy from or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative or deceptive device, practice, plan, program, design or contrivance, that may include but not be limited to:

(i) Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale

of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(iii) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona-fide bid for, or offer of, such security;

(18) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, and, if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, including:

(i) with respect to a security recommended by the broker-dealer, material information that is reasonably available; and

(ii) a written response to any written request or complaint;

(22) Making a recommendation that one customer buy a particular security and that another customer sell that security, where the broker-dealer acts as a principal and such recommendations are made within a reasonably contemporaneous time period, unless individual suitability considerations or preferences justify the different recommendations;

(23) Where the broker-dealer holds itself out as a market maker in a particular security, or publicly quotes bid prices in a particular security, failing to buy that security from a customer promptly upon the customer's request to sell;

(24) Recommending a security to its customers without conducting a reasonable inquiry into the risks of that investment or communicating those risks to its agents and its customers in a reasonably detailed manner and with such emphasis as is necessary to make the disclosure meaningful;

(25) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(26) Falsifying any record or document or failing to create or maintain any required record or documents;

(27) Violating any ethical standard in the conduct rules promulgated by the National Association of Securities Dealers; or

(28) Aiding or abetting any of the conduct listed above.

(c) Broker-Dealer Agents and Issuer Agents. For the purposes of 6 Del. C. §7316(a)(7), **[dishonest or]** unethical practices by a broker-dealer agent or an issuer agent shall include, but not be limited to, the following conduct:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

(6) Where a recommendation is made that an

unsophisticated customer purchase an over-the-counter security that (A) trades sporadically or in small volume, and (B) is not traded on any United States securities exchange (excluding the Spokane Exchange) or on the NASDAQ National Market System, failing to inform the customer that he may not be able to find a buyer if the customer would subsequently want to sell the security;

(7) Where a recommendation is made to purchase an over-the-counter security in which the asked price is greater than the bid by 25 percent or more, failing to inform the customer of the bid and the asked prices and of the significance of the spread between them should the customer wish to resell the security;

(8) Using excessively aggressive or high pressure sales tactics, such as repeatedly telephoning and offering securities to individuals who have expressed disinterest and have requested that the calls cease, or using profane or abusive language, or calling prospective customers at home at an unreasonable hour at night or in the morning;

(9) Conducting or facilitating securities transactions outside the scope of the agent's relationship with his broker-dealer employer unless he has provided prompt written notice to his employer;

(10) Acting or registering as an agent of more than one broker-dealer without giving written notification to and receiving written permission from all such broker-dealers; or

(11) Holding himself out as an objective investment adviser or financial consultant without fully disclosing his financial interest in a recommended securities transaction at the time the recommendation is made;

(12) Engaging in any of the conduct specified in subparagraph (b) above; or

(13) Aiding or abetting any of the conduct listed above.

(d) Prohibited practices in connection with investment company shares. For purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer, broker-dealer agent or issuer agent shall include, but not be limited to, the following conduct:

(1) In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares a front-end loan, a contingent deferred sales load, a SEC Rule 12**[B b]**-1 fee or a service fee which exceeds .25 percent of average net fund assets per year, or in the case of closed-end investment

company shares, underwriting fees, commissions or other offering expenses;

(3) In connection with the offer or sale of investment company shares, failing to disclose to a customer any **[available relevant]** sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint or the availability of a letter of intent feature which will reduce the sales charges to the customer;

(4) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;

(5) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;

(6) In connection with the offer or sale of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;

(7) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(8) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit

account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

(9) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;

(10) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, (i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or (ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(11) In connection with the offer or sale of investment company shares, making representations to a customer, either orally or in writing, that the broker-dealer or agent knows or has reason to know are based in whole or in part on information contained in dealer-use-only material which has not been approved for public distribution; or

(12) Aiding or abetting any of the conduct listed above.

(13) In connection with the offer or sale of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subparagraphs of this rule.

(e) The conduct set forth above is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration.

Part G. Investment Advisers and Investment Adviser Representatives

§700 Registration of Investment Advisers

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940).

Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a ~~[form U-2 (Uniform Consent to Service of Process); (v) a]~~ list of all investment adviser representatives employed by the investment adviser; and ~~(vi v)]~~ such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

(d) ~~[At least one Every]~~ investment adviser ~~[representative]~~ must ~~[have at least one investment be adviser representative]~~ registered with ~~[any investment adviser the Commissioner]~~ to obtain or to maintain its license as an investment adviser.

§701 Registration of Investment Adviser Representatives

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii) a certification that the applicant has successfully completed the Uniform Investment Adviser Law Examination (Series 65 or 66) administered by the NASD; ~~[(iv) a Form U-2 (Uniform Consent to Service of Process); and (v iv)]~~ such other information as the Commissioner may reasonably require. The Commissioner may waive the exam requirement upon good cause shown.

(c) ~~[Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act. Good cause for waiver of the exam requirement of subsection (b)(iii) of this Rule shall include holding a credential designated by the Commissioner by rule or order, so long as the individual is in good standing with the organization that issued the credential. Such credentials shall include the designation Certified Financial Planner awarded by the Board of Standards of the Insitutee of Certified Financial Planners.]~~

~~[(d) Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner~~

~~a letter of intent to renew and the fee required by Section 7314 of the Act.]~~

§702 Notice Filing Requirements for Federal Covered Advisers

(a) The notice filing for a federal covered adviser pursuant to 6 Del. C. §7314 shall be filed with the Commissioner on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. §279)) and shall include~~[-(i) the [consent to service of process fee]~~ required by ~~[6 Del. C.]~~ Sec. 73~~[27 14 of the Act. A notice filing shall be effective from its receipt by the Commissioner until the next December 31st. , and (ii) the fee required by Section 7314 of the Act.]~~

(b) The renewal of the notice filing for a federal covered adviser pursuant to Section 7314(b) of the Act shall be filed ~~[upon Form ADV-S (or prior to December 31st upon)]~~ Schedule ~~[I to Form ADV]~~, ~~[if adopted by the SEC]~~ and shall contain the fee required by Section 7314(c) of the Act. ~~[A renewal filing under this rule shall take effect upon the expiration of the filing being renewed.]~~

§703 Continuing Obligation of Registrants ~~[and Notice Filers]~~ to Keep Information Correct

(a) Persons registering as investment advisers or investment adviser representatives are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their applications for registration.

