Delaware Register of Regulations

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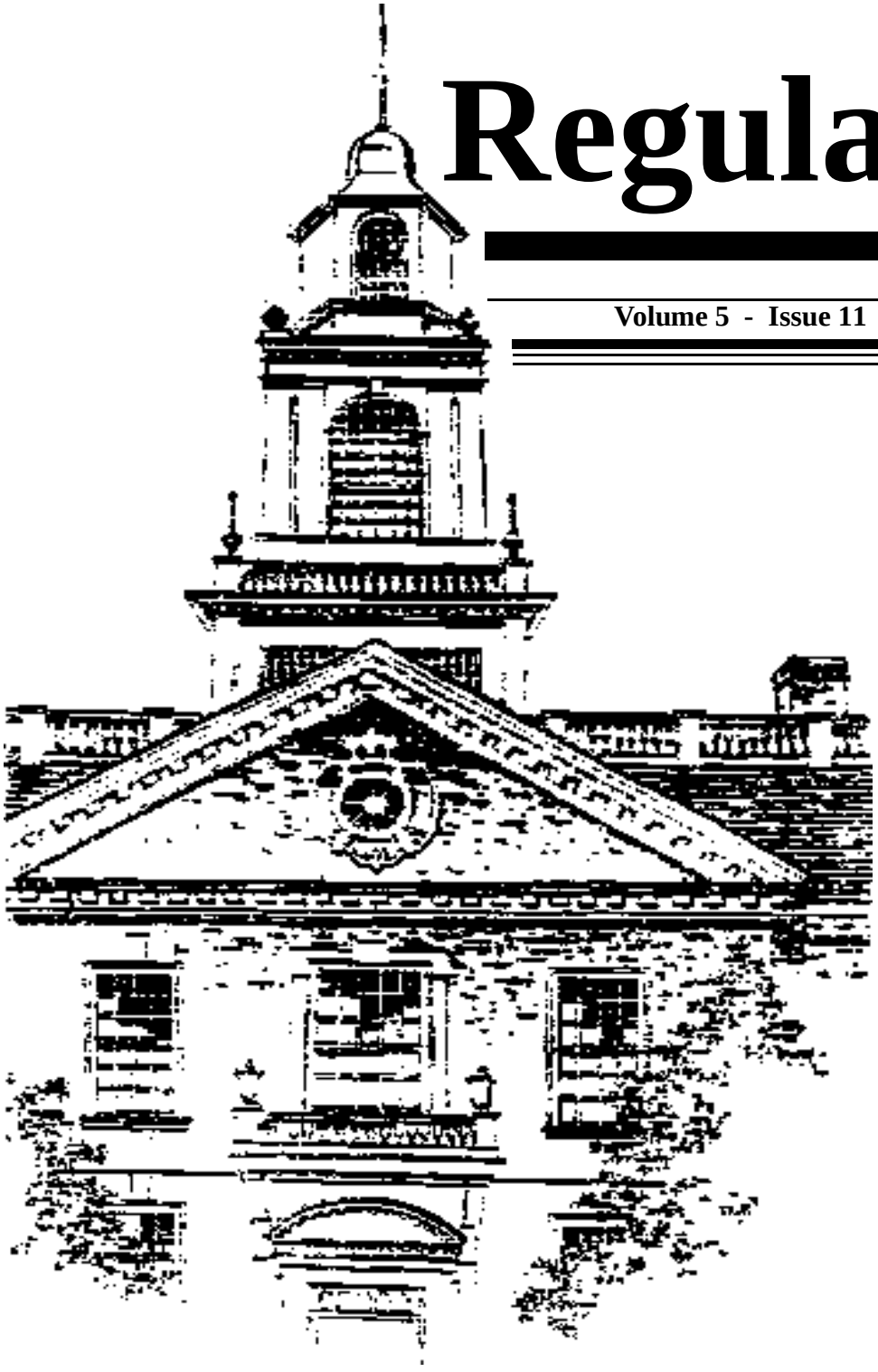

IN THIS ISSUE:

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 April 15, 2002.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

5 **DE Reg.** 1337 - 1339 (01/1/02)

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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

DIVISION OF RESEARCH STAFF:

Walter G. Feindt, Deputy Director; **Judi Abbott,** Secretary; **Sandra F. Clark**, Administrative Assistant; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina,** Print Shop Supervisor; **Alex W. Mull,** Assistant Registrar; **Deborah A. Porter**, Administrative Assistant; **Ted Segletes,** Paralegal; **Don Sellers,** Printer; **Thom Shiels**, Legislative Attorney; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume 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.).

Division of Social Services

DSSM

Symbol Key

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

Emergency Regulations

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

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

Order No. 2002-F-0021

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting an amendment to Tidal Finfish Regulation No. 4, SUMMER FLOUNDER SIZE LIMIT; POSSESSION LIMITS; SEASONS without prior notice to close the recreational fishing season for summer flounder until May 16, 2002 in order to comply with the 2002 management requirements of the interstate fisheries management plan for summer flounder approved by the Atlantic States Marine Fisheries Commission. 7 **Del.C.** § 903 authorizes the Department to adopt regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of this State provided such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish.

REASON FOR EMERGENCY ORDER

Currently, the recreational fishing season for summer flounder is open. In 2001, public opinion favored a larger minimum size limit of 17.5 inches and a smaller creel limit of 4 per day without any closure in order to reduce the recreational landings of summer flounder in 2001 by 48% relative to the recreational landings of summer flounder in Delaware in 1998. The season remains open in 2002. Delaware is required to reduce their recreational summer flounder landings by an additional 3.5 percent in 2002. This is in accordance with the interstate fisheries management plan for summer flounder approved by the Atlantic States Marine Fisheries Commission. At a public hearing on March 21, 2002, public opinion favored an option that continues the 17.5 inch minimum size limit and 4 fish creel limit with a spring seasonal closure of January 1 through May 15, 2002 to account for the required 3.5 percent reduction. If the time line for adopting regulations is followed according to the Administrative Procedures Act, the earliest an amendment to Tidal Finfish Regulations No. 4 for closing could be effective is May 10, 2002. Therefore, it is necessary to immediately close the recreational summer flounder season without further notice. The Atlantic States Marine Fisheries Commission could find Delaware out of compliance with the requirements of the interstate fisheries management plan for summer flounder if the recreational fishery season is not closed until May 10, 2002 and then reopened on May 16, 2002. This would place the summer flounder fishery into consideration for closure under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (P.L. 103-206, Title VIII). This would inevitably lead to imminent peril to the economy of the recreational fishing industry.

EFFECTIVE DATE OF ORDER

The Order shall take effect at 12:01 AM on April 2, 2002 and shall remain in effect until 12:00 midnight on May 15, 2002.

PETITIONS FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, the 1st day of April, 2002, that an amendment to Tidal Finfish Regulation No. 4, a copy of which is hereby attached, is adopted pursuant to 29 Del. C. § 10119.

Nicholas A. DiPasquale, Secretary
Department of Natural Resources and
Environmental Control

Be it adopted by the Department of Natural Resources and Environmental Control an amendment to Tidal Finfish Regulation No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.

Section 1. Amend Tidal Finfish Regulation No. 4 in subsection (a) by striking said subsection (a) in its entirety and substitute in lieu there of the following:

"(a) It shall be unlawful for any recreational fisherman or any Commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the period beginning at 12:01 AM on April 2, 2002 and ending at 12:00 midnight on May 15, 2002."

TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) ~~It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land summer flounder at any time effective 12:01 AM on May 5, 2001~~ It shall be unlawful for any recreational fisherman or any Commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the period beginning at 12:01 AM on April 2, 2002 and ending at 12:00 midnight on May 15, 2002.

b) It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

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

d) It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than seventeen and one-half (17.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) open

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

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

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

g) Open

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

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

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

See 1 DE Reg 1769 (5/1/98)
See 2 DE Reg 1900 (4/1/99)
See 3 DE Reg 1088 (2/1/00)
See 4 DE Reg 1552 (3/1/01)
See 5 DE Reg 462 (8/1/01)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code, Section 706(a)(1)) (24 **Del.C.** 706(a)(1))

Please take notice, pursuant to 29 Del.C. Ch. 101 and 24 Del.C. Ch. 7, the Delaware Board of Chiropractic proposes the following amendment to Rule 5.3 and Rule 6.2.4 of the Delaware Board of Chiropractic's Rules and Regulations as follows:

5.3 *Retention of Patient Records.* Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for ~~three (3)~~ seven (7) years from the date of the last treatment.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.

A public hearing will be held on the proposed amendment to Rule 5.3 on June 20, 2002 at 8:30 a.m. in Conference Room B of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 5.3 in order that the Board of Chiropractic may vote to adopt, amend or reject said amendment at its June 20, 2002 meeting. The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 5.3. Written comments should be submitted to the Board up through and including the date and time of the hearing on June 20, 2002 at 8:30 a.m., to Judy Letterman, Administrative Assistant, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 5.3, please contact Ms. Letterman at the above address or by calling (302) 744-4500.

(See 4 DE Reg. 1940 (6/1/01)

1.0 Chiropractic Defined; Limitations of Chiropractic License

1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

(See 4 DE Reg. 1940 (6/1/01)

2.0 Officers; Meetings; Quorum

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of one hundred (100) or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the nationally recognized certification body.

4.0 Continuing Education.

4.1 Continuing Education for New Licensees:

4.1.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

License Granted During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours

License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	6 hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period.

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30th of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

(See 4 DE Reg. 1940 (6/1/01)

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or who terminates his or her practice and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his duly authorized representative. Such notice by publication shall be made at least ninety (90) days prior to termination of the practice except in an emergency situation where as much notice as is reasonably possible shall be given. All patients who have not requested their records from such publication of notice shall, within thirty days of the closing of the business be notified by first class mail to permit patients to procure their records.

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for ~~three (3)~~ seven (7) years from the date of the last treatment.

(See 4 DE Reg. 1940 (6/1/01)

6.0 Grounds for Discipline

6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written permission of that doctor's patient.

6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.

6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

(See 4 DE Reg. 1940 (6/1/01)

7.0 License to Practice

A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

8.0 Voluntary Treatment Option

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 **Del.C.** §8807(n)

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

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

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

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

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

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

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

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

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

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

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

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

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

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

(See 4 DE Reg. 1940 (6/1/01)

DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE

24 DE Admin. Code 3300
Statutory Authority: 24 Delaware Code Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

PLEASE TAKE NOTICE, that pursuant to 29 ***Del.C.*** Chapter 101 and 24 ***Del.C.*** Section 3306(a)(1), the Delaware State Board of Veterinary Medicine proposes to add to its rules and regulations. The proposed addition concerns prescribing medicine. The proposed addition seeks to define unprofessional conduct for a veterinarian as prescribing medication without examining the animal(s) within a period of a year. The proposed regulation serves to implement or clarify Section 3313(a)(1) of 24 ***Del.C.*** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, June 11, 2002 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

Board of Veterinary Medicine

1.0 Direct Supervision
2.0 Unprofessional Conduct

1.0 DIRECT SUPERVISION (24 *Del. C.* § 3303(10))

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 *Del. C.* § 3302 (6) must be performed under direct supervision. Direct supervision of support personnel also includes:

1.1.1 The initial examination of the animal by the veterinarian prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support personnel to administer emergency measures prior to the initial examination.

1.1.2 The development of a treatment plan by the veterinarian that shall be referenced by support personnel.

1.1.3 The authorization by the veterinarian of the work to be performed by support personnel.

1.2 At no time may support personnel perform the following activities (24 *Del. C.* § 3303(10)):

1.2.1 Diagnosing.

1.2.2 Prescribing.

1.2.3 Inducing Anesthesia.

1.2.4 Performing Surgery.

1.2.5 Administration of Rabies Vaccinations.

1.2.6 Operative dentistry and oral surgery.

1.2.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters).

1.2.9 Splinting or casting of broken bones in other than emergency situations.

1.2.10 Euthanasia.

1.2.11 Issue health certificates.

1.2.12 Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are regulated by federal and state guidelines.

2.0 UNPROFESSIONAL CONDUCT (24 *Del.C.* § 3313(a)(1))

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following;

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks without the required direct supervision as specified in Section 1.1 of the Rules & Regulations.

2.1.3 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.4 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.5 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.6 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

2.1.7 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 *Del.C.* § 1325.

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 *Del. C.* § 1325.

2.1.8.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups

without overcrowding.

2.1.8.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.8.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

2.1.9 Leaving an animal during the maintenance stage of anesthesia.

2.1.10 Improper labeling of prescription drugs. The package or label must contain:

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

2.1.11 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.12 Misrepresenting continuing education hours to the Board.

2.1.13 Failure to obey a disciplinary order of the Board.

See 5 DE Reg. 1897 (04/01/02)

2.1.14 Prescribing medication without examining the animal(s) within a period of one year.

3.0 PRIVILEGED COMMUNICATIONS (24 *Del.C.* § 3313(a)(7))

3.1 Privileged Communications. Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal. The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

4.0 VETERINARY PREMISES & EQUIPMENT (24 *Del. C.* § 3313 (9))

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

5.0 QUALIFICATION FOR LICENSURE BY EXAMINATION AS A VETERINARIAN (24 *Del. C.* § 3307)

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the applicant meets the statutory exemptions in 24 *Del. C.* § 3309.

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall by set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

6.0 CHARACTER OF EXAMINATION - NORTH AMERICAN VETERINARY LICENSING EXAMINATION (NAVLE) (24 *Del. C.* § 3306)

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) after November 2000 or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

7.0 RECIPROCITY (24 *Del. C.* § 3309)

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in 24 *Del. C.* § 3309.

8.0 LICENSURE - RENEWAL (24 *Del. C.* § 3311)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0.

9.0 CONTINUING EDUCATION (24 *Del. C.* § 3311(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

9.2 Continuing Education Requirements for Reinstatement of Lapsed License

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve

continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

10.0 VOLUNTARY TREATMENT OPTION

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

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

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

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

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

treatment program.

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

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

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY

24 DE ADMIN. CODE 2500

Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del. C.** 2509)

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0, 3.0, 5.0, 9.0, 10.0, 11.0, 15.0 (formerly I, III, V, IX, X, XI., and XV)

There are clerical changes to Regulation 1.0.

The proposed changes in Regulation 5.0 substitute the term “technician” for “supportive personnel” and will provide for two levels of technician, both supervised, with duties permitted based on training. The term “supportive personnel” is replaced with “technician” as it appears in other regulations. (For example Regulations 3.0, 9.0, and 10.0) The definition of “dispense or dispensing” is changed to conform to the statute. A new section 5.12 is added to cover centralized prescription processing.

The proposed changes in Regulation 11.0 update the language to include assisted living facilities. Regulation 11.0 is modified as it relates to stock medication, labeling, consultant pharmacist duties, and drug disposal.

The proposed change to Regulation 15.0 makes it conform to Regulation 5.0.

A public hearing will be held on June 5, 2002 at 10:00 a.m. in the Jesse Cooper Building, Room309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

Board of Pharmacy

1.0	Pharmacist Licensure Requirements
2.0	Grounds for Disciplinary Proceedings
3.0	Pharmacy Requirements
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12.0	Health Care Facilities
13.0	Nuclear Pharmacy Regulations

14.0 Administration of Injectable Medications
15.0 Automated Pharmacy Systems

1.0 Pharmacist Licensure Requirements

1.1 Examination Requirements

1.1.1 In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

1.1.2 Candidates must obtain a passing grade of 75 on the NAPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

See 4 DE Reg. 163 (7/1/00)

1.1.3 Any applicant who fails the examination shall be entitled to take a re-examination. If an applicant has failed the examination three times, he/she shall be eligible to take the examination, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

See 4 DE Reg. 163 (7/1/00)

1.1.4 Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

1.2 Practical Experience Requirements

1.2.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.

1.2.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 **Del.C.** §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The total 1500 hours of internship may be acquired in the community or hospital settings. A minimum of 1000 hours shall be obtained in the community or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

1.2.3 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Additional practical experience acquired in the State of Delaware must be submitted to the Board on the Affidavit of intern Experience form provided by the Board of Pharmacy Office. Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

1.2.4 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the **Responsibilities of the Intern** professional assessment form.

1.2.5 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change of preceptor. A change of preceptor affidavit must be completed and filed with the Board.

1.3 Continuing Education Requirements

1.3.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

See 1 DE Reg. 1965 (6/1/98)

See 2 DE Reg. 683 (10/1/98)

1.3.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.

1.3.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:

1.3.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of its decision.

1.3.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).

See 4 DE Reg. 163 (7/1/00)

1.4 Continuing Professional Educational Programs

1.4.1 Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

1.4.2 Approved Provider

1.4.2.1 Any provider approved by ACPE.

1.4.2.2 In-state organization which meets criteria approved by the Board.

1.4.3 Application for Delaware State Provider

1.4.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

1.4.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

1.4.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

1.4.4.1 Administration and Organization

1.4.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

1.4.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

1.4.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.

1.4.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

1.4.4.1.5.1.1 Educational objectives.

1.4.4.1.5.1.2 The target audience.

1.4.4.1.5.1.3 The time schedule of the activities.

1.4.4.1.5.1.4 Cost to the participant/covered items.

1.4.4.1.5.1.5 Amount of C.E. credit which will be awarded.

1.4.4.1.5.1.6 Credentials of the

faculty, presenters, and speakers.

1.4.4.1.5.1.7 Self-evaluation instruments.

1.4.4.1.5.2 Compliance with a quantitative measure for C.E. credit.

1.4.4.1.5.2.1 The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

1.4.4.1.5.2.2 In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

1.4.4.1.5.2.3 The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

1.4.4.1.5.2.4 The provider must provide the Board upon request with appropriate records of successful participation in previous continuing education activities.

1.4.4.1.5.2.5 The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

1.4.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

1.4.4.3 Program Content Development

1.4.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

1.4.4.3.1.1 The social, economic, behavioral, and legal aspects of health care,

1.4.4.3.1.2 the properties and actions of drugs and drug dosage forms,

1.4.4.3.1.3 the etiology, characteristics, therapeutics and prevention of the disease state,

1.4.4.3.1.4 pharmaceutical monitoring and management of patients.