(b) ~~[Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner. A federal covered adviser who has made a notice filing under the Act shall file with the Commissioner a copy of any amendment to its Form ADV or any schedule thereto as and when such amendment is filed with the SEC. Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.]~~

§704 Minimum Financial Requirements for Investment Advisers

(a) ~~[All investment advisers registered or required to be registered under the Act shall maintain at all times, regardless of any bond permitted under this Rule, a minimum net worth of \$1.00. The amount of required~~

~~minimum net worth for certain investment advisers shall be increased subject to subparagraphs (1) and (2) below. "Assets under management" for purposes of this rule shall mean the assets under management as disclosed on the adviser's current Form ADV or any schedule or supplement thereto filed with the Commissioner.~~

~~(1) An investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.00 or one percent of such adviser's assets under management, whichever is greater. Such investment adviser who is registered or required to be registered under the Act and has custody of client funds or securities and fails to meet the foregoing minimum net worth standard shall supplement the bond required in Rule 705 by increasing the bond value by the amount of net worth deficiency, rounded up to the nearest \$5,000.00.~~

~~(2) An investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.00 or one-fifth of one percent of such adviser's assets under management, whichever is greater, unless such adviser posts a bond pursuant to Rule 705. Except as otherwise provided in subsection (c) of this Rule, unless an investment adviser posts a bond pursuant to Rule 705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.]~~

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act [~~whose total net worth falls below the minimum required~~] shall [~~by the close of business on the next business day~~, notify the Commissioner [~~by the close of business on the next day of such net worth deficiency. if such investment adviser's total net worth falls below the minimum required.~~] After transmitting such notice, each investment adviser shall, by the close of business on the next business day, file a report with the Commissioner of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds, securities or assets which are not segregated;

(3) A computation of the aggregate amount of client ledger debit balances; and

(4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean the excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, any asset of intangible nature, home, home furnishings, automobile(s), any personal item not readily marketable (in the case of an individual), advances or loans to stockholders and officers (in the case of a corporation), and advances or loans to partners (in the case of a partnership). For purposes of this Rule, the term "net capital" in Section 222(c) of the Investment Advisers Act of 1940 shall have the same meaning as "net worth" as defined in this subsection.

(d) The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

§705 Bonding Requirements of Certain Investment Advisers

(a) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the Commissioner and shall be subject to the claims of all clients of the investment adviser regardless of the [~~clients'~~ ² client's] state of residence. "Assets under management" for purposes of this rule shall mean the assets under management as disclosed on the adviser's current Form ADV or any schedule or supplement thereto filed with the Commissioner.

~~[(1) Every investment adviser registered or required to be registered under the Act having custody of client funds or securities shall be bonded in an amount equal to one percent of such adviser's assets under management, rounded up to the nearest \$5000.00, up to a maximum bond of \$100,000.00, exclusive of any supplemental bond required by Rule 704(d)(1)(a)(1). If an investment adviser having custody of client funds or securities fails to meet the minimum net worth requirement of Rule 704(a)(1), the adviser shall supplement the required bond pursuant to Rule 704(a)(1).~~

~~(2) Every investment adviser registered or~~

~~required to be registered under the Act having discretionary authority over client funds or securities but not having custody of client funds or securities that fails to meet the net worth requirements of Rule 704(a)(2) shall be bonded in an amount equal to the adviser's required net worth as determined under 704(a)(2), rounded up to the nearest \$5000.00.]~~

[(b) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than \$35,000 by a bonding company qualified to do business in Delaware. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule 704.]

[(b c)] An investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of subsection (a) of this section, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

§706 Recordkeeping Requirements of Investment Advisers

(a) Every investment adviser registered or required to be registered under this Act shall make and keep true, accurate and current the following books, ledgers and records:

~~[(1) Those books and records required to be maintained and preserved in compliance with Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)), notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.~~

~~(2) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 202(d)-1.~~

~~(3) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.~~

~~(4) A copy in writing of each agreement entered into by the investment adviser with any client.~~

~~(5) A file containing a copy of each record required by Rule 204-2(11) of the Investment Advisers Act of 1940 including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser).~~

~~(6) A copy of each written statement and each~~

~~amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 706(b)(1) and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.~~

~~(7) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.~~

~~(8) All records required by Rule 204-2(16) of the Investment Advisers Act of 1940 including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser).~~

~~(9) A file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.~~

~~(10) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.~~

~~(11) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.~~

~~(12) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.~~

~~(b) (1) Books and records required to be made under the provisions of paragraph (a)(1) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.~~

~~(2) Books and records required to be made under the provisions of paragraphs (a)(2)-(12), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the~~

last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

~~(3) Each investment adviser representative who is registered or required to be registered in this state and who has a business location in this state shall maintain at such business location (A) the records or copies required under the provisions of paragraphs(a)(3), (a)(7)-(10), (a)(14)-(15), (b), and (c), inclusive, of Rule 204-2 of the Investment Advisers Act of 1940; (B) the records or copies required under the provisions of paragraphs (a)(2)-(11), inclusive, of this Rule related to customers or clients for whom the investment adviser representative provides or has provided investment advisory services; and (C) the records or copies required under the provision of paragraph (a)(11) and (a)(16) of Rule 204-2 of the Investment Advisers Act of 1940 which records or related records identify the name of the investment adviser representative or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsections (d) and (e) of Rule 204-2 of the Investment Advisers Act of 1940. The investment adviser shall be responsible for ensuring compliance with the provisions of this subsection.~~

~~(c) To the extent that the SEC promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Commissioner for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.~~

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such

order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to: (i) Any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; or (iii) the placing or execution of any order to purchase or sell any security, provided, however: (A) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (B) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advise shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such

notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12)(i) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except: (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording or any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this subdivision (12) the term "advisory representative" shall mean any partner, officer or director of the investment adviser, any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (A) any person in a control relationship to the investment adviser; (B) any affiliated person of such controlling person; and (C) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(iii) An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of his failure to record securities

transactions of any investment adviser representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13)(i) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction requires, any direct or indirect beneficial ownership, except: (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of (1) its total sales and revenues, and (2) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subdivision (13) the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and

any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (A) any person in a control relationship to the investment adviser; (B) any affiliated person of such controlling person; and (C) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(iv) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule 709(a)(16), and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(b) If an investment adviser subject to subsection (a) of this Rule has custody or possession of securities or funds on any client, the records required to be made and kept under subsection (a) above shall also include: (1) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts; (2) a separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits; (3) copies of confirmations of all transactions effected by or for the account of any such client; and (4) a record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount of interest of each such client, and the location of each such security.

(c) Every investment adviser subject to subsection (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current: (1) records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and (2) for each security in which

any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(e) (1) All books and records required to be made under the provisions of subsections (a) to (c), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to subsection (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

(g) (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph (g)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall: (i) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record; (ii) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium the Commissioner by its examiners or other representatives may request; (iii) store separately from the original one other copy of the film or computer storage medium for the time required; (iv) with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonable safeguard records from loss, alteration, or destruction; and (v) with respect to records stored on photographic film, at all times have

available for the Commissioner's examination of its records pursuant to section 7315(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to this paragraph (g) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this rule "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.]