1.4.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.

1.4.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.

1.4.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

1.4.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

1.4.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

1.4.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

1.4.5 ~~1.4.4.6~~ Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

1.4.5.1 ~~1.4.4.6.1~~ In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

1.4.5.2 ~~1.4.4.6.2~~ In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

1.4.5.3 ~~1.4.4.6.3~~ Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

1.4.5.4 ~~1.4.4.6.4~~ A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

See 4 DE Reg. 1501 3/1/01

1.4.4.5 ~~1.4.4.6.5~~ Credit for Instructors of Continuing Education

1.4.5.5.1 ~~1.4.4.6.5.1~~ Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

See 4 DE Reg. 163 (7/1/00)

1.4.5.5.2 ~~1.4.4.6.5.2~~ Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

1.4.5.5.3 ~~1.4.4.6.5.3~~ Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

1.4.5.5.4 ~~1.4.4.6.5.4~~ A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.4.5.6 ~~1.4.4.6.6~~ Credit for On the Job Training:

1.4.5.6.1 ~~1.4.4.6.6.1~~ The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

See 4 DE Reg. 163 (7/1/00)

1.4.5.6.2 ~~1.4.4.6.6.2~~ All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

1.4.5.6.3 ~~1.4.4.6.6.3~~ No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

1.4.5.6.4 ~~1.4.4.6.6.4~~ A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.5 The Verification of Continuing Education - A pharmacist shall complete the required continuing education and submit the signed renewal form with appropriate fees to the Board of Pharmacy. A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 **Del.C.** §2518 (a) (1).

See 4 DE Reg. 1502 (3/1/01)

1.6 Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1.6.1 Payment of any back fees;

1.6.2 Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;

1.6.3 Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

1.7 Reciprocal Requirements

1.7.1 The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

1.7.2 Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

1.7.3 Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

1.7.4 All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.

1.7.5 Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

Regulation 1.2 revised 10/11/96

Regulation 1.3.2 revised 2/6/97

Regulation 1.3.2 deleted, 1.3.3.1 amended, 1.4 amended

Effective date 10/11/98

2.0 Grounds for Disciplinary Proceeding

2.1 Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 **Del.C.** §2518(A):

2.1.1 Knowingly engaging in any activity which violates State and Federal Statutes and Regulations governing the practice of Pharmacy;

2.1.2 Knowingly dispensing an outdated or questionable product;

2.1.3 Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;

2.1.4 Knowingly charging for more dosage units than is actually dispensed;

2.1.5 Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;

2.1.6 Knowingly dispensing medication without proper authorization;

2.1.7 Knowingly defrauding any persons or government agency receiving pharmacy services;

2.1.8 Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information.

2.1.9 Fraudulently altering or forging the contents of prescriptions;

2.1.10 Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;

2.1.11 Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);

2.1.12 Unauthorized substitution;

2.1.13 Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;

2.1.14 Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;

2.1.15 Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;

2.1.16 Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;

2.1.17 Knowingly misbranding a drug by using a brand name when a generic is dispensed;

2.1.18 Practicing under the influence of drugs or alcohol;

2.1.19 The placement of an advertisement which the pharmacist knows to be false or misleading;

2.1.20 Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;

2.1.21 Engaging in activities that would discredit the profession of pharmacy;

2.1.22 Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders.

2.1.23 Using facsimile equipment to circumvent documentation, authenticity, verification or other standards of pharmacy or drug diversion. (Effective 2/29/96)

See 4 DE Reg. 163 (7/1/00)

3.0 Pharmacy Requirements

3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of ~~supportive personnel~~ pharmacy technicians and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials. Each pharmacy shall have the following equipment and current edition of the following texts:

3.3.1 References:

3.3.1.1 Delaware Laws and Regulations governing Pharmacy.

3.3.1.2 Federal Regulations covering the Food and Drug Act, and Controlled Substances Act (If available in another text purchase is not necessary)

3.3.1.3 USP-DI (All volumes and supplements)

3.3.1.4 One (minimum) of the following texts from each category:

3.3.1.4.1 Drug Interactions

3.3.1.4.1.1 Facts and Comparisons Drug Interactions (Metaphor)

3.3.1.4.1.2 Drug Interactions

3.3.1.4.1.3 Hansten's Drug Interactions

3.3.1.4.1.4 APhA Evaluation of Drug Interactions

3.3.1.4.2 Drug Information:

3.3.1.4.2.1 Facts and Comparisons

3.3.1.4.2.2 American Hospital Formulary Service

3.3.1.4.2.3 Pharmindex

3.3.2 Equipment

3.3.2.1 Prescription Scale, Class a
Set of Metric Weights

3.3.2.2 Graduates, (must be glass) Metric
One of Each:
30 ml
60 ml
125 ml
500 ml

(or Set with both metric and Apothecary Graduations may be used)

3.3.2.3 Mortars and Pestles
1 8 ounce glass
1 8 ounce wedgewood

3.3.2.4 Filter Paper

3.3.2.4 Prescription/physician Order Files

3.3.2.5 Two Spatulas

3.3.2.6 One Glass Funnel

3.3.2.7 One Glass Stirring Rod

3.3.2.8 Ointment Slab or Papers

3.3.2.9 Purified Water

Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.

All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59° and 86° Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained at the USP/NF range:

Refrigerator - 36° to 46° Fahrenheit

Freezer - plus 4° to minus 14° Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of blueprints drawn to scale of the proposed prescription department. The blueprints must include the following:

3.5.1 The requirements listed in §2534(F)(1) through (4).

3.5.2 A view of the partition surrounding the prescription department showing a five (5) foot height requirement measured from the floor. A section or sections totaling a maximum of twelve (12) ft in length and at least three (3) ft in height will be acceptable in all situations. The area(s) must be secured to the five (5) ft level when the pharmacist or designated responsible person is not in the pharmacy department.

3.5.3 A partitioned area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. The minimum requirement would be a 9 square foot partitioned area.

3.5.4 The blueprints shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.5 The blueprints must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by

Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.6 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the blueprint requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

See 2 DE Reg. 683 (10/1/98)

3.6 Security. When the pharmacist is off duty and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 **Del.C.** §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

4.0 Pharmacy Closing Procedure

The Executive Secretary of the Delaware State Board of Pharmacy shall be notified by letter via certified mail, or hand delivered written notification of the intent to close a licensed Delaware pharmacy. The Executive Secretary shall be notified at least 14 days in advance of the closing date. In the event of death of the owner/pharmacist-in-charge, the Executive Secretary will be notified immediately.

The closing procedure will be completed by a Delaware licensed pharmacist-in-charge or in the event of death, a Delaware licensed pharmacist designated to perform the closing procedure. Should the permit to operate a pharmacy be revoked or suspended by the Delaware State Board of Pharmacy, the procedure following such action will be directed by the Board. The agents of the Delaware Office of Narcotics and Dangerous Drugs will enforce this regulation under the authority of Chapter 25, Section 2535.

4.1 Permanent Closing of a Pharmacy

4.1.1 Board Notification:

4.1.1.1 Certified letter at least 14 days prior to the planned closing to the Executive Secretary of the Delaware Board of Pharmacy.

4.1.1.2 In the event of death of owner/ pharmacist-in-charge, notification immediately to the Executive Secretary of Delaware Board of Pharmacy.

4.1.1.3 In case of fire or water damage, notify the Executive Secretary of the Delaware Board of Pharmacy immediately.

4.1.2 Required Information to be submitted to the Executive Secretary of the Delaware Board of Pharmacy:

4.1.2.1 Name, address and phone number.

4.1.2.2 Pharmacy permit and Delaware Controlled Substance registration number and D.E.A. registration numbers.

4.1.2.3 Name of pharmacist-in-charge responsible for closing.

4.1.2.4 Date of closing.

4.1.2.5 Name, address, phone number of licensed pharmacy to which prescription drugs, (including controlled substances) prescription files and patient profiles will be transferred.

4.1.2.6 A closing inventory signed and dated of all controlled substances to be sent to the Office of Narcotics and Dangerous Drugs for their records.

4.1.2.7 Name, address, and phone number of custodian of controlled substance records (i.e. invoices, etc.) for the two-year period after closing as required by 21 CFR.

4.1.3 Public Notification:

4.1.3.1 A publication in a local newspaper for one week informing the public the pharmacy is closing on a specific date and the name of the pharmacy to which the prescriptions will be transferred.

4.1.3.2 Name and phone number of person to contact in emergency after closing of pharmacy.

4.1.3.3 A sign posted in the window of pharmacy 14 days prior to closing and to remain 14 days after closing informing the public where prescriptions are being transferred.

4.1.3.4 Remove all signs within 30 days of closing that refer to, "pharmacy," "apothecary," "drugs" or "medicine."

4.1.4 Permits and registration to be surrendered upon closing:

4.1.4.1 Pharmacy permit (Executive Secretary, Board of Pharmacy)

4.1.4.2 Delaware Controlled Substance certificate (Delaware Office of Narcotics & Dangerous Drugs).

4.1.4.3 Federal Controlled Substance certificate (D.E.A.).

4.1.4.4 All unused 222 Schedule II order forms (D.E.A.).

4.1.5 Sale of prescription drugs:

Should the pharmacy be sold, including prescription drugs, or if the prescription drugs are sold separately, the Office of Narcotics & Dangerous Drugs must be notified to verify that the buyer is currently licensed to possess these drugs.

4.1.6 All above procedures must be accomplished within 7 days after closing or upon discretion of the Executive Secretary. Drugs must be properly secured in accordance with all laws and regulations until they are removed.

4.2 Temporary Closing of a Pharmacy

4.2.1 The Board office must be notified according to 24 **Del.C.** §2528.

4.2.2 Board notification must include the following:

4.2.2.1 The exact date the pharmacy will be closing.

4.2.2.2 The name, address and telephone number to be used in an emergency.

4.2.3 A public notice must be posted in a highly visible place within the prescription department at least 5 days prior to the temporary closing of a pharmacy (24 **Del.C.** §2528(B)) and also on a window visible to the public from outside the store. The notice must state:

4.2.3.1 Dates the pharmacy will be closed.

4.2.3.2 A contact number in case of emergency.

4.2.4 If the closing extends past the date given to the Board office, the pharmacy would automatically be put into the status of a permanently closed pharmacy and procedure established by Board regulation must be followed.

5.0 Dispensing

5.1 Definitions

"Agent" - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

"Automated Data Processing System (ADP)" - A system utilizing computer software and hardware for the purposes of recordkeeping.

"Cell" - Any container which holds the medication for automatic dispensing.

"**Centralized Prescription Processing** - The processing by a Pharmacy of a request from another Pharmacy to fill or refill a prescription drug order or to perform processing frunctions such as dispensing, DUR, clams adjudication, refill authorizations and therapeutic interventions.

"Certified Pharmacy Technician" - A technician who has passed a national certification program approved by the Board and maintains certification.

"Common Data Base" - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

"Compounding" - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice~~, including the reconstitution of powders for administration~~ and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

See 3 DE Reg. 431 (9/1/99)

"Computer" - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

"Controlled Substance" - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

"CRT" - Cathode Ray Tube used to impose visual information on a screen.

"Delivery" - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

"Dispense or Dispensing" - ~~To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.~~ The preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug.

"Downtime" - That period of time when a computer is not operable.

"Facsimile (FAX) Prescription" - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

"Final Container" – is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

"New Medication" - A medication not previously dispensed by the pharmacy for the ultimate user.

"Patient Counseling" - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

"Pertinent Patient Medication Information" - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of

information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

~~**"Supportive personnel"**~~ **"Pharmacy Technician"** - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

"**Prescriber"** - A practitioner authorized to prescribe and acting within the scope of this authorization.

"Prescription" - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.) A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

"Printout" - A hard copy produced by computer that is readable without the aid of any special device.

"Reduced to Writing"

For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553)for drug product selection;

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.

"Regulatory Agency" - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

"**Stop Date"** - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

5.2 The practice of dispensing shall include, but not be limited to the following acts: ~~which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.~~

5.2.1 Receive oral prescriptions and reduce them immediately to writing.

5.2.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

5.2.3 Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

5.3 Patient Counseling

5.3.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

5.3.2 Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

5.3.2.1 the name and description of the prescribed drug;

5.3.2.2 the dosage and the dosage form;

5.3.2.3 the method and route of administration;

5.3.2.4 the duration of the prescribed drug therapy;

5.3.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

5.3.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

5.3.2.7 patient techniques for self-monitoring of the drug therapy;

5.3.2.8 proper storage;

5.3.2.9 prescription refill information;

5.3.2.10 the action to be taken in the event of a missed dose; and

5.3.2.11 current over-the-counter medication use.

5.3.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or

other appropriate health care provider.

5.3.4 Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5.3.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

5.3.6 The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

5.3.7 The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

5.4 ~~Supportive personnel~~ Pharmacy Technician

5.4.1 Qualifications and training

5.4.1.1 The pharmacist-in-charge is responsible for ensuring proper training of ~~all supportive personnel~~ both classes of pharmacy technicians. The actual training may be delegated to a pharmacist or other trained ~~supportive personnel~~ pharmacy technician.

5.4.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the ~~supportive personnel~~ pharmacy technician. Areas of training shall include:

5.4.1.2.1 general drug and dosage form knowledge

5.4.1.2.2 medical terminology

5.4.1.2.3 pharmaceutical calculations

5.4.1.2.4 prescription labeling requirements

5.4.1.2.5 general filling/dispensing responsibilities

5.4.1.2.6 patient profile record system requirements

5.4.1.2.7 requirements for patient counseling

5.4.1.2.8 confidentiality

5.4.1.2.9 safety practices

5.4.1.2.10 inventory functions

5.4.1.2.11 knowledge of applicable State and Federal Statutes and Regulations

5.4.1.2.12 other site-specific parameters

5.4.1.3 The general content of the training program must be maintained in the policy and procedure manual.

5.4.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

5.4.2 Supervision. ~~Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons~~.

5.4.2.1 The registered pharmacist shall directly supervise either class of pharmacy technician. The registered pharmacist will be responsible for the activities of the pharmacy technicians and may determine their duties performed within the scope of this Regulation.

5.4.2.2 There must be written documentation in the pharmacy from the pharmacist-on-duty permitting a certified pharmacy technician to perform any of the activities allowed by this Regulation.

5.4.2.3 The final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to the dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

5.4.3 Activities allowed for a Pharmacy Technician

~~5.4.3.1 Supportive personnel will be allowed to perform only those duties permitted by this regulation.~~

~~5.4.3.2 Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:~~

~~5.4.3.2.1 Obtaining the medication from stock.~~

~~5.4.3.2.2 Typing the label after the pharmacist has interpreted the directions~~.

~~5.4.3.2.3 Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown~~.

5.4.3.1 Obtain medication from stock.

5.4.3.2 Counting and pouring of medication.

5.4.3.3 Prepackaging of bulk medication.

5.4.3.4 Entering prescription or patient profile

information into the computer.

5.4.3.5 Generating a prescription label.

5.4.3.6 Reconstitution of medications.

5.4.4 Additional activities allowed for a Certified Pharmacy Technician

5.4.4.1 Obtain or request refill and new authorizations from practitioners' offices.

5.4.4.2 Obtain or give copies of prescriptions to or from other pharmacies.

5.4.4.3 Compound prescriptions including anti-neoplastic agents, according to regulation.

5.4.4.4 Provide drug information that is quoted directly from any reference material available on site that is approved by the supervising pharmacist.

5.4.5 ~~5.4.3.3~~ Compounding is the responsibility of the pharmacist. ~~or~~ The pharmacy intern/certified pharmacy technician may perform compounding functions under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of ~~supportive personnel~~ pharmacy technicians if the following is performed:

5.4.5.1 ~~5.4.3.3.1~~ The formulation is developed by the pharmacist. ~~before proceeding with the compounding.~~

5.4.5.2 ~~5.4.3.3.2~~ The compounding ingredients are checked by the pharmacist. ~~before proceeding with the compounding.~~

5.4.5.3 ~~5.4.3.3.3~~ Every weight and measurement is checked by the pharmacist. ~~before proceeding with the compounding~~.

5.4.5.4 ~~5.4.3.3.4~~ The finished product is checked by the pharmacist before dispensing.

5.4.5.5 ~~5.4.3.3.5~~ A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed the final check. ~~each of the checks indicated above for each step of the procedure.~~ If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

~~5.4.3.4 Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation~~.

5.5 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

5.6 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

5.7 Mandatory Patient Profile Record System

5.7.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

5.7.2 ~~5.7.1.2~~ The following information shall be recorded by a pharmacist or designee:

5.7.2.1 ~~5.7.1.2.1~~ The family name and first name of the person for whom the medication is intended (the patient);

5.7.2.2 ~~5.7.1.2.2~~ The address of the patient and phone number;

5.7.2.3 ~~5.7.1.2.3~~ The patient's age, or date of birth, and gender;

5.7.2.4 ~~5.7.1.2.4~~ The original date the medication is dispensed pursuant to the receipt of a physician's prescription;

5.7.2.5 ~~5.7.1.2.5~~ The number or designation identifying the prescription;

5.7.2.6 ~~5.7.1.2.6~~ The prescriber's name;

5.7.2.7 ~~5.7.1.2.7~~ The name, strength, quantity, directions and refill information of the drug dispensed;

5.7.2.8 ~~5.7.1.2.8~~ The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.7.2.9 ~~5.7.1.2.9~~ If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.7.2.10 ~~5.7.1.2.10~~ Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.7.3 The pharmacist or pharmacy intern/certified pharmacy technician under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.7.4 Upon receipt of a new prescription, a pharmacist or pharmacy intern/certified pharmacy technician under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to

avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5.7.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

5.8.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

5.8.1.1 The request comes from a registered pharmacist, intern or a certified pharmacy technician. The certified pharmacy technician may only take copies for non-controlled substance prescriptions.

5.8.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.8.1.3 The prescription used for refills must be clearly identified as a copy. 5.8.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

5.8.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

5.8.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

5.8.3 Written copies of prescriptions are for information only and are not valid for refilling.

5.9 Automated Data Processing Systems

5.9.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.

5.9.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

5.9.2.1 Original dispensing date

5.9.2.2 Name and address of patient (patient location if in an institution)

5.9.2.3 Name of prescriber

5.9.2.4 DEA number of prescriber in the case of a controlled substance

5.9.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

5.9.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

5.9.3.1 Quantity dispensed

5.9.3.2 Date of dispensing

5.9.3.3 Serial Number (or equivalent if an institution)

5.9.3.4 The identification of the pharmacist responsible for dispensing

5.9.3.5 Record of renewals to date

5.9.3.6 Name and strength of medicine

5.9.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

5.9.4.1 Serial number of prescription (equivalent if an institution)

5.9.4.2 Date of processing

5.9.4.3 Quantity dispensed

5.9.4.4 The identification of the pharmacist responsible for dispensing

5.9.4.5 Medication dispensed

5.9.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

5.9.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

5.9.7 Transfer of Prescriptions via ADP. A

pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

5.9.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

5.9.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

5.9.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

5.9.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

5.9.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription.

5.9.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

5.9.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

5.10 Electronic Transmission Of Prescriptions

5.10.1 All Prescription Drug Order Prescription Drug Order Prescription Drug Order Prescription Drug Orders communicated by way of Electronic Electronic Transmission Electronic Transmission Electronic TransmissionTransmission shall:

5.10.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient’s choice with no intervening Person having access to the Prescription Drug Order Prescription Drug Order Prescription Drug Order Prescription Drug Order;

5.10.1.2 identify the transmitter’s phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.10.1.3 be transmitted by an authorized Practitioner Practitioner Practitioner Practitioner or his designated agent; and

5.10.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.10.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.10.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.10.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.10.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy’s patients.

5.10.6 Controlled substance prescriptions may only be electronically transmitted via a facsimile.

5.10.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.10.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.10.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.10.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.10.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.10.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

5.11 Return of Medications and Supply

5.11.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

5.11.2 Products under the direct control of a health

care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

5.12 Centralized Prescription Processing

5.12.1 A Pharmacy may perform or outsource centralized prescription processing, services provided the parties:

5.12.1.2 have the same owner; or

5.12.1.3 have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

5.12.1.4 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

5.12.2 The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the Board for review upon request and that includes, but is not limited to, the following:

5.12.2.1 A description of how the parties will comply with federal and state laws and regulations;

5.12.2.2 The maintenance of appropriate records to identify the responsible pharmacist(s) in the dispensing and counseling processes;

5.12.2.3 The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;

5.12.2.4 The maintenance of a mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug, order;

5.12.2.5 The provision of adequate security to protect the confidentiality and integrity of patient information;

5.12.2.6 The maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

5.12.3 In addition to the requirements of 24 Del. C. §2536, all drugs dispensed to a patient that have been filled via a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities.

See 4 DE Reg. 163 (7/1/00)

See 4 DE Reg. 682 (10/1/00)

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section 5.4 revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

6.0 Pure Drug Regulations

6.1 Definition

"Central Nervous System" - Central nervous system stimulants are drugs which increase the activity of some portion of the brain or spinal cord. Drugs which act upon the cerebral cortex and subcortical structures including the thalamus (e.g. methylphenidate, etc.) increase motor activity and enhance mental alertness; those which act upon the sensory areas in the brain (e.g. caffeine and its various combinations) increase alertness, brighten spirits and combat mental fatigue; those which act directly or reflexly on the medulla (e.g. nikethamide, pentylenetetrazol and picrotoxin) stimulate the respiratory center; those which act on the spinal cord (e.g. nux vomica and strychnine) facilitate and exaggerate spinal reflexes.

6.2 The Delaware State Board of Pharmacy hereby adopts the rules and regulations officially prescribed for the enforcement of the Federal Food, Drug and Cosmetic Act and Acts amendatory thereof, as far as applicable. This regulation is promulgated to comply with directive in Title 16 **Del.C.** §3315 paragraph b.

6.3 Anyone who repacks and labels drugs in convenient quantities for their own subsequent use must maintain a log on the premises showing the date prepacked, the quantity prepacked, the control number, expiration date and name and strength of the drug. Prepacking must be done under the supervision of a registered pharmacist or any other person authorized to dispense under 24 **Del.C.** §2513. Each container must have a label containing the name of the drug, its strength, the manufacturer's control number, the expiration date if applicable, the name of the manufacturer, or the name and strength of the drug and a conference code number which would enable the control number, manufacturer and expiration date to be retrieved from the log. Nothing in this regulation precludes the Federal laws and regulations.

6.3.1 Beyond use date for single unit and unit dose containers. The beyond use date for these products shall be one year or less, unless the stability data or the manufacturer's labeling indicates otherwise. To use this date, the dispenser repacking the product must maintain the facility and packaging at controlled room temperature not to exceed 25°C. The plastic material used for repacking must provide better protection against moisture permeation than polyvinyl chloride.

See 4 DE Reg. 1502 (3/1/01)

6.4 All biologicals, vaccines, drugs, chemicals, preparations and compounds must be packaged, labeled,

stored and preserved in compliance with USP/NF and all other State and Federal standards. A pharmacist may, with the permission of the patient or the patient's agent, provide a "Customized Patient Medication Package" only to patients that are self-medicating. The containers shall meet all of the requirements of the USP/NF standard entitled, "Customized Patient Medication Package."

6.5 Labeling of Over-the-Counter Central Nervous System Stimulants. Over-the-counter central nervous system stimulants must be labeled and packaged in compliance with state and federal requirements.

6.6 Over-the-Counter Medication - Over-the-counter drug is one that can be legally sold without a prescription.

NOTE: The only over-the-counter products which currently can be labeled, advertised promoted, marketed or sold as a stimulant are those that do not contain any active ingredient but caffeine.

7.0 Non-pharmacy Outlets Handling Legend Veterinary Drugs

7.1 Persons who dispense must be adults (21 years of age).

7.2 The registrant must provide the Board with a list of persons who will dispense.

7.3 The Board must be notified in writing of any changes concerning those persons within 10 days of the change.

7.4 Storage - All medications must be stored in compliance with USP/NF standards. Example: 36 to 46 degrees Fahrenheit for drugs requiring refrigeration. 59 to 86 degrees Fahrenheit for drugs requiring storage at room temperature. All medications must be stored at the registered premise.

7.5 Security - Drugs requiring a prescription must be secured in a manner to prohibit access by unauthorized person. Self-service display of veterinary drugs which require a prescription is prohibited.

7.6 Labeling - A medication dispensed must be labeled in compliance with 24 **Del.C.** §2536 and other applicable State and Federal Statutes and Regulations.

7.7 Packaging - Medications must be dispensed in containers which comply with USP/NF and Poison Prevention Packaging Act requirements.

7.8 Records:

7.8.1 Invoices for the purchase of veterinary drugs requiring a prescription must be maintained at the registered premise for at least two years after the original date of the invoice.

7.8.2 The written order of confirmation of an oral order must be maintained in a separate file at the registered premise. These documents shall be consecutively numbered. If a written order is not received within 72 hours, the seller must notify the Board of Pharmacy.

7.8.3 When a seller documents that a veterinarian is properly licensed in another state, the following information must be recorded on the back of the order:

7.8.3.1 The name, address and license number of the prescriber.

7.8.3.2 The name, address and phone number of the information source.

7.9 All required records shall at all times be opened to inspection by duly authorized persons. Inspections by duly authorized personnel will be conducted during normal business hours per the authority granted in 24 **Del.C.** §2535.

8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis

8.1 Purpose. The purpose of this regulation is to implement the provisions of the prescription Drug Marketing Act of 1987 by defining the minimum standards, terms, and conditions for which a permit may be issued to persons who engage in wholesale distribution of (prescription) drugs within the State of Delaware.

8.2 Definitions

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"**Blood component"** means that part of blood separated by physical or mechanical means.

"**Drug sample"** means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

"Person" means an individual, partnership, corporation, business firm, or a sole proprietorship.

"Prescription drug" means any drug required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

"Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

"Intracompany sales", being defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity:

The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal

Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control, for purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five (5) percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12 consecutive month period;

The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

The distribution of drug samples by manufacturers' representatives or distributors' representatives; or

The sale, purchase, or trade of blood and blood components intended for transfusion.

"Wholesale distributor" means anyone engaged in wholesale distribution of prescription drugs, including but not limited to, manufacturers, repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

8.3 Permit Requirements. Every wholesale distributor located in the State of Delaware who engages in wholesale distribution out of or within this State will be issued a permit by the Delaware Board of Pharmacy in accordance with the laws and regulations of this State before engaging in wholesale distribution of prescription drugs.

8.4 Wholesale Distributor Permit Requirement

8.4.1 The Delaware Board of Pharmacy requires the following from each wholesale drug distributor as part of the initial permit procedure and as part of any renewal of such permit:

8.4.1.1 The name, full business address, and telephone number of the permittee;

8.4.1.2 All trade or business names used by the permittee;

8.4.1.3 Addresses, telephone numbers, and the names of contact persons for the facility used by the permittee for the storage, handling, and distribution of prescription drugs;

8.4.1.4 The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship); and

8.4.1.5 The name(s) of the owner and/or operator of the permittee, including:

8.4.1.5.1 If a person, the name of the person;

8.4.1.5.2 If a partnership, the name of each partner, and the name of the partnership;

8.4.1.5.3 If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the State of incorporation, and the name of the parent company, if any;

8.4.1.5.4 If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

8.4.1.6 Submission of a policy and procedures manual pertinent to employee qualifications and training.

8.4.2 Changes in any information in this section shall be submitted to the Board of Pharmacy within 30 days after such change.

8.5 Minimum Qualifications. The Delaware Board of Pharmacy will consider the following factors in determining eligibility for granting a permit to persons who engage in the wholesale distribution of prescription drugs:

8.5.1 Any convictions of the applicant under any Federal, State, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

8.5.2 Any felony convictions of the applicant under Federal, State, or local laws;

8.5.3 The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

8.5.4 The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

8.5.5 Suspension or revocation by Federal, State, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

8.5.6 Compliance with the requirements of this regulation under previously granted permits if any;

8.5.7 Compliance with the requirements to maintain and/or make available to the State Board authority or to Federal, State, or local law enforcement officials those records required to be maintained by wholesale drug distributors.

8.6. Personnel. As a condition for receiving and retaining a wholesale drug distributor permit, the permittee shall require each person employed in any prescription drug wholesale distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained as required

by law. The permittee must maintain records evidencing that each employee has been trained in accordance with the policy and procedure manual approved at the time of the issuance of the permit. These records shall be kept two years from the date of separation of the employee from the company. Records on all current employees shall be available at any time for inspection.

8.7 Facilities. All facilities at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

8.7.1 Be of suitable size and construction to facilitate cleaning, maintenance and proper operations.

8.7.2 Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.

8.7.3 Have a quarantined area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated.

8.7.4 Be maintained in a cleaned and orderly condition; and be free from infestation of insects, rodents, birds, or vermin of any kind.

8.8 Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

8.8.1 If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

8.8.2 Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs.

8.9 Record Keeping Requirements. Wholesale drug distributors shall establish and maintain inventory and records. Records shall include the following information:

8.9.1 Sources of the drugs, the identity and quantity of the drugs received and distributed or disposed of, and the date of receipt and distribution or other disposition of the drugs.

8.9.2 Records for all personnel and training.

8.9.3 All inventories and records shall be made available for inspection and photocopying by authorized Federal, State, or Local law enforcement agency officials for a period of two years following the disposition of the drugs.

8.9.4 Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by an authorized official of a Federal, State, or local law enforcement agency.

8.10 Written Policies and Procedures

8.10.1 There shall be written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of drugs including policies for identifying, recording, and reporting losses or thefts, and for correcting all errors, inaccuracies, and inventories. There shall be:

8.10.1.1 A procedure whereby the oldest approved stock of a drug product is distributed first. Deviation from this requirement is permitted if such deviation is temporary and appropriate.

8.10.1.2 A procedure must be established for the handling of recalls and withdrawals of manufacturer/ distributor drugs due to any action initiated at the request of the manufacturer, the FDA or other Federal, State, or local enforcement or government agencies.

8.10.1.3 A procedure whereby drugs that are outdated, damaged, deteriorated, misbranded or adulterated are physically separated until they are destroyed or returned to their supplier.

8.11 Salvaging and Reprocessing. Compliance with applicable Federal, State, or local law or regulations relating to drug product salvaging is required.

8.12 Security

8.12.1 All facilities shall be secured from unauthorized entry.

8.12.2 The outside of the premises shall be well lighted.

8.12.3 Entry into areas where drugs are held shall be limited to authorized personnel.

8.12.4 All facilities shall be equipped with an alarm system to detect entry after hours subject to approval by the Secretary of the Board.

8.12.5 There must be a security system that will provide suitable protection against theft and diversions. When appropriate, the system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

9.0 Hospital Pharmacy

9.1 Definition:

A hospital pharmacy is defined as a pharmacy registered with the Board located in a hospital facility. "Hospital pharmacy" shall not include a pharmacy operated by a hospital facility at a location other than the site of a permanent facility at which in-patient care and medical services are rendered.

9.2 Personnel

9.2.1 Director of Pharmacy. The storage, compounding, repackaging, dispensing and distribution of drugs by a hospital pharmacy shall be under the direction,

supervision and responsibility of the pharmacist-in-charge, hereinafter referred to as the Director of Pharmacy, who shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations. Written policies and procedures will be established defining the operation and scope of services provided by the hospital pharmacy. The Manual shall include policy and procedures concerning:

9.2.1.1 Preparation and sterilization of parenteral medications if done within the hospital pharmacy.

9.2.1.2 Establishment of specifications for procurement of drugs, chemicals and biologicals. The procedures are subject to the approval of the appropriate committee of the hospital.

9.2.1.3 Maintaining readily available inventory of emergency drugs both in the pharmacy and patient care areas. Current antidote information and telephone numbers of regional poison control centers must also be available.

9.2.1.4 Participation in the development of a Formulary or drug list for the hospital.

9.2.1.5 The filling and labeling of all containers from which drugs are to be administered in compliance with applicable Statutes and Regulations.

9.2.1.6 The records of the transactions of the pharmacy that are required by applicable law and that are necessary for accurate control and accountability. This should include procedures for wastage of controlled substances in all areas of the hospital.

9.2.1.7 Polices and procedures shall specify the duties to be performed by pharmacy personnel.

9.2.1.8 Discontinued drug procedures to insure that discontinued drugs and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition or disposal. All outdated products should be removed from all areas and stored in a separate section in the pharmacy for proper disposition or disposal.

9.2.1.9 A recall procedure that can be implemented to insure proper disposition of the recalled materials.

9.2.1.10 A policy for drugs brought in by patients.

9.2.1.11 A policy for the proper handling of investigational drugs must be in compliance with FDA and State requirements.

9.2.1.12 The pharmacist shall be involved with the utilization review process as it pertains to drug therapy.

9.2.2 Registered Pharmacists. The Director of Pharmacy may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws.

9.2.3 ~~Supportive Personnel. Supportive personnel~~ Pharmacy Technician. Pharmacy technicians may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons.

9.3 Absence of Pharmacist. When a pharmacist is not on duty, drugs may be provided for use by physicians and other authorized staff via night cabinets or other areas designated by the hospital, and in emergency circumstances by access to the pharmacy. A pharmacist shall be available to provide professional services.

9.4 Night Cabinets or Other Designated Areas

9.4.1 These drug storage areas must be securely locked and substantially constructed in a manner which prevents easy entry.

9.4.2 Access must be limited to authorized personnel.

9.4.3 Contents and use procedures should be determined by the pharmacy and those departments with access to the night cabinet or other designated areas in accordance with the hospital's policies and procedures.

9.4.4 Drugs must be properly labeled and prepackaged in sufficient quantities as defined by the hospital.

9.4.5 Accountability records documenting withdrawal and replacement of controlled drugs must be readily available.

9.4.6 The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.5 Access to Pharmacy. When a pharmacist is not available and medications cannot be obtained immediately from any other source, authorized persons may enter the pharmacy and obtain drugs per procedures established by the hospital. The procedures must include the following stipulations:

9.5.1 Entry shall be by two persons; registered nurse or physician with another nurse, physician, or security person present approved by the hospital.

9.5.2 Persons authorized to enter the pharmacy shall indicate the name and strength and amount of drug removed, the date, time and their signature, and the name and location of the patient. The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.6 Emergency Drugs. Emergency drugs must be available for use by authorized personnel at strategic locations throughout the hospital. The drugs must be available to authorized personnel and must be stored in a manner to preserve the integrity of the contents.

9.6.1 Emergency Drugs Defined - Emergency drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients.

9.6.2 Emergency drug supplies shall be clearly identified for emergencies. A list showing the contents and the strength and quantity of each item shall be attached to the exterior.

9.6.3 Removal of Drugs - Drugs shall be removed from an emergency drug supply only pursuant to a valid physician's order or by authorized personnel.

9.6.4 Notification - Whenever an emergency drug supply is accessed, the pharmacy or its designee shall be notified within 24 hours, and the pharmacy or its designee shall restock and reseal or replace the kit or cart within forty-eight hours.

9.7 Equipment and Texts. Each hospital pharmacy shall have the equipment and texts required by Board Regulation 3.0 and Regulation 10.0.

9.8 Drug Storage. Drugs must be stored in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.9 Labeling

9.9.1 The drug dispensed for inpatient use shall contain a label, shall show the brand or established name and the strength of the medication. If the medication is prepacked, it must also show the source, lot number and expiration date, in compliance with the Board's prepacking regulation.

9.9.2 All drugs dispensed for outpatients must be labeled in compliance with the Pharmacy Statutes.

9.9.3 Admixtures in parenteral bags and bottles shall be labeled in accordance with Regulation 10.0.

9.10 Abbreviations. The hospital should establish a standard list of abbreviations to be used whenever medications are prescribed.