(d i) Every investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements.

§707 Use of the Internet for General Dissemination of Information on Products and Services

(a) Investment advisers and investment adviser representatives who use the Internet to distribute information on available products and services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The investment adviser or representative in question may only transact business in [this a] state [requiring registration] if first registered, excluded or exempted from state investment adviser or representative registration requirement, as the case may be; and

(ii) follow-up individualized responses to persons in Delaware by such investment adviser or representative that involve the rendering of personalized investment advice for compensation will not be made absent compliance with state investment adviser or representative registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said investment adviser or representative is first registered in Delaware or qualifies for an exemption or

exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered investment adviser or representative from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve the rendering of personalized advice for compensation in Delaware over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a representative:

(i) the affiliation with the investment adviser is prominently disclosed within the Internet Communication;

(ii) the investment adviser with whom the representative is associated retains responsibility for reviewing and approving the content of any Internet Communication by the representative;

(iii) the investment adviser with whom the representative is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the representative acts within the scope of the authority granted by the investment adviser;

(b) The position expressed in this rule extends to state investment adviser and representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any investment adviser and representative engaged in business in Delaware that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended.

§708 Custody of Client Funds or Securities

It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

(a) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody;

(b) The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place reasonably free from risk of destruction or other loss;

(c) All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(d) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

(e) At least once every 3 months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

(f) At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the Commissioner within 30 days after each examination.

§709 **[Prohibited Dishonest or Unethical] Practices**

(a) A person who is an investment adviser, a federal covered adviser, or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the client. While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, no investment adviser, federal covered adviser or representative shall engage in any **[dishonest or] unethical business practice [including but not limited to the following:]**. **The provisions of this section apply to federal covered advisers only to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). For purposes of §7316(a)(7) of the Act, the term "dishonest or unethical practices" shall include but not be limited to the following:]**

(1) Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount

of a specific security that shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the client's financial resources and investment objectives and the character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(6) Borrowing money or securities from a client, unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) **[~~Loaning money to a client, unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser. Extending arranging for, or participating in arranging for credit to a customer in violation of the provisions of Regulation T promulgated by the Federal Reserve Board, 12 C.F.R. §§220.1-220.131.~~**

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation **[prepared by someone other than the adviser]** to any advisory client prepared by someone other than the adviser without disclosing the fact; provided, however, that this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(10) Charging a client an **[unreasonable]** advisory fee **[that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.]**

(11) Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:

(i) Compensation arrangements connected with advisory services which are in addition to compensation from such clients for such services; and

(ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice to be rendered.

(13) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client, unless required by law to do so, or unless consented to by the client.

(15) ~~[Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940 Violating Rule 206(4)-2 under the Investment Advisers Act of 1940, irrespective of whether such investment adviser is registered under the Investment Advisers Act of 1940.]~~

(16) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the ~~[information required by Part II of Form ADV, the]~~ services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. ~~[The information required by Part II of form ADV may be disclosed in a document advisory contract, so long as it is disclosed at the time the contract is entered into, extended or renewed.]~~

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940

(18) Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Delaware Securities Act~~[. , notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.]~~

(19) To include in an advisory contract any condition, stipulation, or provision binding any person to waive compliance with any ~~[applicable]~~ provision of the Delaware Securities Act, any rule promulgated thereunder, the Investment Advisers Act of 1940, or any rule promulgated

thereunder, or to engage in any other practice that would violate Section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

(21) Engaging in any conduct, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Delaware Securities Act or any rule thereunder.

(22) Aiding or abetting any of the conduct listed above.

(b) The conduct set forth in subparagraph (a) of this Rule is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration. The federal statutory and regulatory provisions referenced herein shall apply to all investment ~~[adviser representatives and federal covered]~~ advisers, ~~[federal covered advisers and investment adviser representatives only]~~ to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No. 98-A-0017

Re: Amendment to Regulation No. 38 "Emission Standards for Hazardous Air Pollutants for Source Categories" of the *Regulations Governing the Control of Air Pollution*

Date of Issuance: May 5, 1998

Effective Date of Regulatory Amendment: June 11, 1998

I. Background

On Monday April 27, 1998, a public hearing was held at 6:00 p.m. in the DNREC Auditorium at 89 Kings Highway, Dover. The public hearing concerned a proposed amendment

to Regulation No. 38 entitled "Emission Standards for Hazardous Air Pollutants for Source Categories" of the Regulations Governing the Control of Air Pollution. The Department previously adopted Regulation No. 38 which incorporated 40 CFR Part 63, Subpart A, §§ 63.1 through 63.15 and Subpart Q §§ 63.400 through 63.406. The Department seeks to amend this regulation and adopt further pieces of the federal regulatory program. The Hearing Officer submitted a memorandum dated April 28, 1998, containing proposed findings and recommendations.

II. Findings

1. Proper notice of the hearing was provided as required by law, including publication in the Delaware Register of Regulations.

2. The Department held a public workshop to educate the public about the proposed regulatory changes.

3. A few members of the public appeared at the public hearing but provided no comments concerning the proposal.

4. Minor changes for the sake of consistency and improved clarity were made to the regulatory amendment proposal after it was put out for public notice, and the changes do not constitute substantial changes.

5. The proposed amendment to Regulation No. 38 will allow the Department to institute maximum achievable control technology standards for applicable emissions of hazardous air pollutants which will further the policies and purposes of 7 Del. C. Chapter 60.

III. Order

In view of the above findings, it is hereby ordered that the regulatory amendment as discussed hereinabove be adopted in the manner and form required by law and that the amendment be effective on the date specified above.

IV. Reasons

The regulatory amendment will further the policies and purposes of 7 Del. C. Chapter 60 and comply with the federal Clean Air Amendments of 1990.

Christophe A. G. Tulou, Secretary

The Department amends Regulation 38 by adding Subpart B, which follows. Subpart B does not change any of the existing subparts of Regulation 38 and shall be placed between existing Subpart A and Subpart Q.

REGULATION NO. 38 Amendment

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

~~3/4/~~ 4/22/98

Subpart B Requirements for Case-By-Case Control

Technology Determinations for Major Sources

The provisions of Sections 63.40 through 63.44 in Subpart B, of Title 40, Part 63 of the Code of Federal Regulations, [~~dated July 1, 1997 as set forth in Vol. 61 of the Federal Register, page 68399 et seq, dated December 27, 1996~~] are hereby adopted by reference with the following changes:

[(a) "Regulation 30" shall replace "title V" wherever it appears.

(b) Paragraph 63.40(b) shall be replaced with the following language: "The requirements of Secs. 63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998 unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) and incorporated in another subpart of part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998."]