9.11 Outpatient Orders. Medication dispensed for outpatients via prescriptions are governed by applicable State and Federal Statutes Regulations. A patient profile must be maintained and counseling must be provided for each person according to Regulation 5.0.

9.12 Suspected Adverse Drug Reaction. When an adverse reaction is documented, the pharmacy department shall receive a copy.

9.13 Maintenance of Medication Orders. Patient Profile - A patient medication profile must be maintained for each inpatient whose medication is directly dispensed from the pharmacy. It must show the patient's name, location, age, allergies and diagnosis(es) as available. The profile must show the name, strength and quantity of the drug dispensed and appropriate directions and the initials of the dispenser. Prior to administration of the first dose, the pharmacist must examine the profile to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a significant potential for harm, the pharmacist should notify the prescriber and other appropriate persons. The profile must be retained and readily retrievable for 30 days after discharge.

9.14 Medication Error. Medication error as defined by the hospital shall be documented and reported immediately to the pharmacy. It should also be reported to the attending physician.

9.15 Monthly Inspections. A member of the pharmacy staff shall conduct monthly inspections of each nursing station and patient care areas where medications are dispensed, administered or stored. Such documented inspections shall verify that:

9.15.1 Disinfectants and drugs for external use are stored separately.

9.15.2 Drugs are stored under proper conditions.

9.15.3 No outdated drugs are present.

9.15.4 Distribution, administration, and disposition of controlled substances audits indicates proper recordkeeping and administration.

9.15.5 Emergency drug supplies and floor stock drug levels are properly maintained.

9.15.6 Drugs are properly secured.

9.16 Hospital Operating with an Off-site Pharmacy Provider.

9.16.1 Definition. A hospital operating with an off-site pharmacy is one that obtains pharmacy services from another hospital, community pharmacy, or infusion pharmacy that can provide services as necessary for operation.

9.16.2 Personnel.

9.16.2.1 There must be a Director of Pharmacy or Consultant Pharmacist available on an on-call procedure 24 hours per day. The storage, compounding, repackaging, dispensing and distribution of drugs by an off-site Provider Pharmacy shall be under the direction, supervision and responsibility of a Pharmacist-in-Charge or Director of Pharmacy. This person shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations.

9.16.2.2 The Director of Pharmacy or Pharmacist-in-Charge may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws. Any of these registered pharmacists may act as the Consultant Pharmacist for the institution if he/she is licensed to practice pharmacy in the State of Delaware. Additional ~~supportive personnel~~ pharmacy technician may be utilized as required.

9.16.2.3 The Director of Pharmacy or Pharmacist-in-Charge must provide written policies and procedures establishing the operation and scope of services provided by the off-site Pharmacy Provider. The Policy and Procedure Manual shall include all items as outlined in "B." of this section. In addition, the manual shall include a written statement of pharmaceutical services provided and the responsibilities of the off-site Provider Pharmacy.

9.16.3 Monthly Inspections. The Director of Pharmacy or Consultant Pharmacist must perform monthly

medication area inspections as outlined in "O" of this section.

9.16.4 Storage

9.16.4.1 Drugs must be stored at the off-site Pharmacy Provider in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.16.4.2 The Pharmacy Provider must also provide any special handling and/or packaging and/or storage conditions for compounded sterile preparations when delivering from the pharmacy to the institution as necessary to maintain the sterility and stability of the preparation. This includes any product that is frozen or that requires refrigeration.

9.16.5 Patient Profiles. The off-site Pharmacy Provider must maintain complete patient profiles as outlined in Regulation 5.0.

9.16.6 Medication Errors or Adverse Reactions

9.16.6.1 Any medication errors or adverse drug reactions, as defined by the hospital, shall be documented and reported to the off-site Pharmacy Provider.

9.16.6.2 This information shall also be reported to the Director of Pharmacy, Pharmacist-in-Charge, or Consultant Pharmacist for their review and documentation for the patient profile.

9.16.7 Emergency Medications

9.16.7.1 All legend drugs not dispensed in patient name shall be approved by the Board of Pharmacy in order for those emergency medications to be kept as "stock" at the institution.

9.16.7.2 The procedure for approval of emergency medications must be followed as outlined in Regulation 11.3.

10.0 Sterile Pharmaceuticals and Antineoplastic Agents

This regulation contains minimum pharmacy practices for the preparation, compounding and dispensing of sterile preparations and antineoplastic agents by licensed pharmacies.

10.1 Definitions. As used in this part, the following terms shall have the meanings specified:

"Admixture" - A solution for parenteral administration to which one or more additional drugs have been added.

"Antineoplastic Agent" - A drug used to treat various forms of cancer.

"Aseptic Technique" - A procedure for compounding sterile preparations designed to minimize/ prevent contamination during the compounding procedure.

"Class 100" - A classification of an airflow unit capable of producing an environment containing no more than 100 airborne particles of a size 0.5 micron and larger per cubic foot (3.5 particles/liter) of air.

"Enteral Nutrition" - The administration into the gastro-intestinal tract of calories, nitrogen, and/or other nutrients to achieve tissue synthesis and anabolism for patients requiring medically prescribed, defined formula, liquid diets.

"HEPA" - (High-efficiency particulate air) Filter - A filter that provides a minimum-efficiency of 99.97% in removal of particles 0.3 micron or larger from the effluent air.

"Laminar Airflow" - An entire body of air moving with uniform velocity along parallel flow lines.

"Parenteral" - A sterile preparation intended for injection and used in the diagnosis, cure, mitigation, or treatment of disease or modification of physiological functions in human beings, but not including blood or blood products or as otherwise defined in the current United States Pharmacopeia.

"Sterile Pharmaceutical" - A dosage form free from living microorganisms.

"Total Parenteral Nutrition" - The intravenous administration of calories, nitrogen, and other to achieve tissue synthesis and anabolism.

10.2 General Requirements. A licensed pharmacy in the State of Delaware desiring to compound and dispense prescriptions or physician's orders for sterile pharmaceuticals and antineoplastic agents shall meet the following requirements:

10.2.1 Facilities and Equipment

10.2.1.1 The environment for the preparation of such prescriptions shall be set in a low traffic area, clean and free of contaminants and dust, and equipped to permit controlled aseptic/antineoplastic compounding.

10.2.1.2 The area for preparing sterile/ antineoplastic prescriptions shall be segregated from general non-aseptic work and storage areas and shall be used solely for sterile pharmaceutical/anti-neoplastic compounding. The area shall be maintained at controlled room temperatures as defined by the United States Pharmacopeia.

10.2.1.3 The area(s) shall provide space for a minimum of one class 100 environment. Additionally, the space shall be of a size to accommodate equipment as required herein and sufficient space to allow personnel working therein to safely and accurately fulfill their duties.

10.2.1.4 Minimum requirements for equipment, supplies and publications are as follows:

10.2.1.4.1 Minimally, a class 100 air flow unit

10.2.1.4.1.1 The air flow unit must be in compliance with recommendations from OSHA guidelines.

10.2.1.4.2 Refrigerator

10.2.1.4.3 Sink and wash area easily accessible to the sterile preparation/antineoplastic compounding area(s)

10.2.1.4.4 Appropriate waste containers

for:

10.2.1.4.4.1 Used needles and syringes

10.2.1.4.4.2 All antineoplastic wastes including apparel used in their preparation

10.2.1.4.5 Supplies:

10.2.1.4.5.1 Disposable needles and syringes and other supplies needed for sterile pharmaceutical/antineoplastic compounding

10.2.1.4.5.2 Disinfectant cleaning agents

10.2.1.4.5.3 Single-use lint free towels or air-driers

10.2.1.4.5.4 Handwashing materials with bactericidal action

10.2.1.4.5.5 Equipment and materials for cleaning antineoplastic agent spills

10.2.1.4.6 References: In addition to compliance with the reference requirements as set forth in Delaware Board Regulation 3.0, the pharmacy must have the following texts (items b and c required if chemotherapy agents are prepared):

10.2.1.4.6.1 Handbook of Injectable Drugs by the American Society of Hospital Pharmacists.

10.2.1.4.6.2 Procedures for handling Antineoplastic Drugs Technical Bulletin - most current edition published by the American Society of Hospital Pharmacists.

10.2.1.4.6.3 Most current edition of OSHA Guidelines for the handling of antineoplastic agents.

10.2.1.4.6.4 The Policy and Procedures Manual prepared under Section F of this Regulation.

10.2.1.4.7 Drug Components: All drug components that are received, stored, or used in compounding prescriptions shall meet official compendial requirements. If this cannot be met, pharmacists shall use their professional judgment to procure alternatives.

10.3 Personnel

10.3.1 The compounding of sterile pharmaceuticals/anti-neoplastic agents shall be under the control and supervision of a licensed pharmacist. The licensed pharmacist-in-charge or licensed pharmacist designee shall be on duty and on premises during all hours of operation of said pharmacy.

10.3.2 A pharmacist shall be accessible by telephone 24 hours a day to answer questions and to provide consultation regarding the dispensed preparation.

10.3.3 ~~Supportive personnel~~ Pharmacy Technician: The pharmacist managing the section of the pharmacy providing sterile/anti-neoplastic product pharmacy services may be assisted by ~~supportive personnel~~ pharmacy technician. These ~~personnel~~ persons must have specialized training in this field, and shall work under the supervision of a licensed pharmacist. The training provided to these ~~personnel~~ persons must be described in writing in a training manual. The duties and responsibilities of these ~~personnel~~ persons must be consistent with their training and experience.

10.4 Storage, Preparation, Dispensing, and Handling

10.4.1 A pharmacy shall provide any special handling and/or packaging and/or storage conditions for compounded sterile/antineoplastic preparations when delivering from the pharmacy to the patient or institution as necessary to maintain sterility and stability of the preparation.

10.4.2 Each pharmacy shall develop product sampling plans and shall have the ability to determine or know where to readily procure services to assure the quality of the products compounded or prepared.

10.4.3 Delivery service. The pharmacist managing the section of the pharmacy providing sterile/antineoplastic product pharmacy services is responsible for the environmental control of all products shipped. Therefore, any compounded, sterile parenteral product or antineoplastic agent that is frozen, or that requires refrigeration, must be shipped or delivered to a patient in appropriate coolers and stored appropriately in the patient's home.

10.5 Labeling

10.5.1 Each compounded preparation shall bear a label indicating the date beyond which it should no longer be administered and the temperature or conditions under which it should be stored.

10.5.2 If the preparation is an antineoplastic product, it must be labeled with a warning label clearly identifying the product as such.

10.5.3 The following "beyond use" dates shall be used: Admixtures in parenteral bags and bottles shall be labeled with a distinctive supplementary label, indicating the name and amount of the drug added, date, expiration date of the container and name or initials of the person preparing the solution.

10.5.3.1 Admixtures: Maximum of seventy-two hours when stored under refrigerated conditions from the time of compounding unless the manufacturer's recommendation is to store at room temperature and/or longer storage times can be substantiated with documentation.

10.5.3.2 If medications with expiration periods of less than forty-eight hours are added to a parenteral solution, or if the manufacturer indicates an expiration period of less than forty-eight hours, the "beyond use" date of the solution shall be the shorter expiration period and shall appear on the label.

10.6 Policy and Procedures Manual

10.6.1 A Policy and Procedures Manual shall be prepared and be available at each pharmacy site where sterile pharmaceuticals/antineoplastic agents are prepared for

inspection by authorized agents of the Board of Pharmacy. The Policy and Procedures Manual shall contain the objectives, operational guidelines and standard operating procedures of the pharmacy pertaining to sterile products/ antineoplastic agents. A procedure shall be included that addresses how a contaminated product is detected, recall measures and follow up.

10.6.2 The manual shall include procedures to be used by the pharmacy to prevent contamination of the products during preparation, storage, and dispensing.

10.6.3 The manual shall include written policies and procedures for cleaning and maintenance of the sterile pharmaceutical compounding/antineoplastic agent area(s) with records kept in the pharmacy department for one year.

10.6.4 Documentation of the following shall be included:

10.6.4.1 Replacement of filters and prefilters.

10.6.4.2 Certification of clean air source by an outside agency at least once a year.

10.6.4.3 Cleaning and maintenance of the equipment.

10.6.5 If antineoplastic agents are compounded in the pharmacy, protection shall be provided for its personnel by utilizing the proper equipment and protective garb and having a Policy and Procedures Manual for said antineoplastic agents. The Manual shall include, among the other requirements, the following special requirements outlined in sections 10.2 - 10.5 the following special requirements:

10.6.5.1 Procedures for disposal of all unused drugs and materials used in the preparation of antineoplastic agents in accordance with accepted professional standards, such as the most current OSHA Guidelines, regarding the handling of antineoplastic agents.

10.6.5.2 Safety standards which stress proper technique in handling antineoplastic agents and which include:

10.6.5.2.1 A certified vertical laminar air flow hood.

10.6.5.2.2 Protective garb, i.e., gloves, face and eye protection, and gowns.

10.6.5.3 In the event that antineoplastic agents and other parenterals are prepared within the same air flow unit, procedures shall be provided for a thorough scrub down and air purge of at least twenty minutes after compounding of the antineoplastic agent(s).

10.6.6 The Policy and Procedures Manual shall be maintained on a current basis. It shall be reviewed at least annually and changes shall show the effective date.

Revised Effective Date: April 14, 1997 (10.2 General Requirements revised)

11.0 Pharmaceutical Services in Nursing Homes

11.1 Definition: A nursing home is an institution licensed by the ~~State Board of Health~~ Division of Public Health that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest - Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

11.2 General Requirements

11.2.1 Each ~~administrator~~ facility shall provide ~~within the facility~~, a cabinet or medication carts for individual ~~prescriptions~~ patient medications. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for ~~the lock of~~ the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses, pharmacy technicians, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 ~~All bleaches, detergents, disinfectants, and external preparations so labeled shall be kept in a separate locked cabinet, compartment, or room apart from medicines, drugs or foods.~~ Internal medications must be stored separately from external medications.

11.2.3 ~~Adequate refrigeration (36° to 46° Fahrenheit) must be used to store medications requiring refrigeration.~~ Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.

11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.

11.2.5 No persons except properly authorized licensed personnel shall handle or administer "~~caution legend drugs~~ Rx only drugs." ~~from individual prescriptions~~.

11.2.6 Schedule II substances shall be secured under two locks in securely, fixed boxes or drawers in the medication storage area, medication cart, interim ~~or~~ and emergency supplies. These are to be kept separate from non-controlled medications. ~~There shall be accountability procedures for all Schedule II substances present.~~

11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained at the provider pharmacy and the facility showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.

11.3 Stock Medication

~~11.3.1 Non-legend medications:~~

~~11.3.1.1 A minimal amount of non-legend drugs may be kept as stock supply.~~

~~11.3.1.2 If accountabilities for individual patients are found to be inadequate upon inspection, then the~~

~~stock non-legend medications may be subject to limitations.~~

11.3.1 ~~11.3.2~~ ~~Legend~~ Prescription medications - Emergency, IV, and Anaphylactic supplies

11.3.1.1 ~~11.3.2.1~~ Certain ~~legend~~ prescription medications for **emergency use** may be stocked by the nursing home subject to ~~Board~~ approval by the Executive Secretary of the Board.

11.3.1.2 ~~11.3.2.2~~ **Emergency use** medications are those which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

11.3.1.3 ~~11.3.2.3 IV's and~~ Vaccines must be submitted on ~~an IV interim~~ stock list for approval by the Executive Secretary of the Board.

11.3.1.4 ~~11.3.2.4~~ IV medications must be submitted on a stock list for approval by the Executive Secretary of the Board. Only one IV box may be maintained at the facility, unless an exemption is granted. ~~by the Board. The number of Anaphylaxis or Emergency boxes must also be submitted for Board approval.~~ A request for an additional box must be submitted to the Executive Secretary of the Board.

11.3.1.5 The number and contents of Anaphylaxis and Emergency boxes must be submitted for approval to the Executive Secretary of the Board.

11.3.1.6 ~~11.3.2.5 If there is no specific~~ There must be an accountability procedure at the facility for needles and syringes. ~~then these must be submitted on an IV or emergency box list for approval. These are legend items in the State of Delaware~~.

11.3.2 ~~11.3.3 Legend~~ Prescription medications - Interim supply

~~The criteria for legend interim medications requiring Board approval are as follows:~~

~~11.3.3.1 The interim supply may consist of medications selected from the following categories:~~

~~11.3.3.1.1 antibiotics~~
~~11.3.3.1.2 pain medications~~
~~11.3.3.1.3 antidiarrheal~~
~~11.3.3.1.4 cold/cough/antihistamines~~
~~11.3.3.1.5 antiemetics~~
~~11.3.3.1.6 antihypertensive~~
~~11.3.3.1.7 anticonvulsants~~
~~11.3.3.1.8 antidiabetic agents~~
~~11.3.3.1.9 cardiovascular drugs~~
~~11.3.3.1.10 respiratory/bronchodilators~~
~~11.3.3.1.11 sedatives/hypnotics~~
~~11.3.3.1.12 anticoagulants~~
~~11.3.3.1.13 H2 antagonists~~

~~11.3.3.2 The pharmacy, medical, and nursing staff committee may select a maximum quantity of 6 dosage units for items present in this supply.~~

11.3.2.1 ~~11.3.3.3~~ There can be no more than a total of 60 ~~legend~~ prescription items present in this interim supply with a maximum quantity of 6 dosage units per item.

11.3.2.2 ~~11.3.3.4~~ Only one interim box may be maintained at the facility, unless an exemption is granted ~~by the Board~~. A request for an additional box or supply must be submitted for approval to the Executive Secretary of the Board ~~for approval~~.

11.3.3 ~~11.3.4~~ Approved lists for ~~legend~~ prescription drug ~~boxes~~ stock.

11.3.3.1 ~~11.3.4.1~~ The most current approved signed list or lists for each box must be maintained in the pharmacy, attached to the box or boxes in the facility, and shall become part of the Policy and Procedures manual.

11.3.3.2 ~~11.3.4.2~~ When additions or deletions are made, then a complete revised list must be submitted for ~~Board~~ approval to the Executive Secretary of the Board.

11.3.3.3 Location site(s) where each box will be stored in the facility must be included on each list submitted.

11.3.3.4 When there is a change of the provider pharmacy all stock lists, even if unchanged, must be submitted for approval to the Executive Secretary of the Board within 15 days of initiation of pharmacy services.

11.3.4 ~~11.3.5~~ Accountability for ~~legend~~ prescription stock ~~usage~~ drugs

11.3.4.1 ~~11.3.5.1~~ The pharmacy provider must be contacted within 24 hours after medication is used from the supply. The pharmacist shall review the records of new or changed orders to assure appropriateness. These records must indicate the patient name, location, name of medication, strength, quantity removed, date, time and nurses' signature. Copies of the usage (i.e. removal) records must be maintained at the facility in chronological order for 3 years.

11.3.4.2 The provider pharmacy is responsible for the accuracy of all stock drug box contents at the time of the filling of the medication. The replacement of approved stock medications must be supervised by a pharmacist and documented as such within 72 hours of usage. This check must also include any medication that became available when the medication is accessed. Records documenting this filling or replacement of a stock medication by a pharmacy must be kept for a minimum of three years at the provider pharmacy and must be readily available for inspection by the Board.

11.3.4.3 ~~11.3.5.2~~ Failure to comply with all aspects and intent of these procedures outlined can result in the revocation, suspension, or denial of the privilege of having ~~controlled substances present in these supplies~~ stock medications present.

11.3.4.4 ~~11.3.5.3~~ Continuous violations of accountability procedures for ~~the non-controlled legend~~ stock medications may result in review proceedings before

the Board. ~~of Pharmacy.~~

11.4 Return Medication Procedures

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or ~~and~~ returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of such returns for ~~disposal~~ destruction. The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.

11.4.3 ~~11.4.2~~ Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication ~~may be jointly performed by the consultant pharmacist or provider pharmacist with a designated nurse witness if~~ shall be jointly performed by two authorized licensed personnel within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for two years.

11.5 Labeling

11.5.1 Labels on controlled substances must ~~show~~ contain the original dispensing date, the actual refill date and amount of medication dispensed.

11.5.2 If a unit dose system is used then the provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for inpatient use in a nursing home may label the prescription, "to be administered according to current physician's orders." ~~provided that:~~

~~11.5.3.1 The MAR accurately reflects the prescriber's current orders.~~

~~11.5.3.2 The pharmacy is informed of any change in directions within twenty-four (24) hours and promptly records the change on the patient's profile. Prescriptions for leave of absence or discharge must be labeled in compliance with 24 **Del.C.** §2536.~~

11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

11.6 Duties of Consultant Pharmacist (CP)

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services, and the direct supervision of Delaware registered pharmacy interns, who may assist in chart reviews. Supervision of the pharmacy intern activities must be documented by the supervising pharmacist as pertaining to chart review.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

11.6.3 When a pharmacist becomes the consultant to a nursing home, he or she must notify the Board in writing within ten days of the starting date. The Delaware State Board of Pharmacy shall be notified in writing within ten days by the consultant pharmacist of termination of said services.

11.6.3.1 If the Consultant pharmacist has not served in that position in the State of Delaware, the letter of notification must contain a request for an interview with a pharmacist on the staff of the Executive Secretary. At that interview, the consultant pharmacist will receive a self inspection form for nursing homes.

11.6.4 The CP shall be responsible for the development of written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing ~~physician~~ practitioner medication orders, medication errors, automatic stop orders; medications for patient discharge and leave of absence. ~~emergency; medication orders.~~

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the nursing home in compliance with State and Federal ~~and State~~ laws.

11.6.4.4 Policies and procedures outlining the return or destruction on site of wastage for all controlled ~~substances~~ medications.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure, and labeling of all prescription drugs and biologicals in accordance with State and Federal ~~and State~~ requirements. For registered out-of-state providers an additional labeling requirement is having ~~their~~ the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen reviews, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all ~~physicians'~~ practitioners' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the CP shall serve on that Committee.

11.6.6 The pharmacist ~~consultant pharmacist or designated pharmacy staff~~ shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy technician may assist under the direct supervision of the consultant pharmacist.

11.6.6.1 Nursing station inspections must include, but are not limited to the following- documentation of:

11.6.6.1.1 ~~(1) Documentation of~~ medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit),

11.6.6.1.2 ~~(2) documentation of~~ security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes),

11.6.6.1.3 ~~(3)~~ proper labeling, including any accessory or cautionary instructions,

11.6.6.1.4 ~~(4)~~ proper expiration dating ~~dates~~,

11.6.6.1.5 ~~(5)~~ cleanliness,

11.6.6.1.6 ~~(6) accountability of all medication and~~ interim, emergency, IV, anaphylactic boxes or kits are properly maintained,

11.6.6.1.7~~(7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained.~~ accountability of all medication, which includes complete documentation for a minimum of 15% of all patients on each unit with a minimum of 5 patients, whichever is greater. Complete documentation includes: date audited, patient identification, listing of all patient medications, and a report of overages and shortages with an explanation, if known.

11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly. Each patient's chart will be reviewed at the facility. Documentation of the review is accomplished in the following manner.

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report ~~summary~~ which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. ~~The written summaries must be maintained in the facility. A copy must be sent to the Medical Director, attending physician, Administrator and the Director of Nursing.~~ This written recommendation shall be forwarded to the prescribing practitioner, with the original documentation maintained in the patient chart.

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator.

11.6.8 The CP shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy related activities and concerns.

11.6.9 The CP shall assume all other responsibilities required of a CP as set forth in any State or Federal ~~or State~~ statutes or regulations as enacted or amended or may be enacted or amended.

11.7 Notwithstanding this Regulation, nothing in the Regulation shall render a practice unlawful which is required by Federal regulation.

Effective Date: October 11, 1996

Revision Date: April 14, 1997 (11.33.2 Stock Medication)

12.0 Health Care Facilities

12.1 Definition

A health care facility means any organization, other than a nursing home or hospital, which is licensed or certified by the State to provide a physical environment for patients in which health care services are a primary component. These facilities include, but are not limited to:

12.1.1 Convalescent homes
12.1.2 Extended health facilities
12.1.3 Mental health facilities
12.1.4 Rehabilitation centers
12.1.5 Psychiatric centers
12.1.6 Group homes for mentally retarded
12.1.7 Group homes for mentally ill
12.1.8 Clinics
12.1.9 Residential treatment centers
12.1.10 End Stage Renal Disease Treatment Centers

12.2 Requirements. Any health care facility in which medication is administered and/or dispensed must comply with all State and Federal laws regarding drug storage, labeling, recordkeeping, and security. Only health care personnel authorized by law to handle medication may have access to medication areas.

13.0 Nuclear Pharmacy Regulations

13.1 Purpose and Scope

13.1.1 The purpose of this regulation is to recognize the practice of nuclear pharmacy as a specialty of pharmacy practice to be regulated by the Delaware State

Board of Pharmacy. As such, the following rules are included to address those areas specific to this specialty practice.

13.1.2 Nuclear Pharmacy practice refers to a patient oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

13.2 Definitions

"Authentication of Product History" includes, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

"Authorized Personnel" means any individual trained through management to be permitted to perform assigned duties in a safe and effective manner.

"Authorized User" means any individual or institution named on a radioactive materials licensed.

"Nuclear Pharmacy" is a pharmacy which provides radiopharmaceutical services.

"Qualified Nuclear Pharmacist" is a currently licensed pharmacist in the State of Delaware who meets either of the following criteria:

Must be currently certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties.

Must have successfully completed a minimum of 700 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a nationally accredited college of pharmacy or from an American Council on Pharmaceutical Education (ACPE)-approved training program. The training qualifications are described in 13.6.

"Radiopharmaceutical Quality Assurance" means, but is not limited to, the performance of tests on radiopharmaceuticals to ascertain the radionuclidic, radiochemical, chemical, physical, and microbiological purity and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

"Radiopharmaceutical services" means, but shall not be limited to, the procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record keeping, and disposal of radiopharmaceuticals and other drugs.

"Radiopharmaceuticals" are radioactive drugs as defined by the FDA to include any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non radioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance. This definition does not include drugs such as carbon containing compounds or potassium containing salts which contain trace quantities of naturally occurring radionuclides. The term radiopharmaceutical also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Restricted Area" means any area the access to which is controlled by the license for purpose of protection of individuals from exposure to radiation and radioactive materials.

"Unrestricted Area" means any area the access to which is not controlled by the licensee for purpose of protection of individuals from exposure to radiation and radioactive materials.

13.3 Nuclear Pharmacy—general Requirements. The process employed by any permit holder in this state concerning the handling of radioactive materials must involve procedures for the purchase receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials. In order to insure the public health and safety in this respect, a nuclear pharmacy in this state shall meet the following general requirements:

13.3.1 A nuclear pharmacy may be managed only by a qualified pharmacist acting in the capacity of a pharmacist-in-charge who shall be responsible for the compliance with all laws and regulations, both state and federal pertaining to radiopharmaceuticals and radiopharmaceutical services. An actively licensed qualified nuclear pharmacist must personally supervise the operation of only one nuclear pharmacy when radiopharmaceutical services are being performed.

13.3.2 The nuclear pharmacy area shall be secured from access by unauthorized personnel.

13.3.3 Each nuclear pharmacist shall maintain accurate records of the acquisition, inventory, distribution, and disposal of all radiopharmaceuticals.

13.3.4 All nuclear pharmacies shall provide adequate space for radioactive storage and a product decay area.

13.3.5 Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies for the procurement, secure storage, inventory, preparation, distribution and disposal of radiopharmaceuticals and other drugs.

13.3.6 Radiopharmaceuticals are to be distributed only upon a prescription order from an authorized licensed medical practitioner or through the practitioner's agent.

13.3.7 A nuclear pharmacist shall transfer radioactive materials in accordance with all applicable laws and regulations.

13.3.8 A nuclear pharmacy upon receiving an oral prescription order for a radiopharmaceutical shall immediately have the prescription order reduced to writing or recorded in a data processing system which shall contain at least the following:

13.3.8.1 the name of the authorized user or his agent;

13.3.8.2 the date of distribution and the time of administration of the radiopharmaceutical;

13.3.8.3 the name of procedure;

13.3.8.4 the name of the radiopharmaceutical;

13.3.8.5 the prescription number assigned to the order for the radiopharmaceutical;

13.3.8.6 any specific instructions; and

13.3.8.7 the initials of the person who received the order.

13.3.8.8 When the order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.

13.3.8.9 If the product is for a therapeutic radiopharmaceutical the patient's name must be obtained and recorded (i.e. verified) by a pharmacist when the pharmacy receives an oral prescription.

13.3.9 In addition to other labeling requirements of the Board of Pharmacy for non-radioactive pharmaceuticals, the immediate outer container shield of a radiopharmaceutical to be dispensed shall be labeled with:

13.3.9.1 the name and address of the pharmacy;

13.3.9.2 the name of the prescriber;

13.3.9.3 the name of the procedure;

13.3.9.4 the standard radiation symbol;

13.3.9.5 the words "caution Radioactive material";

13.3.9.6 the prescription number of the radiopharmaceutical;

13.3.9.7 the radionuclide and chemical form;

13.3.9.8 the amount of radioactive material contained in millicuries (mCi), or microcuries (uCi) and the corresponding time that applies to this activity, if different from 13.3.9.9 of this paragraph;

13.3.9.9 the calibration date and time;

13.3.9.10 the expiration date and time;

13.3.9.11 if a liquid, the volume;

13.3.9.12 if a solid, the number of items or weight;

13.3.9.13 if a gas, the number of ampules or vials;

13.3.9.14 molybdenum-99 content to USP limits; and

13.3.9.15 the name of the patient or the words "Physicians Use Only" in the absence of a patient name. If the order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing. The requirements of this subsection shall be met when the name of the patient is readily retrievable from the physician upon demand.

13.3.10 The immediate inner container label of a radiopharmaceutical to be distributed shall also be labeled with:

13.3.10.1 the standard radiation symbol

13.3.10.2 the words "Caution Radioactive Material"

13.3.10.3 the radionuclide;

13.3.10.4 the amount of radioactivity in mCi or uCi;

13.3.10.5 the calibration date and time

13.3.10.6 the prescription number of the radiopharmaceutical; and

13.3.10.7 the pharmacy name; and

13.3.10.8 the name of the patient or the words "Physicians use only" in the absence of a patient name. If the order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be on the label.

13.4 Nuclear Pharmacy—minimum Requirements. All nuclear pharmacies must meet the requirements of the Department of Health and Rehabilitative Services for the control of radiation hazards and applicable requirements of the Federal Food and Drug Administration. In addition, in order to insure compliance with general safety requirements, the following additional minimum requirements must be met by a nuclear pharmacy:

13.4.1 Physical Facilities

13.4.1.1 Each nuclear pharmacy shall have an area for the storage, compounding, distribution and disposal of radiopharmaceuticals which shall be adequate to completely separate such radioactive pharmaceuticals from pharmacy areas which contain non radioactive medicinal drugs.

13.4.1.2 The nuclear pharmacy facility shall have adequate space commensurate with the scope of services.

13.4.2 Equipment:

13.4.2.1 Vertical laminar air flow unit (hood) used as a shielded radiation containment drawing station;

13.4.2.2 Exhaust/fume unit (hood) with engineering controls to assure airborne concentrations in compliance with federal regulations for storage and handling of all volatile radioactive drugs, if applicable;

13.4.2.3 Vertical laminar flow biological safety cabinet to be used for all compounding of applicable radiopharmaceuticals (i.e. blood products; white blood cells procedures);

13.4.2.4 Dose calibrator;

13.4.2.5 Well scintillation counters;

13.4.2.6 Area rate meters;

13.4.2.7 Geiger-Mueller (GM) Survey meters;

13.4.2.8 Refrigerator;

13.4.2.9 Microscope;

13.4.2.10 Hemacytometer

13.4.2.11 Leaded glass syringe shields;

13.4.2.12 Personal radiation detection devices

13.4.3 Supplies:

13.4.3.1 Syringes and vials required to perform practice;

13.4.3.2 Disposable gloves and protective lab coats;

13.4.3.2 Supplies to insure sterile practices for I.V. solutions and preparations;

13.4.3.3 Supplies to perform thin layer chromotography;

13.4.3.4 Lead transport shields for syringes and vials;

13.4.3.5 D.O.T. type 7A approved transport containers and other labels and supplies for shipping radioactive materials.

13.4.4 Library/Current references: In addition to the reference requirements of Regulation 3.0, a nuclear pharmacy shall maintain a reference library which shall include the following:

13.4.4.1 NRC Title 10 CFR, Code of Federal Regulations;

13.4.4.2 NRC Title 21 CFR, Code of Federal Regulations;

13.4.4.3 NRC Title 49 CFR, Code of Federal Regulations;

13.4.4.4 NABP Nuclear Pharmacy Practice Guidelines;

13.4.4.5 A minimum of three current edition texts dealing with nuclear medicine science;

13.4.4.6 A copy of the procedure manual.

13.4.4.7 Delaware Radiation Control Regulations

13.5 Records.

13.5.1 Policy and procedure manual. All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

13.5.2 A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organization, etc. All pharmacy personnel shall be familiar with the contents of the manual.

13.5.3 The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from other pharmacy staff members.

13.6 Training Qualifications

13.6.1 A pharmacist licensed to practice pharmacy in this state who performs a radiopharmaceutical service shall, prior to engaging in such specialized practice, be qualified as a nuclear pharmacist and licensed by the Board of Pharmacy.

13.6.2 Qualifications for a nuclear pharmacist are as follows:

13.6.2.1 A pharmacist shall:

13.6.2.1.1 be a pharmacist licensed by the Board to practice pharmacy in Delaware.

13.6.2.1.2 submit to the Board either:

13.6.2.1.2.1 Certification that he or she has successfully completed a minimum of four months on the job training providing radioactive drug services under the supervision of a nuclear pharmacist;

13.6.2.1.2.2 certification that he or she has successfully completed a nuclear pharmacy training program in an accredited college; or

13.6.2.1.2.3 an application, in affidavit form, along with such other information the Board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy.

13.6.2.2 A qualified pharmacist seeking licensure as a nuclear pharmacist in the state shall submit to the Board of Pharmacy a course outline from an accredited college of pharmacy or other program recognized by the Delaware Board of Pharmacy (a program comparable to those offered by accredited colleges of pharmacy for the training of nuclear pharmacists), and a certificate of training which provides a minimum of 200 clock hours of formal didactic training, which includes:

13.6.2.2.1 Radiation protection (45 hours);

13.6.2.2.2 Radiation physics and instrumentation (85 hours);

13.6.2.2.3 Mathematics of radioactivity (20 hours);

13.6.2.2.4 Radiation biology (20 hours); and

13.6.2.2.5 Radiopharmaceutical chemistry (30 hours).

13.6.2.3 Proof of attaining a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist. The training and experience shall include, but shall not be limited to the following:

13.6.2.3.1 Procurement

13.6.2.3.2 Compounding

13.6.2.3.3 Quality Assurance

13.6.2.3.4 Dispensing

13.6.2.3.5 Distribution

13.6.2.3.6 Health and Safety

13.6.2.3.7 Provisions of Information and Consultation

13.6.2.3.8 Monitoring patient outcome

13.6.2.3.9 Research and Development

13.7 Nuclear Pharmacist Continuing Education

13.7.1 Proof satisfactory that a nuclear pharmacist licensed pursuant to this section, has met the requirements necessary for biennial renewal of this license shall be constituted by the following:

13.7.1.1 The licensee has completed no less than ten (10) out of the total requirements of 30 hours of coursework each two-year period by or through a committee-approved provider (e.g ACPE), instructionally

designed to provide in-depth treatment of nuclear pharmacy practice.