[(a c)] The opening sentence of Section 63.41 shall be replaced with the following language: "Terms used in Secs. 63.40 through 63.44 that are not defined in this section have the meaning given to them in the Act and in subpart A of this regulation."

[(b d)] The opening of the definition of Available information found in Section 63.41 shall be replaced with the following language: "*Available information* means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of issuance of the construction permit which incorporates the final and effective case-by-case MACT determination:."

[(e e)] The following errata found in Section 63.41 as published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) "for" in definition (3) of Available information shall be replaced with "from";

(ii) "HAP's" in definition of Construct a major source shall be replaced with "HAP";

(iii) "*suite*" in definition of Greenfield suite shall be replaced with "*site*";

(iv) "deduction" in definition of Maximum achievable control technology (MACT) emission limitation for new sources shall be replaced with "reduction"; and

(v) "that potential" in definition of Reconstruct a major source shall be replaced with "the potential".

([d f]) “Administrator” in the definition of Available information found in Section 63.41 shall be replaced with “Administrator or Department.”

([e g]) Paragraph (2)(ii)(A) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER) under Regulation 25 of the State of Delaware “Regulations Governing the Control of Air Pollution” for those HAP to be emitted by the process or production unit; or”.

([f h]) Paragraph (2)(ii)(B) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);”.

([g i]) Paragraph (2)(iv) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;”.

([h j]) Paragraph (2)(v) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and”.

([i k]) Paragraph (2)(vi) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations are made by the permitting authority are applicable requirements under section 504(a) of the Act and under Section 6 of Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution” and either have been incorporated into any existing ~~title V~~ **Regulation 30** permit for the affected facility or will be incorporated into such permit upon issuance or

revision.”

([j l]) The definition of Construction permit is added to the list of definitions found in Section 63.41 with the following language: “*Construction permit* means a construction permit issued pursuant to Regulation 2 and/or 25 of the State of Delaware “Regulations Governing the Control of Air Pollution”.”

([k m]) The opening of the definition of Control technology found in Section 63.41 shall be replaced with the following language: “*Control technology* means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants in a way that would --”.

([l n]) The definition of Effective date of section 112(g)(2)(B) in a State or local jurisdiction found in Section 63.41 shall be ~~replaced with the following language:~~ **“Effective date of section 112(g)(2)(B) in a State or local jurisdiction means June 29, 1998.” deleted.**

([m o]) The definition of Electric utility steam generating unit found in Section 63.41 shall be replaced with the following language: “*Electric utility steam generating unit* means any fossil fuel fired combustion unit that serves a generator with a nameplate capacity of more than 25 megawatts that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its nameplate electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.”

([n p]) The definition of HAP is added to the list of definitions found in Section 63.41 with the following language: “*HAP* means a hazardous air pollutant (i.e., any chemical listed in or pursuant to section 112(b) of the Act).”

([o q]) The definition of Notice of MACT Approval found in Section 63.41 shall be deleted.

([p r]) The definition of Permitting authority found in Section 63.41 shall be replaced with the following language: “*Permitting authority* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.”

([q s]) The entire content of Paragraph 63.42(a) as promulgated shall be deleted and its heading shall be replaced with the following language: “(a) [Reserved].”

([r t]) The entire content of Paragraph 63.42(b) as promulgated shall be deleted and its heading shall be replaced

with the following language: “(b) [Reserved].”

([u] Paragraph 63.42(c) shall be replaced with the following language: “After June 29, 1998, no person may begin actual construction or reconstruction of a major source of HAP unless:”.]

([s v]) The following errata published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) “owner and operator” in paragraph 63.42(c)(1) shall be replaced with “owner or operator”;

(ii) “[~~this 63~~]” in paragraph 63.42(c)(1) shall be deleted; and

(iii) “the anticipated” in paragraph 63.43(e)(2)(v) shall be replaced with “The anticipated”.

([t w]) Paragraph 63.42(c)(2) shall be replaced with the following language: “The permitting authority has issued a construction permit which incorporates a final and effective case-by-case determination pursuant to the provisions of Sec. 63.43; requiring the emissions from the constructed or reconstructed major source to be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.”

([u x]) Paragraph 63.43(b) shall be replaced with the following language: “When a case-by-case determination of MACT is required by Sec. 63.42(c), the owner and operator shall obtain from the permitting authority an approved MACT determination pursuant to paragraph (c) of this section.”

([v y]) Paragraph 63.43(c)(1) shall be replaced with the following language: “[Reserved].”

([w z]) Paragraph 63.43(c)(2) shall be replaced with the following language: “The owner or operator shall follow all procedures in Regulation 2 and/or 25, except that --”.

([x aa]) Paragraph 63.43(c)(2)(i) shall be replaced with the following language: “the provisions of Section 2.2 of Regulation 2 do not apply to any owner or operator that is subject to the requirements of Secs. 63.40 through 63.44 and”.

([y bb]) Paragraph 63.43(c)(2)(ii) shall be replaced with the following language: “in addition to the provisions of Section 11.10 of Regulation 2, the final MACT determination and the construction permit shall expire if construction or reconstruction has not commenced within 18 months of permit issuance. The owner or operator may request[~~ed~~] and the permitting authority may grant an extension which shall not exceed an additional 12 months.”

([z cc]) Paragraph 63.43(c)(3) shall be replaced with the following language: “When desiring alternative operating scenarios, an owner or operator may request approval of case-by-case MACT determinations for each alternative operating scenario. Approval of such determinations satisfies the requirements of section 112(g) for each such scenario.”

([aa dd]) Paragraph 63.43(c)(4) shall be replaced with the following language: “The MACT emission limitation and requirements established in the approved construction permit shall be effective as required by paragraph (j) of this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in subpart A of this regulation.”

([bb ee]) The opening to Paragraph 63.43(d) shall be replaced with the following language: “The following general principles shall govern preparation by the owner or operator of each construction permit application requesting a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the permitting authority:”.

([cc ff]) Paragraph 63.43(e)(1) shall be replaced with the following language: “An application for a MACT determination shall be submitted at the same time as the construction permit application and shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section. At the time of submittal, the owner or operator shall request that the permit application be processed pursuant to Section 11.2 (i) or 11.2 (j) of Regulation 2, whichever is appropriate.”

([dd gg]) The opening to Paragraph 63.43(e)(2) shall be replaced with the following language: “In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:”.

([ee hh]) Paragraph 63.43(e)(2)(xiii) shall be replaced with the following language: “Any other relevant information required pursuant to subpart A of this regulation.”

([ff ii]) The opening to Paragraph 63.43(e)(3) shall be replaced with the following language: “In each instance where the owner or operator contends that a constructed or

reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:”.

([gg jj]) The entire content of Paragraph 63.43(f) as promulgated shall be deleted and its heading shall be replaced with the following language: “(f) [Reserved].”

([hh kk]) The entire content of Paragraph 63.43(g) as promulgated shall be deleted and its heading shall be replaced with the following language: “(g) [Reserved].”

([ii ll]) The entire content of Paragraph 63.43(h) as promulgated shall be deleted and its heading shall be replaced with the following language: “(h) [Reserved].”

([jj mm]) Paragraph 63.43(i) shall be replaced with the following language: “The permitting authority shall send notice of any approvals pursuant to paragraph (c)(2) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States.”

([kk nn]) Paragraph 63.43(j) shall be replaced with the following language: “The effective date of a MACT determination shall be the date the permitting authority issues the construction permit which incorporates the final and effective MACT determination.”

([H oo]) Paragraph 63.43(l)(1) shall be replaced with the following language: “An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the issued construction permit, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.”

([mm pp]) Paragraph 63.43(l)(2) shall be replaced with the following language: “An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the issued construction permit. Any violation of such requirements by the owner or operator shall be deemed by the permitting authority and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner

or operator to appropriate enforcement action under the Act.”

([nn qq]) Paragraph 63.43(m) shall be replaced with the following language: “Within 60 days of the issuance of a construction permit, the permitting authority shall provide a copy of such permit to the Administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT data base.”

([oo rr]) The phrase “under any of the review options available” in paragraph 63.44(a) shall be deleted.

([pp ss]) The phrase “40 CFR part 70 or part 71, whichever is relevant,” in 63.44(b) shall be replaced with the following language: “Regulation 30.”

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FIFTY-TWO**

TO: HEADS OF ALL STATE
DEPARTMENTS, AGENCIES AND
AUTHORITIES, AND ALL POLITICAL
SUBDIVISIONS AND GOVERNMENTAL
UNITS OF THE STATE OF DELAWARE

RE: AGRICULTURAL INDUSTRY
ADVISORY COMMITTEE ON
NUTRIENT MANAGEMENT

WHEREAS, the quality of Delaware's ground and surface water and the availability of clean drinking water are of paramount importance to the quality of life of all Delawareans; and

WHEREAS, Delawareans owe it to future generations to preserve the quality of our State's aquatic environment; and

WHEREAS, agriculture is one of Delaware's most important industries, and maintaining a strong and profitable agricultural industry is essential to the health of Delaware's economy and to the preservation of an essential part of the Delaware way of life; and

WHEREAS, pursuant to § 303(d) of the 1972 federal Clean Water Act, the Department of Natural Resources and Environmental Control ("DNREC") and the Environmental Protection Agency ("EPA") have signed a Memorandum of Understanding (the "DNREC-EPA Agreement") which sets forth a plan of action for restoring the quality of Delaware's impaired waters to achieve federal water quality standards;

WHEREAS, the DNREC-EPA Agreement calls for the establishment of Total Maximum Daily Loads ("TMDLs") in those waters which are not in compliance with federal water quality standards; and

WHEREAS, the establishment of a TMDL for an affected waterway brings with it the legal requirement to enforce the TMDL so as to restore the waterway to acceptable water quality standards; and

WHEREAS, it is highly unlikely that acceptable water quality standards can be achieved in Delaware waterways solely through the regulation of point sources of water pollution; and

WHEREAS, it will therefore be necessary to reduce non-point sources of water pollution if the State is to bring water quality into compliance with legal standards; and

WHEREAS, studies indicate that excess nutrient loading of surface lands has a negative effect on the quality of both the surface and ground water of Delaware; and

WHEREAS, public concerns about the effect of

agricultural nutrients on water quality have intensified and governmental actions are now underway in other states and at the federal government level to develop new nutrient management policies which could significantly affect Delaware agriculture; and

WHEREAS, the issue of water quality management is also being addressed by the agricultural and poultry industries of the Delmarva Peninsula; and

WHEREAS, Delaware has a history of using voluntary methods to empower individual farmers to address environmental issues related to agriculture; and

WHEREAS, the State desires to use voluntary methods to improve agricultural nutrient management practices and thereby ensure compliance with federal water quality standards; and

WHEREAS, the existing committee convened at the request of Representatives Price, Schroeder, West and Senator Bunting, which has been examining both the point and non-point sources of nutrients flowing into the Inland Bays, is an excellent example of a positive initiative which is proactively addressing the myriad of issues associated with this problem, and that Committee is encouraged to continue its efforts to build a consensus of all involved entities and to produce a plan to reduce point and non-point sources of pollution to the Inland Bays; and

WHEREAS, while it is important to address the unique circumstances of each waterway, there is also a demonstrated need to assess on a statewide basis the relationship between agricultural nutrient management practices and water quality in Delaware and to formulate a systematic and economically viable solution which will both maintain agricultural profitability and improve water quality in Delaware; and

WHEREAS, the best method to achieve such a solution in the first instance is to bring together the State's agriculture community and the state agencies responsible for improving water quality in order to develop a cooperative plan to improve nutrient management practices, reduce non-point source pollution, and help Delaware meet federal water quality standards.

NOW THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. There is hereby established the Agricultural Industry Advisory Committee on Nutrient Management.

2. The Advisory Committee shall be composed of ten representatives from Delaware's agricultural community, no fewer than seven of whom shall be actively involved in farming.

3. The Chairperson of the Advisory Committee shall be appointed by the Governor from among the Committee members and the Secretary of Agriculture shall be responsible for convening all meetings of the Advisory Committee.

4. A senior staff support team, composed of the Directors

of the Division of Soil and Water Conservation and the Division of Water Resources of DNREC, the Director of the Division of Public Health of the Department of Health and Social Services ("DHSS"), and the Executive Assistant to the Secretary of the Department of Agriculture, shall provide the necessary administrative, scientific, and technical resources and staff to support the Advisory Committee. Technical support and/or advice shall also be sought from any agency, university, organization, group, or individual as deemed necessary by the Secretary of Agriculture and the Advisory Committee.

5. The Advisory Committee shall serve as the mechanism by which state agencies such as the Department of Agriculture, DNREC, and DHSS and federal agencies such as the EPA and the United States Department of Agriculture receive advice and input from Delaware's agriculture community regarding what policies the State and federal government should implement in order to improve water quality in Delaware while maintaining the profitability of the State's agricultural industry. In that regard, the Advisory Committee should provide advice regarding, among other issues:

a. The relationship between agricultural nutrient management practices and water quality in Delaware, including recommendations to maximize the effectiveness of voluntary measures (such as improved management practices) in reducing the negative effects of agricultural nutrients on water quality in Delaware; and

b. The relative effectiveness and economic effects of available options to minimize the negative effects of agricultural nutrients on water quality in Delaware; and

c. The effectiveness of public policies of other states and the federal government which address the issue of nutrient management and water quality, and the utility of their adoption in Delaware; and

d. The additional outreach efforts the State should take to obtain the views of relevant members of the agriculture community as the State addresses the water quality of, and establishes TMDLs with respect to, specific waterways in accordance with the DNREC-EPA Agreement.