13.7.1.2 Content of nuclear pharmacist continuing education program can include, but not be limited to the following:

13.7.1.2.1 Formulation and quality control issues in nuclear pharmacy

13.7.1.2.2 Radionuclide therapy in nuclear pharmacy

13.7.1.2.3 Radiopharmaceutical updates for target organs

13.7.1.2.4 Current concepts in radiation physics, radiation biology and exposure.

13.7.1.2.5 Current principles of radiation safety

13.7.1.2.6 Current principles of nuclear pharmacy management

13.7.1.2.7 Advances in drug, radiopharmacuetical, or related technology (including but not limited to monoclonal antibodies, peptides, magnetic resonance imaging, positron emission tomography, novel radionuclide therapy and other applicable issues.

Effective 09/23/95

14.0 Administration of Injectable Medications

The purpose of this regulation is to implement provisions relating to the training, administration, and documentation of injectable medications, biologicals, and adult immunizations by pharmacists, pursuant to Chapter 25, Title 24 of the Delaware Code relating to Pharmacy.

14.1 Educational Requirements

14.1.1 In order to administer injectable medications, biologicals, and adult immunizations a licensed pharmacist shall provide proof that the following requirements have been satisfied:

14.1.1.1 The satisfactory completion of an academic and practical curriculum approved by the Board of Pharmacy which includes, but is not limited to, disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events, and related topics.

14.1.1.2 A current Cardio-Pulmonary Resuscitation (CPR) certificate acceptable to the Board of Pharmacy.

14.1.2 A registered pharmacist may only administer injections consistent with public health and safety and in a competent manner consistent with the academic curriculum and training completed.

14.1.3 Continued competency shall be maintained. A minimum of two hours (0.2 C.E.U.) of the thirty hour requirement for continuing education, every licensure period, must be dedicated to this area of practice.

14.1.4 Documentation of the satisfactory completion of the proper academic and practical training requirements shall be listed in a policy and procedures manual available for inspection by the Board of Pharmacy. Maintaining such a policy and procedures manual shall be the responsibility of each registered pharmacist administering injections.

14.2 Practice Requirements

14.2.1 The pharmacist must maintain a manual with policies consistent with OSHA (Occupational Exposure to Bloodborne Pathogens) and procedures for dealing with acute adverse events.

14.2.2 Prescriptions and/or physician-approved written protocols will be maintained and available for inspection by the Board of Pharmacy.

14.2.3 The pharmacist, before administering an injectable medication, biological, or immunization, must counsel the patient and/or the patient's representative about contraindications and inform them in writing in specific and readily understood terms about the risks and benefits. A signed copy of the patient's consent shall be filed and available for inspection by the Board of Pharmacy.

14.2.4 The pharmacist must document all injections made and have such documentation available for inspection by the Board of Pharmacy. Documentation shall include:

14.2.4.1 Patient's name, address, phone number, date of birth, and gender.

14.2.4.2 Medication or vaccine administered, expiration date, lot number, site of administration, dose administered.

14.2.4.3 Date of original order and the date of administration(s).

14.2.4.4 The name of the prescribing practitioner and the pharmacist administering the dose.

14.2.5 The pharmacist must document fully and report all clinically significant adverse events to the primary-care provider and to the Vaccine Adverse Event Reporting System (VAERS) when appropriate.

14.2.6 The pharmacist shall provide documentation to each person receiving immunizations and when appropriate to the Immunization Section of the Department of Health and Social Services so the names of those individuals can be added to the Vaccination Registry.

14.2.7 All documentation and records required by this Regulation must be maintained for a period of not less than three years.

14.3 Classes and Indications of Approved Medications. Classes of medications shall include injectable medications, immunizations, and biologicals contained in the list of Approved Drug Products with Therapeutic Equivalence Evaluations or drugs under clinical study when administered in accordance with indications approved by the Food & Drug Administration.

14.4 Authorization. Only those registered pharmacists meeting the requirements of this Regulation shall administer injectable medications, biologicals, and adult

immunizations. The Board of Pharmacy shall maintain a current list of those pharmacists so authorized. It is the responsibility of each registered pharmacist to maintain his or her current status on such list.

See 3 DE Reg. 431 (9/1/99)

Effective Date: September 11, 1999

15.0 Automated Pharmacy Systems

15.1 Purpose and Scope

15.1.1 The purpose of this regulation is to recognize the use of automated pharmacy systems in community, institutional, and long term care pharmacy settings.

15.2 Definitions

15.2.1 "Automated Pharmacy Systems" include, but are not limited to, mechanical systems that perform operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medications, and which collects, controls, and maintains all transaction information.

15.3 Automated Pharmacy Systems – General Requirements

15.3.1 Personnel

15.3.1.1 Duties and Responsibilities of the Permit Holder

15.3.1.1.1 The Permit Holder has the following responsibilities:

15.3.1.1.1.1 Assuring that the Automated Pharmacy System is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards.

15.3.1.1.1.2 Developing and implementing an ongoing quality assurance program that monitors performance of the Automated Pharmacy System, which is evidenced by written policies and procedures developed by the pharmacy.

15.3.1.1.1.3 Providing the Board with 60 days prior written notice of the installation, removal, substantive change of Automated Pharmacy Systems. Such notice must include, but is not limited to:

15.3.1.1.1.3.1 the name and address of the pharmacy;

15.3.1.1.1.3.2 the location of the automated equipment; and

15.3.1.1.1.3.3 the identification of the responsible pharmacist.

15.3.1.1.1.3.4 policies and procedures for system operations (for initial installations).

15.3.1.1.1.4 Obtaining written approval and authorization from the Board of Pharmacy prior to implementation.

15.3.2 Pharmacy Practice

15.3.2.1 Automated Pharmacy Systems

15.3.2.1.1 Automated Pharmacy Systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Board of Pharmacy, and licensed health care facilities where legally permissible and shall comply with the following provisions:

15.3.2.1.1.1 Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained on-site in the pharmacy for review by an agent of the Board of Pharmacy. Such documentation shall include, but is not limited to:

15.3.2.1.1.1.1 Name and address of the pharmacy and/or licensed health care facility where the Automated Pharmacy System(s) is being used;

15.3.2.1.1.1.2 Manufacturer's name and model;

15.3.2.1.1.1.3 Description of how the device is used;

15.3.2.1.1.1.4 Quality assurance procedures to determine continued appropriate use of the automated device; and

15.3.2.1.1.1.5 Polices and procedures for system operation, safety, security, accuracy, patient confidentiality, access, and malfunction.

15.3.2.1.1.1.2 Automated pharmacy Systems shall be used only in setting where there is an established program of pharmaceutical care that ensures medication orders are reviewed by a pharmacist in accordance with established policies and procedures and good pharmacy practice.

15.3.2.1.1.1.3 All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

15.3.2.1.1.1.4 Automated Pharmacy Systems shall have adequate security systems and procedures, evidenced by written policies and procedures, to:

15.3.2.1.1.1.4.1 Prevent unauthorized access and to comply with Federal and State regulations; and

15.3.2.1.1.1.4.2 Maintain patient confidentiality.

15.3.2.1.1.1.5 Records and/or electronic data kept by Automated Pharmacy Systems shall meet the following requirements:

15.3.2.1.1.1.5.1 All events involving the contents of the Automated Pharmacy System must be recorded electronically; and

15.3.2.1.1.1.5.2 Records must be maintained by the pharmacy and must be readily available to the Board. Such records must be maintained for a period of three (3) years and shall include:

15.3.2.1.1.1.5.2.1 identity of

system accessed;

15.3.2.1.1.1.5.2.2 identification of the individual accessing the system;

15.3.2.1.1.1.5.2.3 type of transaction;

15.3.2.1.1.1.5.2.4 name, strength, dosage form, and quantity of the drug accessed;

15.3.2.1.1.1.5.2.5 name of the patient for whom the drug was ordered; and

15.3.2.1.1.1.5.2.6 such additional information as the pharmacist-in-charge may deem necessary.

15.3.2.1.1.1.6 Access to and limits on access (e.g., security levels) to the Automated Pharmacy System must be defined by policy and procedures and must comply with State and Federal regulations.

15.3.2.1.1.1.7 The pharmacist-in-charge or authoirzed designee shall be responsible for:

15.3.2.1.1.1.7.1 Assigning, discontinuing, or changing access to the system.

15.3.2.1.1.1.7.2 Ensuring that access to the medication complies with State and Federal regulations.

15.3.2.1.1.1.7.3 Ensuring that the Automated Pharmacy System is filled/stocked accurately and in accordance with established, written policies and procedures that ensure accuracy.

15.3.2.1.1.1.7.4 Checking the automated pharmacy system for accurate dispensing of medications at appropriate periodic intervals.

15.3.2.1.1.1.8 The filling/stocking of all medication in the Automated Pharmacy System shall be accomplished by qualified personnel under the supervision of a licensed pharmacist.

15.3.2.1.1.1.8.1 Community/ Outpatient Pharmacy –A final check by the pharmacist is required after the medication is placed in the final container prior to dispensing and administration to the patient.

15.3.2.1.1.1.8.2 Hospital/ Institution – ~~Unit based or centralized dispensing requires the same level of supervision required in Regulation IX - B3 which states: "Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons".~~ Pharmacy technicians may be utilized in assisting the pharmacists. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons. There will be a final check by a licensed pharmacist prior to the dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

15.3.2.1.1.1.9 A record of medication filled/stocked into an Automated Pharmacy System shall be maintained and shall include identification of the persons filling/ stocking and checking for accuracy.

15.3.2.1.1.1.10 All containers of medications stored in Automated Pharmacy System shall be packaged and labeled in accordance with Federal and State laws and regulations.

15.3.2.1.1.1.11 All aspects of handling controlled substances shall meet the requirements of all State and Federal laws and regulations.

15.3.2.1.1.1.12 The Automated Pharmacy System shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the Automated Pharmacy System, all in accordance with existing State and Federal law.

15.3.2.1.1.1.13 The Automated Pharmacy System shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing State and Federal law.

See 4 DE Reg. 1502 (3/1/01)

DEPARTMENT OF EDUCATION

14 DE Admin. Code 101

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

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL.C. SECTION 122(d)

701 Unit Count

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend regulation 701 Unit Count. The amendments are necessary to clarify the language under 4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count, concerning home-bound students in 4.1.4, gifted and talented students in 4.1.7 and Children with disabilities in 4.1.8. The new language provides more complete definitions of these categories of students.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the unit count system not student achievement.

2. Will the amended regulation help ensure that all

students receive an equitable education? The amended regulation addresses the unit count system not equity issues.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the unit count system not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? These changes must be reflected in the regulation for the unit count.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There will be no additional cost to the state or to the local school boards for implementing this amended regulation.

701 Unit Count

1.0 Forms and Record Keeping

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

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

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

2.0 Special Situations Regarding Enrollment

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

2.2 Students with multiple handicaps shall be reported in the category that corresponds to their major handicapping condition.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in the regulation, Children with Disabilities

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

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

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

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

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

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment. The notification shall be by fax with a follow-up letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted

from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

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

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

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

4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (2.4 in regulation 915 James H. Groves High school) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

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

4.1.4 ~~Supportive homebound instruction provided by the reporting school.~~ Supportive Home-bound Instruction Provided by the Reporting School: The school shall provide a minimum of 3 hours of supportive (home-bound) instruction each week of eligibility for students with disabilities in grades K-5, and a minimum of 5 hours of supportive (home-bound) instruction for students with disabilities in grades 6-12. There is no minimum when supportive (home-bound) instruction is part of the transitioning process that has been documented by an IEP team as necessary for an orderly return to the educational program (14 DE. Administrative Code 930 paragraph 3.1.1). Students who are receiving supportive (home-bound) instruction are to be served by qualified (certified) individuals (Section 300.23, IDEA, Part B).

4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

4.1.7 ~~Four-year-old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned.~~ Gifted or talented students who possess certain outstanding abilities that enable them to exhibit a high degree of performance in a particular field, beginning with the chronological age of 4 inclusive, who have been identified by professionally qualified persons (14 *Del. C.* Section 3101), are recorded in the grade level enrollment group to which they are assigned. These students should be evaluated using standardized assessment instruments.

4.1.8 Persons with Disabilities in the Chronological Age Group Birth Through 20 Years, Inclusive (14 DE. Admin. Code 925, paragraph 4.1) : Persons with Disabilities are persons in the chronological age group birth through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems, as defined by the Department of Education rules and regulations, require special education and related services in order to develop their capabilities. Such eligibility and the nature of the disabling condition, must be determined by an IEP/MD team.

~~4.1.8~~ 4.1.8.1 All pre-kindergarten students with disabilities shall be counted as full-time special education students. In the case of developmentally delayed 3 year old students and speech or language delayed 3 and 4-year old students as determined by the Department of Education with the approval of the State Board of Education, services shall be provided for these students through an annual appropriations to the Department of Education specifically for that purpose (14 *Del. C.* Section 1703). Students identified in these categories are not included in the state unit count.

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

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

4.1.11 Full-time Special Education Programs -

Students who have been properly diagnosed, placed in a special program, and receive instruction from a certified special education teacher for at least 12 1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in Regulation 925, Children with Disabilities.

4.1.12 Part-time Special Education Programs - Part-time special education programs include students who receive less than 12-1/2 hours of instruction from a certified special education teacher, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category.

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

4.1.13 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

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

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

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

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

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

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

6.0 Nontraditional High School Schedules: For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student:

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

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

7.0 Charter Schools

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

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

7.1.2 adding the fractional units in each category and using the major fraction unit rounding rule on the total

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

See 2 DE Reg. 382 (9/1/98)
See 5 De Reg. 627 (9/1/01)

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

1511 ISSUANCE AND RENEWAL OF CONTINUING LICENSE

A. TYPE OF REGULATORY ACTION REQUESTED
New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board seeks the approval of the State Board of Education to establish regulations concerning the requirements for the issuance and renewal of a continuing license. This regulation shall apply to the issuance and renewal of a continuing license as established by 14 Del. C §1211 and § 1213. This regulation is necessary to comply with changes in statute regarding the licensure and certification of educators.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and requires that educators be fully qualified to teach a subject area and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation helps ensure that all educators demonstrate high standards for the issuance of a continuing license and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure, not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator licensure, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 Del. C. requires that we promulgate this regulation.

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

1511 ISSUANCE AND RENEWAL OF CONTINUING LICENSE

1.0 Content: This regulation shall apply to the issuance and renewal of a continuing license for educators, pursuant to 14 Del. C. § 1211 and § 1213.

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

"College credit" means graduate or undergraduate level coursework and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

"Clock-hour" means actual time spent in professional development, not credit hours.

"Cooperating teacher or intern supervisor" means an individual working with student teachers or graduate or undergraduate interns as part of a state-approved educator preparation program.

"Clusters" means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters must be approved by the Standards Board.

"Curriculum or assessment development" means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual's professional responsibilities.

"Delaware Administrator Standards" means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 **DE Admin. Code** 394, Delaware Administrator Standards.

"Delaware Professional Teaching Standards" means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 **DE Admin. Code** 393, Delaware Professional Teaching

Standards.

"Department" means the Delaware Department of Education.

"Educational project" means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual's professional practice, with the development of a final product or report.

"Educational travel" means a travel experience including 15 or more clock hours of work time directly related to the individual's professional responsibilities, including a final project to be used to enhance the individual's work.

"Educator" means an employee paid under 14 **Del.C.** §1305.

"Formal study group" means documented participation in a study group, related to an individual's professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, as a form of professional development.

"Initial License" means a license issued as part of the three-tiered licensure system set forth in 14 **Del. C.** § 1210.

"Knowledge and skills" means understandings and abilities that, when acquired by educators, lead to more effective instruction.

"Mentoring" means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period.

"NBPTS or similar national certification" means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in an individual's job-related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

"Other experience or activity" means a professional development experience or activity, not covered by the other options, that enhances an individual's work in his/her professional responsibilities and contributes to the individual's area of specialization.

"Peer coaching" means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer-coaching or peer assistance program.

"Presentation" means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual's professional responsibilities.

"Professional conference, workshop, institute, or academy" means a program offered either within, or outside, the state that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

"Professional development" means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction.

"Professional development activities" means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve educator performance.

"Professional development cluster" or "cluster" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Professional portfolio" means a formal collection of artifacts and exhibits that include required examples of an individual's professional work based upon specific performance tasks or standards.

"Professional programs or committees" means job related service, designed to enhance the profession.

"Publication" means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.**, § 104.

"State" means State of Delaware.

3.0 In accordance with 14 Del. C. § 1211, the Department shall issue, upon application, a continuing license to an educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del. C. § 1210 and § 1211. A continuing license is valid for 5 years unless extended pursuant to 14 Del. C. §1216 or revoked for cause, as defined in 14 Del. C. §1218.

3.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of DPAS II annual summative evaluations for the period of initial licensure shall be submitted with the application. Incomplete applications will not be processed.

4.0 Department may issue a continuing license to an educator who is duly certified or licensed in another jurisdiction and to an educator who previously held a valid Delaware certificate that has expired.

4.1 An educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon employment.

4.2 An educator who previously held a valid Delaware standard or professional status certificate which has expired shall be issued a continuing license, valid for 5 years, upon

employment and application on the approved form and evidence of previous Delaware certification.

4.3 An educator holding a limited standard or temporary certificate and currently employed as an educator in a Delaware public school will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.4 An educator holding a current or expired professional status or standard certificate assigned to work outside the area covered by the professional status or standard certificate will be issued a continuing license, with an emergency certificate for the new area issued one year at a time for a maximum of three years to enable the educator to fulfill the requirements for the standard certificate in the area of the new assignment. Professional status or standard certificates held by an educator at the time of reassignment will be added to the continuing license as standard certificates.

5.0 In accordance with 14 **Del.C.** §1212, the Department shall renew a continuing license, valid for an additional 5 years, to an educator who has fulfilled the 90-clock hour requirement for professional development. Satisfactory evidence of such completion, as set forth in Section 3.1, shall be submitted to the Department with the application for renewal. The 90-clock hours of professional development must have taken place during the term of the continuing license.