6. The Advisory Committee shall present a written summary of its recommendations to the Secretaries of the Department of Agriculture, DNREC, and DHSS no less than once a year. The Secretaries shall issue a joint report to the Governor and the General Assembly regarding how the recommendations of the Advisory Council should be addressed no more than 90 days after receiving them.

APPROVED this 21st day of April, 1998.

Thomas R. Carper, Governor

Attest:

Lawrence E. Windley, Assistant Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FIFTY-THREE**

TO: HEADS OF ALL STATE
DEPARTMENTS, AGENCIES AND
AUTHORITIES, AND ALL POLITICAL
SUBDIVISIONS AND GOVERNMENTAL
UNITS OF THE STATE OF DELAWARE

RE: ESTABLISHMENT OF A
GOVERNANCE COMMITTEE FOR THE
STATE OF DELAWARE'S NEW
HUMAN RESOURCES/PAYROLL SYSTEM

WHEREAS, the State's new human resources/payroll system ("the HR/Payroll System") will be brought into operation in phases beginning in April 1998; and

WHEREAS, the System's "PeopleSoft" technology will provide agencies and school districts with improved flexibility and expanded capabilities while reducing process steps and needless paper flow; and

WHEREAS, the system incorporates the most cost-effective and efficient technology and affords the State an opportunity to re-engineer its payroll and human resource processes; and

WHEREAS, the successful implementation and maintenance of the HR/Payroll System will require governance by, and an enhanced level of, cooperation among several state agencies and school districts; and

WHEREAS, essential to the effective governance of the HR/Payroll System are: clearly defined lines of ownership of the system's component processes; an established protocol for table and report changes; and a strong, hands-on working committee with authority to quickly make necessary decisions.

NOW, THEREFORE, I, THOMAS R. CARPER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. An HR/Payroll System Governance Committee be established and composed of the following:

The Secretary of Finance, who shall serve as co-chairperson;

The Director, State Personnel Office, who shall serve as co-chairperson;

The Secretary of Education, or the Deputy Secretary of Education, if the Secretary so designates;

The Director, Office of Information Services;

The Director, State Budget Office;

The State Treasurer, or her Chief Deputy, if the State Treasurer so designates; and

The President of the Chief School Officers' Association,

or her designee.

2. The Governance Committee shall address the following priorities:

a. **Ownership.** The most urgent priority is agreement on management of policy areas that relate to the operation, support, and maintenance of the HR/Payroll System. The Committee shall develop a memorandum of understanding defining and institutionalizing the ongoing roles and responsibilities of the Department of Finance, the State Personnel Office, the Department of Education, and other governmental entities. Key ownership issues to be determined shall include, but are not limited to, which entity shall: operate, staff and house a help desk with a single point of contact; maintain and update data for the public schools, the Delaware State University and the Delaware Technical and Community College; develop and staff an ongoing human resources/payroll training component; house, provide security for, maintain, and revise the PeopleSoft tables; provide ongoing support for database administration, programming, and other information technology issues; and administer employee benefits.

b. **Protocol.** Based on ownership and policy-setting decisions made by the Governance Committee, the Human Resources/Payroll Working Group ("HR/Payroll Working Group") hereafter established in this Order shall develop a protocol for table and report changes.

c. **Resource allocation.** The Governance Committee shall identify the fiscal, human, and technical resources necessary to the ongoing development and maintenance of the HR/Payroll System.

d. **Re-engineering.** The Governance Committee shall consider proposals for re-engineering human resources or payroll processes forwarded to the Committee by the HR/Payroll Working Group.

3. A School District Consortium shall be established by the Governance Committee. The Department of Education will serve as liaison to that Consortium. This Consortium shall:

a. Provide regular feedback to the Governance Committee on the operation and maintenance of the HR/Payroll System;

b. Propose policy changes reflecting the unified views of the school districts regarding the operation and maintenance of the HR/Payroll System to the Governance Committee via the Department of Education; and

c. Review and comment on re-engineering proposals forwarded by the HR/Payroll Working Group, including proposals to streamline administrative and benefits policies.

4. An HR/Payroll Working Group shall be established and consist of the following:

A designee of the Secretary of Finance, who shall be co-chairperson; A designee of the Director of State Personnel, who shall be cochairperson;

A designee of the State Treasurer;

A designee of the Office of Information Services Director;
Two representatives of agencies which use the HR/Payroll System, who shall be designated by the Secretary of Finance;
A designee of the Secretary of Education; and

Three representatives from the school districts, with a representative to come from each county, who shall be designated by the Chief School Officers' Association.

The members shall serve at the pleasure of the appointing authorities. The Working Group members shall have hands-on knowledge of their respective agency processes and of the HR/Payroll System.

5. The Working Group shall be responsible for the following:

a. Developing a protocol for maintaining or changing PeopleSoft tables and creating or modifying reports;

b. Identifying and advocating opportunities for re-engineering current HR/Payroll processes in state agencies and school districts;

c. Weighing the costs and benefits of proposed modifications to the PeopleSoft system;

d. Identifying other policy issues and/or problems that develop in relation to the HR/Payroll system and proposing solutions to the Governance Committee;

e. Ensuring that the Delaware Technical and Community College and the Delaware State University are consulted and have input into the governance process for the HR/Payroll System;

f. Overseeing the development of future phases of the HR/Payroll project; and

g. Developing a plan for eventually phasing out the Integrated Management Systems Project and allocating ongoing operational and maintenance responsibilities to the appropriate agencies.