5.1 Options for Relicensure

RE-LICENSURE OPTIONS – SPECIFICATIONS – TEACHERS/SPECIALISTS/ADMINISTRATORS

OPTION	MAX. HOURS	HOUR VALUE	VERIFICATION	CRITERIA
College Credit	No limit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Must be completed at a regionally accredited college. Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.
"Clusters" of skills & knowledge. Planned school Prof. Dev. Day if activities Part of Approved Cluster	No limit	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster must be prior-approved by Delaware In-service Review Committee (or its replacement in a "cluster" system).
Professional Conference/ Workshop/ Institute or Academy	30 clock hours per year 45 clock hours per cycle	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff. Copies/ Exhibits of products developed by Applicant. Course Attendance Slip	Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education.
Mentoring	30 per year 45 per cycle	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Must be mentoring of teacher, administrator, or specialist. Must be part of a formal state/local program.
Cooperating Teacher/Intern Supervisor	30 per year 45 per cycle	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field-based clinical studies. (No prior approval required)	Must be supervision of graduate or undergraduate intern or student teacher in a state-approved educator preparation program.
Presentation	10 per 3 clock hour course; 30 per longer course; 45 per cycle	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Must include only actual time preparing and presenting a course, workshop, or presentation.
Educational Project	30 per year 45 per cycle	Verified clock hours completing project. Minimum of 15 clock hours	Activity Documentation Form* (Prior approval required)	Project must have been prior approved by the Delaware In-service Review Committee or its replacement. Must have obtained final approval after completion and verification by DIRC.
Curriculum/ Assessment Development	30 per year 45 per cycle	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Must be service on formal committee organized by local, state, national, or international education agency or organization.

Educational Travel	3 per day 30 per cycle	Verified clock hours of experience. Minimum of 15 clock hours per travel activity.	Activity Documentation Form* (Prior approval required)	Must be prior approved by DIRC or its replacement. Must have obtained final approval after completion and verification by DIRC.
Professional Programs/ Committees	30 per year 45 per cycle	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Must be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	30 per year 45 per cycle	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Must be part of a formal program.
Publication	30 per year 45 per cycle	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.
Professional Portfolio (to be developed by Standards Board).	30 per year 45 per cycle	45 clock hours for completed and approved portfolio.	The Completed/Approved Portfolio.	Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.
NBPTS Certification or similar National Certification	30 per year 45 per cycle	45 clock hours for attaining national certification Not complete – verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	30 per year 45 per cycle	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Must relate to the individual's work or assignment. Must include a product.
Other Experience/ Activity	30 per year 45 per cycle	Verified clock hours participating in prior approved activity.	Activity Documentation Form* (Prior approval required)	Must enhance individual's work in the profession or contribute to his/her area of specialization. Must be prior approved by DIRC or its replacement and include a final product.

5.2 Documentation of Clock Hours for Relicensure

5.2.1 For renewal of the continuing license, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used:

1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for. Activities requiring prior approval must be approved by the educator's immediate supervisor. Professional development activities that are part of a DPAS II assistance plan may be used to satisfy this requirement.

5.2.2 Criteria for determining if activities are acceptable for clock hour credit include the following:

5.2.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her school or profession.

5.2.2.2 The activity meets one of the relicensure options.

5.2.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.2.2.4 The activity is completed during the term of the educator's current continuing license.

5.2.2.5 The activity addresses specific Professional Teaching or Administrator Standards.

5.2.2.6 Participation in, or completion of, the activity can be documented.

5.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the educator's position at the time the clock hours were completed.

6.0 To obtain renewal of a continuing license, educators are required to participate in professional development activities totaling 90 clock hours every five years. The 90 clock hours must be completed during the five-year term of the license.

At least one-half of the required hours (45 hours every 5 years) for educators must be in activities that relate to the educator's work with students or staff. All activities must relate to the 14 **DE Admin. Code** 393, Delaware Professional Teaching or 14 **DE Admin. Code** 394, Delaware Administrator Standards.

7.0 Candidates for renewal of a continuing license may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5.1 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the 90-clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule. The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

8.0 The Department may extend a continuing license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

9.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the continuing license.

10.0 An applicant shall disclose his or her criminal conviction history upon application for a continuing license. Failure to disclose a criminal conviction history is grounds for denial or revocation of a continuing license as specified in 14 **Del. C.**, § 1219.

11.0 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 and all administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

1512 ISSUANCE AND RENEWAL OF ADVANCED LICENSE

A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board seeks the approval of the State Board of Education to establish regulations concerning the requirements for the issuance and renewal of an advanced license. This regulation shall apply to the issuance and renewal of an advanced license as established by 14 **Del.C.** §1213 and §1214. This regulation is necessary to comply with changes in statute regarding the licensure and certification of educators..

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and acknowledges educators who attain certification from the National Board for Professional Teaching Standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation acknowledges educators who attain certification from the National Board for Professional Teaching Standards.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure, not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator licensure, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the

State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1512 ISSUANCE AND RENEWAL OF ADVANCED LICENSE

1.0 Content: This regulation shall apply to the issuance and renewal of an advanced license for educators, pursuant to 14 **Del. C**. § 1213 and § 1214.

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

"Department" means the Delaware Department of Education.

"Educator" means an employee paid under 14 Del. C. § 1305.

"Maintenance of proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.

"National Board Certified Teacher" means an educator who holds National Board for Professional Teaching Standards certification.

"National Board certification" means certification of an educator by the National Board for Professional Teaching Standards.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C., § 104.

"State" means State of Delaware.

3.0 In accordance with 14 **Del.C.** § 1213, the Department shall issue, upon application, an advanced license to an educator who receives National Board for Professional Teaching Standards certification. An advanced license is valid for 10 years unless extended pursuant to 14 **Del.C.** §1216 or revoked for cause, as defined in 14 **Del.C.** § 1218.

3.1 An applicant for an advanced license shall submit the approved application form to the Department. Verification of receipt of National Board certification must be included with the application. Incomplete applications will not be processed.

4.0 RESERVED (for equivalent program)

5.0 In accordance with 14 **Del.C.** § 1214, the Department shall renew an advanced license, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

5.1 An applicant for renewal of an advanced license shall submit the approved application form to the Department. Verification of valid renewal of National Board for Professional Teaching Standards must be included with the application. Incomplete applications will not be processed.

6.0 The Department may extend an advanced license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the advanced license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an advanced license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license and criminal prosecution as specified in 14 **Del. C.**, §1219.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1101 (16 **Del. C.** §1101)

PUBLIC NOTICE

Delaware Health & Social Services (DHSS) has prepared draft regulations governing Group Homes for Persons with Mental Illness as authorized by 16 **Del.C.** Chapter 11.

These regulations are designed specifically for Group

Homes for between three (3) and ten (10) adults with psychiatric disabilities to provide mental health treatment, rehabilitation and housing, staffed substantially full-time when residents are present.

The proposed regulations replace in their entirety the current regulations for Group Homes for Persons with Mental Illness.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Monday, June 3, 2002, 10:00 AM
Department of Natural Resources & Environmental Control Auditorium
89 Kings Highway
Dover

Wednesday, June 5, 2002, 9:00 AM
Main Building, Conference Room 301
Herman Holloway Campus
Delaware Health and Social Services
1901 N. DuPont Highway
New Castle

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

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

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

THE LAST TIME TO SUBMIT WRITTEN COMMENTS WILL BE AT THE PUBLIC HEARING, JUNE 5, 2002.

~~Department of Health and Social Services~~
~~Division of Public Health~~
~~Statutory Authority: 16 Delaware Code, Chapter 11 (16 Del.C. Ch. 11)~~

~~Rules and Regulations Pertaining to Group Homes for the Mentally Ill~~

~~PART I - STATE APPROVAL~~

~~SECTION 61.0 - PURPOSE~~

~~The State Board of Health is issuing these regulations to establish a comprehensive array of treatment, rehabilitation and support services in group home settings for consumers of mental health services who are unable to live independently at a given time, but who would benefit from living in a particular residential environment. Toward that end, the safety and welfare of all residents of group homes must be promoted by regulations relating to the operation of such residential facilities. These regulations are also meant to insure that service providers will be accountable to their residents, the State Board of Health and the public. They are not intended to limit additional contract standards for community support programs with which a service provider may be expected to comply.~~

~~SECTION 61.1 - AUTHORITY AND APPLICABILITY~~

~~The Board is authorized by 16 Del. C. Ch. 11 to license and regulate group homes for adults. These regulations shall apply to group homes that are 24-hour, on-site supervised residential facilities to provide long-term housing for between three (3) and ten (10) adults with psychiatric disabilities. Group home does not include a residence licensed to provide foster care or a group residence operated under contract with the Division of Mental Retardation for adults who are dually diagnosed. These regulations address the minimum acceptable level of living and programmatic conditions for residents of those group homes. The term "Group Homes for the Mentally I11" shall not be used as part of the official name of any institution in this State, unless it has been so classified by the State Board of Health.~~

~~SECTION 61.2 - WAIVERS~~

~~The Board may only grant a waiver of any provision of these regulations upon the written request of the service provider so long as the service provider establishes a need for the waiver and the waiver will not cause a threat to the health or safety of the residents, staff or neighbors except that the Board may only waive any provision of Section 1308 according to the terms therein. Waivers may be granted only for a period the Board, in its discretion, considers reasonable to correct a deficiency in a group home's operation of a group home and in no event for more than one (1) year or beyond the expiration of the group home's license, whichever is sooner. An emergency waiver may be granted by the Director in writing for reasons that would justify a waiver by the Board, provided however, that any emergency waiver shall expire upon its terms or when the Board first meets after the issuance of the emergency waiver, whichever is sooner. This section may not be waived.~~

~~SECTION 61.3 - DEFINITIONS~~

~~The following terms found in these regulations shall have these specific meanings:~~

~~61.301. "group home" - group residence to provide long-term housing for between three (3) and ten (10) adults with psychiatric disabilities, licensed pursuant to 16 Del. C. Section 1101. Group home does not include a residence licensed to provide foster care or a group residence operated under contract with the Division of Mental Retardation for adults who are dually diagnosed.~~

61.302. "resident" - an individual who lives in a group home.

61.303. "service provider" - a corporation that operates a group home.

61.304. "Director" - the Director of the State Division of Alcoholism, Drug Abuse, and Mental Health or its legal successor.

61.305. "Division" - the State Division of Alcoholism, Drug Abuse and Mental Health or its legal successor.

61.306. "CMHC" - Community Mental Health Center.

61.307. "Board" - State Board of Health or its legal successor.

61.308. "program" - system of treatment and residential services developed by the service provider for use in a group home.

61.309. "applicant" - an individual who seeks admission to a group home. Where admission is sought through the Division, an individual who the Division certifies in writing meets the criteria set forth in Section 1304.

SECTION 61.4 - LICENSING BY THE BOARD

61.401The service provider shall maintain a license issued by the Board for each group home. The license shall be posted in a conspicuous place in the group home to which it applies. The license shall not be transferable directly or indirectly from one service provider to another.

61.402Separate licenses are required for group homes maintained in separate locations, even though operated by the same service provider. A license shall not be transferable from one group home to another or from one location to another.

61.403Application for a license for a group home shall be made on forms provided by the Division. The application shall bear the notice that false statements therein are punishable. The application shall be accompanied by:

a. evidence of certification by the Division, required by Section 601,

b. the service provider's certificate of incorporation and evidence of the liability insurance, required by Section 701,

c. the agenda for training offered by the service provider to assistant clinicians, required by Section 902(d),

d. the personnel policies and procedures manual, required by Section 906,

e. the service provider's procedures for recruiting and interviewing candidates for positions with the group home, selecting staff members, verifying credentials and references, evaluating staff performance, and conditions for termination of employment, required by Section 907,

f. the written procedures manual, required by Section 1001,

g. the annual quality assurance plan approved by the Division, required by Section 1201,

h. the written policies on periodic physical examinations, required by Section 1703,

i. evidence of the ability to transport residents on an as needed basis, including provisions for emergency transportation, required by Section 2013,

j. the written policies on maintenance and storage, required by Section 2126,

k. a letter by the Fire Marshall having jurisdiction certifying compliance by the group home
with the rules and regulations of the State Fire Prevention Commission, requir.ed by Section 2201, and

l. the evacuation plan, required by Section 2205.

61.404 The Board may deny an application for a license for a group home or revoke the license of a group home if the Board finds that the service provider failed to comply with these regulations or failed to obtain or maintain the certification required by Section 601. The Board may deny an application or revoke a license only after notice to the service provider and an opportunity for a hearing, except that in an emergency involving a threat to the safety of any resident, staff, or neighbor, revocation may be forthwith and the Board will afford the service provider a hearing as soon as possible thereafter. The Division will assume immediate responsibility for the temporary operation of the group home at the service provider's expense until another service provider can be found or until the residents can be moved to another group home.

61.405 Where the transfer of any property interest in a group home is proposed, the transferor shall inform the Board and the Director of the proposed transfer no later than 30 days prior to the transfer. No service provider shall transfer its interest as a service provider without the prior written approval of the Division, except minor changes in the service provider's corporate status to conform to 8 Del. C. Section 101 et seq. that have no substantial impact on the operation of the group home shall not require such approval. Upon the approval of the transfer by the Division, the Board shall issue a new license to the transferee service provider, provided the transferee service provider is otherwise qualified.

61.406All applications for renewal of *licenses shall* be filed with the Board at least 30 days prior to expiration and shall be accompanied by the attachments set forth in Section 503. Before its license may be renewed, the group home shall be evaluated by an evaluation team that shall include an independent licensed Delaware psychiatrist with clinical experience. Licenses may be issued for a period not to exceed one year (12 months) from the date of issuance.

61.407The Director shall be notified by the service provider in writing immediately of any changes in the personnel of the service provider.

SECTION 61.5 - CERTIFICATION BY THE DIVISION

61.501 A service provider shall be certified by the Division annually pursuant to Division standards and

procedures.

61.502 Application for certification shall be made on forms provided by the Division. The application shall be accompanied by:

a. a policies and procedures manual for operation of the group home,

b. a staffing and work schedule,

c. a set of program plans,

d. a list of persons serving on the Board of Directors,

e. an outline of arrangements with other providers of community support services for care or treatment of residents at off-site locations,

f. an operating budget,

g. a blueprint (or similar plan) of the group home, and

h. a specific plan for the storage of residents' records and medication.

61.503 The Division shall measure compliance with its standards and procedures using a certification instrument. A certification instrument shall be based upon information from the service provider, neighbors, residents, their families, documents provided to the Division by the service provider, and on-site observations by employees of the Division. The service provider shall make all documentation and records deemed necessary by the Division available for the Division's review and site visits shall be permitted at any time. The Division shall have the right of access to any information directly or indirectly related to the service provider's operation of the group home. Documents used by the Division for certification review shall bear the notice that false statements therein are punishable.

61.504 A service provider shall operate the group home in accordance with the attachments to the application for certification and the certification instrument. A service provider shall immediately report any deviations from such operation to the Division.

61.505 The financial responsibility, financial condition, business experience, and character and general fitness of the service provider shall reasonably warrant the belief that the service provider will operate a group home honestly, carefully and efficiently. The Division may investigate and consider the qualifications of a service provider to determine whether the service provider meets this qualification.

61.506 Revocation of a group home license shall automatically terminate the service provider's certification relating to such group home and shall also terminate the contract, if any, with the Division for the operation of such group home.

61.507All applications for annual recertification shall be received by the Division at least 30 days prior to expiration and shall be accompanied by the attachments set forth in Section 603.

PART II - ADMINISTRATION

SECTION 61.6 - BOARD OF DIRECTORS

61.601 Each service provider shall be incorporated in Delaware or registered in Delaware as a foreign corporation and have a Board of Directors that meets in Delaware as often as is necessary to conduct its business but in no event less often than annually. The Board of Directors shall purchase liability insurance coverage for the service provider that shall provide indemnity for damages for bodily injury, death or property damage to residents and neighbors arising out of the operation of each group home operated by the service provider. The Board of Directors shall include mental health consumers, family members, and at least one (1) representative of the advisory committee from the group home operated by the service provider. Members of the Board of Directors shall disclose all potential conflicts of interest, including those relating to the selection and admission of residents to the group home.

61.602The Board of Directors shall delegate to a residence manager those powers and duties it deems appropriate for the proper functioning of the group home.

61.603The Board of Directors shall:

a. select the residence manager of the group home, provided that the Board may order the residence manager's dismissal,

b. adopt rules for the operation of the group home, provided that such rules shall include rules for the residents and staff designed to keep the physical appearance of the exterior of the group home and grounds and the noise level on the outside of the group home reasonably consistent with the character of the immediate area in which the group home is located.

c. administer the funds for operation of the group home including reviewing and adopting an annual budget for its operation,

d. recruit volunteers, where appropriate, to enrich the lives of residents living in the group home,

e. review all reported violations of a resident's rights or exploitation of residents where the residence manager has failed to review such violations or where the advisory committee recommends review of such violations,

f. review all alleged violations of the Board of Director's rules for the operation of the home where the residence manager has failed to review such violations or where the advisory committee recommends review of such violations, and

g. engage in an annual written assessment of the group home's operation, the quality of resident care, and the condition of the residents, provided that the annual assessment shall be maintained for five (5) years at the group home and shall be available for inspection and copying by the Division upon request.

The Board of Directors may hear complaints relating to the *management of* the group home made by residents, residents' families and guardians, and neighbors where the residence manager or the advisory committee fails to resolve problems brought to its attention. The Board shall order corrective action within its powers as it deems appropriate, provided that Board actions shall not estop complainants to seek other actions or remedies available by law.

SECTION 61.7 - ADVISORY COMMITTEE

61.701Each service provider shall have an advisory committee for each group home. Each advisory committee shall be composed of:

a. five (5) persons who are neighbors of the group home, one of whom shall be the president of the civic association of the neighborhood or development in which the home is located, or his designee, if he is willing to serve and if the neighborhood or development has a civic association,

b. the residence manager, or another representative of the service provider,

c. a consumer of mental health services, provided that the consumer shall be a resident of the group home served by the advisory committee if a resident is willing to serve,

d. two (2) individuals associated with the group home, each of whom may be a consumer advocate, resident, a relative of a resident, a representative from a mental health advocacy organization, or the owner of the group home or a representative of the owner of the group home.