Approved this 23rd day of April, 1998

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

GOVERNOR'S APPOINTMENTS

2011

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Architectural Accessibility Board	Mr. Francis J. DiSabatino, Jr.	04/21/02
	Ms. Sandra Reyes	10/15/00
	Ms. Ada M. Stokes	04/21/02
Commission on Adult Entertainment Establishments	Mr. James C. Brannon Jr.	05/04/01
Board of Pension Trustees	Mr. John R. Malloy	05/04/02
Delaware Open Space Council	Mr. Paul H. Boswell, Esq.	04/21/02
	Mr. Edward W. Cooch, Jr.	04/21/02
	Mr. Nathan Hayward, III	05/04/02
	Mr. Donald J. Lynch	04/21/02
	Mr. Harry K. Terry	04/21/02
	Ms. Lynn W. Williams	04/21/02
Delaware Board of Examiners for Nursing Home Administrators	Dr. John Forest	4/21/01
Delaware Workforce Development Council	Mr. Frederick Janeka	Pleasure of the Governor
Delmarva Advisory Council	Mr. Donald D. Hill, Jr.	Pleasure of the Governor
Diamond State Port Corporation	Mr. Gary F. Dalton	05/13/01
	Mr. Richard H. Derrickson	05/13/01
Foster Care Review Board Executive Committee	Ms. Marsha Barnett	04/21/01
	Ms. Barbara Blair	04/21/01
Foster Care Review Board	Ms. Anne M. DeMarie	04/21/01
	Ms. Kay D. Haubois	04/21/01
	Ms. Joan C. Herman	04/21/01
	Ms. Karla B. Jensen	04/21/01
	Ms. Gertrude Jean Shipp	04/21/01
	Ms. Eleanor M. Kiesel	04/21/00
	Ms. Stephanie Liguori	04/21/01
	Ms. Lydia Massey	04/21/99
	Ms. Pearl J. Maull	04/21/01

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Foster Care Review Board	Ms. Judith F. Melman	04/21/01
	Ms. Anna M. Parks	04/21/00
	Ms. Bonita E. Porter	04/21/01
	Ms. Bettie Ralph	04/21/01
	Ms. Alice R. Rasmussen	04/21/01
	Ms. Robin Ryan	04/21/01
	Ms. Barbara P. Williams	04/21/00
	Ms. Sharon A. Williams	04/21/00
	Ms. Virginia Van Sciver	04/21/01
Governor's Advisory Council on Exceptional Citizens	Ms. Olga Y. Calistro	Pleasure of the Governor
	Dr. Daniel E. Forsee	Pleasure of the Governor
Governors Council on Exceptional Citizens	Ms. Ann Grunert	Pleasure of the Governor
	Mr. Robert D. Overmiller	Pleasure of the Governor
Judge of the Court of Common Pleas for New Castle County	The Honorable Alfred Fraczkowski	07/11/06
	The Honorable John K. Welch	06/10/08
Justice of the Peace for Kent County	Mr. James A. Murray	05/05/02
Justice of the Peace for New Castle County	Mr. Thomas R. Barton	05/01/02
	Mr. Richard O. Douglas	05/01/02
	Mr. Laurence L. Fitchett, Jr.	05/07/02
Kent County Vocational-Technical Board of Education	Mr. William Dale Hammond	05/07/05
	Mr. Harold E. Stafford	05/07/05
Parks and Recreation Council	Ms. Mable Granke	04/21/01
	Mr. Ronald D. Mears	04/21/01
	Ms. Leah L. Roedel	04/21/01
Wastewater Facilities Advisory Council	Mr. Michael D. Sprague	05/13/01

DEPARTMENT OF AGRICULTURE**DELAWARE HARNESS RACING COMMISSION**

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

**BEFORE THE DELAWARE HARNESS RACING
COMMISSION**

The Commission proposes this amendment pursuant to 3 Del.C. §§10027 and 29 Del.C. §10115. The proposed amendment would ease the whipping rules to allow drivers to use the whip once one handed for a maximum of three strokes from the quarter pole to the 7/8's pole, and to have no restrictions after the lead horse reaches the 7/8's pole. The Commission will consider written comments submitted to the Commission Office on or before 4:00 p.m. on June 30, 1998. The Commission office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION****DELAWARE BOARD OF EXAMINERS OF SPEECH/
LANGUAGE PATHOLOGISTS, AUDIOLOGISTS &
HEARING AID DISPENSERS**

Statutory Authority: 24 Delaware Code,
Section 3714(3) (24 **Del.C.** 3714(3))

The Delaware Board of Speech/Language Pathology, Audiology and Hearing Aid Dispensers proposes to change the existing rule and regulation, 602.6 and adopt a new rule and regulation in accordance with 24 Del C. Section 3714 (3).

A public hearing will be held on Wednesday, July 22, 1998 at 2:00 p.m. in the Cannon Bldg., Conference Room A, 861 Silver Lake Blvd. Dover, Delaware.

Anyone desiring a copy of this proposed rule and regulation may obtain some from the Board office, Division of Professional Regulation Cannon Bldg. Suite 203, 861 Silver Lake Blvd. Dover, Delaware 19904. Written comments should be submitted to the Board office at the above address on or before July 22, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board office at (302) 739-4522, extension 204.

Synopsis

The Board of Speech/Language Pathology, Audiology and Hearing Aid Dispensers proposed to revise the current Rules and Regulations in accordance with 24 Del. C., Section 3714 (3), in order to provide licensees and Board members with a more use-friendly document.

There is only one substantial change.

Section 602.6 of the current Rules and Regulations limits CEs for professional course work for academic credit to a formula of 8 CEs for 2 credits earned by taking a college course. The Board has revised this item so that licensees who take college courses may receive a large number of CEs.

Other changes are related to style and readability. They consist mainly of the resequencing of sections, the inclusion of a table of contents, and clarification of continuing education requirements and timelines.

The Board is establishing the new user-friendly style Rules and Regulations to facilitate future activities of the Board and its licensees.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION****DELAWARE COUNCIL ON REAL ESTATE
APPRAISERS**

Statutory Authority: 24 Delaware Code,
Section 2934(a) (24 **Del.C.** 2934(a))

The Delaware Council on Real Estate Appraisers proposes to repeal the existing rules and regulations and adopt new rules and regulations in accordance with 24 Del. C. Section 2934 (b)(1).

A public hearing will be held on Tuesday, July 21, 1998 at 9:30 a.m. in the Cannon Building, Conference Room "A", 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain some from the Council office, Division of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be submitted to the Council office at the above address on or before July 21, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Council office at (302) 739-4522, ext. 205.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF NURSING

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del.C.** 1906(1))

The Delaware Board of Nursing in accordance with 24 Del.C. §1906(1) has proposed to revise certain sections of Articles II, VII, VIII, IX and X of the Rules and Regulations related the Law regulating the Practice of Nursing in the State of Delaware that address nursing education programs, standards of nursing practice, the practice of nursing as an Advanced Practice Nurse in the State of Delaware, mandatory continuing education, and disciplinary proceedings.

The proposed changes include the following:

ARTICLE II:

Amend Section 1: Definitions to change “National League for Nursing” to “National Accrediting Agency for Nursing Education”

Amend Section 5: Standards for Approval, 5.10:1 and 5.10:2, substitute “Board-approved national accrediting agency for nursing education” for “National League for Nursing”.

ARTICLE VII:

Amend Section 7: Definitions to delete 7.2:4 “The RN may not delegate functions that are to be performed only by licensed nurses listed in Section 4.” in its entirety. In 7.4: Add “These exlusions do not apply to Advanced Practice Nurses.”

ARTICLE VIII:

Amend Section 7: Generic Functions of the Advanced Practice Nurse Within The Specialized Scope of Practice include but ar not limited to: Add 7.14 to read “Delegating tasks appropriately” and renumber accordingly.

ARTICLE IX:

this Article includes revised definitions, additional methods to obtain continuing education, and clarification of process.

A public hearing will be held on Wednesday, July 8, 1998 at 11:30 a.m., in the second floor conference room A of the Cannon Building, 861 Silver lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 silver Lake Blvd., cannon building, Suite 203, Dover, Delaware 19903. Persons desiring to submit written comments on the revised rules and regulations may forward

these comments to the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION

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

THE REGULARLY SCHEDULED MEETING OF THE STATE BOARD OF EDUCATION WILL BE HELD ON THURSDAY, JUNE 18, 1998, AT 11:00 A.M.

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

Statutory Authority: 16 Delaware Code,
Section 122(3)(t)(1) (16 Del.C. 122(3)(t)(1))

The Office of Lead Poisoning Prevention, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss proposed Regulations Governing Lead-Based Paint Hazards. These proposed regulations describe the training and certification requirements of individuals engaged in lead-based paint abatement activities, the accreditation requirements of lead-based paint hazard control training programs, and the lead-based paint work practice standards.

The public hearing will be held on June 24, 1998, at 1:00 pm, in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Lead Poisoning Prevention
Jesse S. Cooper Building
Federal and Water Streets
Dover, Delaware 19901
Phone: 302-739-4731

Anyone wishing to present their oral comments at this hearing should contact Thomas V. May at (302) 739-4731 by June 19, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by July 2, 1998, to:

Jeffrey Beaman, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903

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

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. 505)
DMAP 207.1

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) Division of Social Services/Medical Assistance Program (DMAP) is amending its eligibility manual.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131. Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than July 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4800, ext.131 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

PUBLIC NOTICE

Medicaid / Medical Assistance Program
DMAP 301.25

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 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual as follows:

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than July 1, 1998, at

the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

PUBLIC NOTICE

Medicaid / Medical Assistance Program
DMAP Long-term Care Provider Manual

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Long Term Care, Pharmacy, Home Health, Ground Ambulance, and Hospice provider manuals.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than July 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

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

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

Delaware Health and Social Services is considering revising certain regulations contained in DSSM Section 9092. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.

The proposed regulations:

- allow the agency to use the food stamp allotment along with the ABC benefit in determining the number of hours a household is required to participate in workfare, which is a work experience program in which participants work to earn their benefits.

Any person who wished to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, Delaware, by June 30, 1998.

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

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR & WASTE MANAGEMENT
WASTE MANAGEMENT SECTION
1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW).

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The State of Delaware is authorized by the U. S. Environmental Protection Agency to administer its own hazardous waste management program. To maintain this authorization, the State must remain equivalent to and no less stringent than the federal program. To accomplish this, the State regularly amends the DRGHW by adopting regulations previously promulgated by EPA.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:
NONE**
**4. STATUTORY BASIS OR LEGAL AUTHORITY TO
ACT:**

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapter 63, §6305.

**5. OTHER REGULATIONS THAT MAY BE AFFECTED
BY THE PROPOSAL:**

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday, June 23, 1998, beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**DELAWARE RIVER BASIN
COMMISSION**

The Delaware River Basin Commission will meet on Wednesday, June 24, 1998, in West Trenton, NJ. For more information contact Susan M. Weisman at (609) 883-9500 ext 203.

DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Section
121(b) (5 Del.C. 121(b))

**NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER**
Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001, and to rescind Regulation No. 5.853.0001.P. Proposed revised regulation 5.751.0013 ("Procedures Governing the Dissolution of a State Chartered Bank or Trust Company") was amended to delete the reference to §750 of Title 5 of the Delaware Code, which was deleted by Senate Bill 336, signed by the Governor on May 2, 1996. Proposed revised regulation 5.852.0002 ("Application to Become a Delaware Bank Holding Company") makes technical changes to clarify the regulation, and to conform the public notice provisions to other similar notice provisions in the State's

banking laws and regulations. Proposed revised regulation 5.1403.0001 (“Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch or Foreign Bank Agency”), 5.1403.0002 (“Application By a Foreign Bank for a Certificate of Authority to Establish a Foreign Bank Limited Purpose Branch or Foreign Bank Agency Pursuant to 5 Delaware Code, §1403”), 5.1403/1101.0003 (“Regulations Governing the Organization, Chartering, Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office”), and 5.1422.0004 (“Application By a Foreign Bank for a License to Establish a Foreign Bank Representative Office Pursuant to Subchapter II, Chapter 14, Title 5, Delaware Code”) amend the regulations governing foreign banking activities in the State under Chapter 14 of Title 5 of the Delaware Code. Proposed revised regulations 5.1403.0001, 5.1403.0002, 5.1403/1101.0003 and 5.1422.0004 add references to foreign bank limited purpose branches, pursuant to Senate Bill 207, signed by the Governor on June 28, 1995, conform the public notice provisions to other similar notice provisions in the State’s banking laws and regulations, add references to the separation of assets of the foreign bank’s business in this State, as provided in Senate Bill 255, signed by the Governor on March 30, 1998, and make other technical and conforming changes. Proposed revised regulation 5.3404.0001 (“Preneed Funeral Contracts Regulations Governing Irrevocable Trust Agreements”) makes technical changes to conform to section number changes provided in Senate Bill 44 (“SB 44”), signed by the Governor on April 23, 1997. Regulation 5.853.0001.P (“Procedures Governing the Registration of Delaware Bank Holding Companies with the Bank Commissioner Pursuant to the Provisions of Section 853 of Title 5, Delaware Code”) is proposed for rescission because Section 853, which provided for registration of Delaware bank holding companies existing as of May 18, 1987, was deleted as unnecessary in SB 44. Proposed amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 replace existing Regulation Nos. 5.750/751.0013, 5.852.0002, 5.1403.0001.P, 5.1403.0002.P, 5.1403/1101.0003.NC, 5.1422.0004.P, and 5.304(b).0001, respectively. Proposed amended Regulation Nos. 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 would be adopted, and Regulation No. 5.853.0001.P would be rescinded, by the State Bank Commissioner on or after July 13, 1998. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed revised regulations, and of the regulation proposed to be rescinded, are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by July 13, 1998.

Public Hearing:

A public hearing on the proposed new regulations will be held in Room 113, Tatnall Building, William Penn Street, Dover, Delaware 19901, on Monday, July 13, 1998 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.