61.702Members of the advisory committee who are not serving as a function of their employment shall be appointed by the Board of Directors. A good faith effort shall be made to secure a representative sample of the neighbors. Where a civic association or a similar organization exists in the neighborhood in which a group home is located, the association's good-faith recommendations for appointment to the advisory committee shall be followed. The failure of the community leaders or civic association to make good faith recommendations for appointment to the advisory committee shall not affect the power of the Board of Directors to make good faith appointments to the advisory committee or the operation of the group home.

61.703The advisory committee shall:

a. organize itself, elect officers, direct its activities and establish procedures for the removal
of members of the advisory committee for the reasons set forth in subsection 806.

b. immediately refer any complaint of resident abuse or neglect to the Office of the Long Term Care Ombudsman within the Division of Aging for appropriate investigation and action.

61.704The advisory committee may:

a. recommend review by the Board of Directors where a majority of the advisory committee members reasonably believes that the group home program is operating out of compliance with these regulations,

b. cause an immediate investigation by the Office of Health Facilities Licensure and Certification and an immediate review of the group home's license by the Board where a majority of the advisory committee reasonably believes that the Board of Directors failed to take appropriate remedial action on the alleged noncompliance set forth in subpart a above. The investigation shall be commenced after receipt of a written statement from the advisory committee setting forth the alleged noncompliance and the alleged facts underlying the alleged noncompliance. Upon the completion of its investigation, the Office of Health Facilities Licensure and Certification shall report to the advisory committee in writing its findings and any remedial action or penalties it will recommend to the Board.

c. verify resident placement in a group home for compliance with the criteria for selection to the facility provided that anonymity of the applicant is protected in this process and further provided that such review is limited to a review of the criteria for selection in the group home in a checklist format established by the Division. The checklist format shall include each of the criteria set forth in Sections XIII and XIV, including the Court determination set forth in Subsection 1308. Each checklist shall be signed by the Director upon its completion.

d. elect to participate in the interview process for the selection of the residence manager of the group home,

e. evaluate the service provider's procedures manual and recommend changes to the residence manager and Board of Directors.

f. recommend rules for the operation of the group home to the Board of Directors,

g. review the annual budget for the group home's operation,

h. actively engage other neighbors in the under standing and assimilation of the group home into their community,

i. recruit volunteers to enrich the lives of the residents living in the home, as appropriate,

j. review all violations of residents' rights, exploitation of residents and alleged violations of the Board of Director's rules and regulations for the operation of the group home, voluntarily reported to the advisory committee and recommend remedial action on such reported violations to the service provider and the Board of Directors, and

k. be advised in a summary and timely fashion of all written complaints made to the residence manager or the Department of Health and Social Services involving a resident, the service provider or staff by a resident, a resident's family or guardian, or a neighbor and recommend remedial action on such complaints to the service provider and the Board of Directors. The requirements in this section shall not limit any other reporting requirements in these

~~regulations or elsewhere.~~

~~61.705 Meetings of the advisory committee shall be held as needed to conduct business and in no event less frequently than quarterly. Meetings shall be held within seven (7) days of the receipt by the advisory committee of notice of a matter that warrants action by the advisory committee. No advisory action may be taken by the advisory committee without the consent of a majority of its members. No advisory action may be taken without prior notice to all members.~~

~~61.706 Removal: Members of the advisory committee shall be removed for breach of confidentiality regarding information relating to actual or potential residents. Members of the advisory committee shall also be removed for bad faith obstruction of the operation of the group home.~~

~~SECTION 61.8 - STAFFING AND PERSONNEL MANAGEMENT~~

~~61.801 Service providers shall have an understanding of the needs and characteristics of consumers of mental health services as demonstrated by appropriate academic and programmatic accomplishments by the service provider and the service provider's staff.~~

~~61.802 Staffing Standards~~

~~The minimum qualifications for staff associated with a group home shall be as follows:~~

~~a. Consulting Psychiatrist: A consulting psychiatrist shall be a person with a medical degree or Doctor of Osteopathy degree, who is licensed to practice medicine in Delaware and is board certified in psychiatry or has served a residency in psychiatry. A physician who is a psychiatric resident may serve as a consulting psychiatrist for a group home so long as he is employed by an accredited hospital that has an institutional license and performs under the supervision of a regularly licensed psychiatrist only such medical duties as are assigned to him as part of a residency training program. A service provider shall employ, or have under contract, a consulting psychiatrist who shall be responsible for staff support and training, resident intake evaluation, emergency responses, and staff evaluation in each group home. This consulting psychiatrist may be a physician other than the primary treating physician for one or all of the patients.~~

~~b. Clinician: A clinician shall be a person with a doctoral or master's degree in clinical or counseling psychology, psychiatric social work, or vocation/psychiatric rehabilitation from an accredited college or university; a registered nurse with a certificate in mental health nursing from the American Nurses Association; or a person with a bachelor's degree with ten (10) years experience in mental health service delivery with at least three years experience in residential services.~~

~~c. Associate Clinician: An associate clinician shall be a person with a bachelor's degree in clinical or counselling psychology, social work, nursing, vocational/psychiatric. rehabilitation, or other mental health field from an accredited college or university; or a registered nurse. An associate clinician shall have had direct experience in mental health service.~~

~~d. Assistant Clinician: An assistant clinician shall be a person who has an associate's degree in a human service field or who has a high school diploma and training that shall be offered by the service provider, approved by the Division and credentialed by the program's consulting psychiatrist and residence manager.~~

~~In order to be approved by the Division, the training that shall be offered to assistant clinicians trainees by the service provider shall, at a minimum, include each of the following topics:~~

~~1. A complete course in medications used in the treatment of mental illness including the medications' effects and side effects used alone or in combination with other prescription and non-prescription medication and alcoholic or caffeinated beverages,~~

~~2. A course in mental illnesses including symptoms of the major mental illnesses, mood and personality disorders, sexual disorders and indications of deterioration of an individual's mental condition,~~

~~3. A course in first aid including CPR training,~~

~~4. An explanation of the rights of psychiatrically disabled adults in residential care in Delaware,~~

~~5. Expectations for confidentiality and ethical behavior towards residents who will reside in the group home,~~

~~6. Policies and procedures that apply to a group home on both a daily and emergency basis,~~

~~7. Fire safety and evacuation procedures,~~

~~8. Health care, sanitation, and safe handling of food,~~

~~9. Familiarization with community mental health services available in the county in which the group home to which the assistant clinician will be assigned is located,~~

~~10. Lessons in informally counseling or living with psychiatrically disabled adults,~~

~~11. Training in appropriate activities and entertainment for residents,~~

~~12. Demonstration of a clear understanding of these regulations.~~

~~This list of topics is not intended to be exhaustive and shall in no way limit the training requirements set forth in the Division's Operations Manual.~~

~~A service provider need not require training in areas in which the assistant clinician has demonstrated expertise to the satisfaction of the service provider and the Division.~~

~~Assistant clinicians participating in a training program as outlined above may work in the group home following an orientation period provided that they are under the direct supervision of a clinician or associate clinician.~~

~~61.803 The group home shall have a residence manager who shall be responsible for the operation of the group home. The residence manager shall be a clinician with at least three years clinical and administrative experience in the provision of residential services to consumers of mental health services. The residence manager shall be responsible for the supervision of resident treatment plans.~~

~~61.804 Associate and assistant clinicians shall have credentials for the treatment activities in *which* they engage and shall be supervised by the residence manager. At least 75$ of the group home staff, including the residence manager, shall be clinicians or associate *clinicians*. *No* clinician, associate clinician or assistant clinician may engage in any practice regulated by 24 Del. C. Ch. 35 unless he is licensed thereunder.~~

~~61.805 The service provider shall ensure that all staff are in such physical and mental health as will not adversely affect the health, safety, or personal welfare of the residents.~~

~~61.806 The service provider shall maintain a current personnel policies and procedures manual that sets forth grounds for termination, adequately supports sound resident care and shall be available to the program's staff. The service provider shall comply with the provisions of such manual. The manual shall contain an explanation of the residents' rights pursuant to 16 Del. C. Section 1121 and applicable federal law.~~

~~61.807 As a condition of licensure of a group home, the service provider shall obtain the Director's written approval of the service provider's procedures for recruiting and interviewing candidates for positions with the group home, selecting staff members, verifying credentials and references, evaluating staff performances, and terminating employment. The service provider shall comply with such procedures. The service provider shall not employ for a group home program any person who fails to provide four (4) verifiable references regarding his character, work experience, and training and a copy of his criminal record as part of his application for employment, provided that the service provider may provisionally employ a person whose criminal records have been requested from the appropriate agency but not yet received. The criminal records check shall consist of a report from the agency charged with compiling and maintaining criminal records in each jurisdiction in which the person resided for the five (5) years preceding his application for employment. All applications for employment by a group home, in any capacity, shall bear the notice that false statements therein are punishable.~~

~~The service provider shall develop and require adherence to a strict code of ethics for staff members working with residents.~~

~~61.808 Staff Development Plan. The service provider operating a group home under contract with the Division shall develop a written plan for enhancing the clinical skills of staff members. The service provider shall comply with such plan.~~

~~61.809The staffing standards set forth in this section shall not apply to clinicians, associate clinicians, or assistant clinicians employed in a group home at the effective date of these regulations, provided that these staffing standards shall apply to such staff if such staff become employed in any other position regulated by these staffing standards and further provided that such staff shall complete the training offered by the service provider to assistant clinician trainees within twelve (12) months of the effective date of these regulations.~~

~~SECTION 61.9 - PROCEDURES MANUAL~~

~~61.901 The service provider shall maintain and comply with a written procedures manual for its staff. A mechanism shall be in place to ensure that this manual is updated continuously and that the staff of the group home is notified promptly of changes. The manual shall include:~~

~~a. A statement of the group home program's values, mission and objectives,~~

~~b. Referral policies and procedures that facilitate resident referral,~~

~~c. Detailed instructions for assessment, service planning and documentation procedures,~~

~~d. Policies and procedures for handling on-call responsibilities and resident emergencies,~~

~~e. Detailed instructions for application to and communication with federal Social Security Administration agencies,~~

~~f. Policies and procedures for lawful sharing of information about residents with family members or others,~~

~~g. Policies and procedures regarding handling financial resources of the group home,~~

~~h. Policies and procedures regarding the management of residents' funds for whom the service provider has been designated payee,~~

~~i. Procedures for managing resident medications and for monitoring medication effects,~~

~~j. Policies and procedures involving the services of the CMHC's emergency unit in the event of psychiatric emergencies,~~

~~k. Policies and procedures that are in compliance with state and federal law for 'receiving and resolving resident grievances,~~

~~l. Policies and procedures regarding the process of residtent transition or termination from the program that are in compliance with state and federal law and are intended to ensure continuity of service,~~

~~m. Policies and procedures for use of the program, if applicable, for respite services to individuals who are former residents of the program.~~

~~SECTION 61.10 - FINANCIAL MANAGEMENT~~

~~61.1001 The accounting system of the service provider~~

shall be in accordance with accepted practices of accounting. The service provider shall submit an independent annual audit and management letter prepared by a C.P.A. to the Division within 90 days of the end of each budget period. This annual financial report on the operation of a group home shall be a public record.

61.1002 Fees for service in group homes not operated under contract with the Division shall be subject to the approval of the Board. Fees charged recipients of public assistance or supplemental security income benefits shall not exceed amounts available to such persons under law. Residents of all group homes shall be given 30 days written notice of any increase in fees.

SECTION 61.11 - QUALITY ASSURANCE PROGRAM

61.1101 The service provider shall prepare an annual quality assurance plan that shall be subject to approval by the Division. The service provider shall comply with such plan. A *clinician of* the program shall be designated quality assurance coordinator who shall be responsible for implementing and overseeing the annual quality assurance plan. The service provider shall establish and implement the following quality assurance mechanisms, which shall be carried out in accordance with the quality assurance plan:

a. a concurrent utilization review process,

b. a retrospective quality assurance review process,

c. a process for clinical care evaluation studies,

d. a process for self-survey for compliance with the certification standards.

PART III - RESIDENTS

SECTION 61.12 - GROUP HOME RESIDENTS

61.1201 A group home is not a substitute for hospitalization. Its purpose is to provide a supportive and rehabilitative environment for consumers of mental health services who are unable to live independently at a given time, who demonstrate a willingness to develop the skills for independent living, and who would benefit from group living as an alternative to their existing living situation.

61.1202 A service provider shall insure that no applicant is denied any benefits or services or is discriminated against on the basis of age, sex, race, nationality, religion, or handicap except as provided in Section 1304.

61.1203 Unless otherwise authorized by statute, admission to a group home shall be limited to adults with psychiatric disabilities who voluntarily apply for admission to the group home, meet the criteria contained in Section 1304 and require intensive home and community-based support services as a result of the degree of their psychiatric disability.

61.1204 In order to serve the greatest number of individuals, to increase the likelihood that each resident will be provided an environment in which she or he is likely to progress toward independence, to insure the safety and well-being of each individual so housed and to insure the safety and security of persons residing in the neighborhood surrounding the group home, a resident shall:

a. be eighteen (18) years of age or older and have an established psychiatric history,

b. be determined to need community support services,

c. require a 24-hour supervised residence because of a primary diagnosis of serious mental illness,

d. agree to adhere to an individual service plan including voluntarily following their individual medication regime as prescribed,

e. agree to abide by the rules and regulations of the program,

f. be capable of self-preservation in the event of a fire or other emergency,

g. be assessed not likely to be dangerous, or to cause harm, to self or others and

h. not need nursing facility care.

61.1205 Individuals whose residency, even with reasonable accomodation, would constitute a direct threat to the health and safety of themselves or other individuals or whose residency would result in substantial physical damage to the property of others shall not be eligible for admission to a group home. Clinician staff members, with the assistance of the group home's consulting psychiatrist, shall determine in writing whether an individual meets the admission requirements of these regulations, including but not limited to those regulations relating to threat, based, where relevant, on the prior behavior of the individual. The consulting psychiatrist shall sign the written determination.

61.1206 Individuals who require intensive psychiatric treatment, intensive medical supervision, or restraint, or who are acutely psychotic, or who exhibit severe refractory symptoms indicating inability to benefit from community treatment shall not be eligible for admission to a group home.

61.1207 Individuals with a diagnosis of Psychoactive Substance Abuse Disorder not in remission for a continuous period of 60 days or who are engaged in the current, illegal use of or addiction to a controlled substance shall not be eligible for admission to a group home. A drug screening test may be required to demonstrate the remission or current nonuse of a controlled substance. Individuals with a primary diagnosis of Pyromania, Antisocial Personality Disorder, or Sexual Disorders except those suffering from Sexual Dysfunction shall not be eligible for admission to a group home.

61.1208 Individuals with the following criminal history shall not be eligible for admission to a group home:

a. conviction of a felony or a Class A misdemeanor, Violent Category 1 in the five years preceding the proposed admission date or adjudication of

delinquent in the five years preceding the proposed admission date for conduct that would be a felony if committed by an adult, or

b. participation on the proposed admission date in probation, parole; or any conditional release program, however designated, for any misdemeanor or felony, where such disposition arose from conduct causing physical touching, physical injury, the threat of imminent physical injury, the substantial risk of physical injury, or death or the substantial risk of death to another person.

Upon the joint application of a group home and the Division and with actual notice in a timely fashion to the Attorney General and the Superior Court, the Board may permit the admission to a group home of any resident or applicant who has applied for admission and been found to be qualified for admission but for subsection b, provided the Court determines that the applicant or resident poses no significant threat to himself, other residents, staff, or neighbors of the group home and provided further that the consulting psychiatrist agrees, in writing, with the Court's determination.

61.1209 Admissions priority shall be given among those who meet the eligibility requirements of Sections 1304 through 1308 to individuals who are having recurrent admissions to a psychiatric hospital due to lack of support systems outside the hospital, individuals living alone or with others in a dysfunctional situation, including instability of natural support systems; individuals living in substandard conditions because of their level of impairment, inpatients at the Delaware State Hospital, and otherwise eligible individuals who are homeless.

61.1210 Discharge Criteria. The Division and the group home operator each reserves the right to remove a resident for the reasons set forth in 16 Del. C. Section 1121 (18) and applicable federal law. Where the Division seeks the discharge of the resident, the Director of the CMHC shall determine whether grounds for discharge exist. Where the service provider seeks the discharge of a resident, the Board of Directors through its consulting psychiatrist and residence manager shall determine whether grounds for discharge exist. The Division shall facilitate this dis charge, where consistent with Del. C. Section 1121 and federal law, in the following circumstances:

a. The resident has demonstrated the ability and willingness to live in a less restrictive setting.

b. The resident poses a serious threat to his own or another person's safety or welfare;

c. The severity of the resident's psychiatric problems requires frequent or long-term hospitalization;

d. The resident repeatedly refuses to follow or is incapable of following the rules and regulations of the group home;

e. The resident voluntarily withdraws from the group home or is withdrawn by the guardian or person legally responsible for his care;

f. The resident requires medical care that cannot be provided in the group home or has a medical condition that endangers the health of other residents;

g. The resident has materially violated the rules for the operation of the group home or a law of the State of Delaware and such material violation affects the welfare of the residents or other residents of the group home.

61.1211 A resident to be discharged shall be given 30 days prior notice of the discharge and the reasons therefore and shall be entitled to an impartial hearing to challenge the discharge. No resident may be discharged before the service provider develops a discharge plan for the resident. The discharge plan shall address the resident's need for housing. A request for hearing shall be made to the Director who shall designate a hearing officer.

In emergency situations, a resident may be discharged without notice and a hearing, provided that as soon as practical a resident will be provided an opportunity to challenge the discharge through a hearing after the discharge has occurred, and further provided that no resident may be discharged before the service provider develops and implements an emergency discharge plan adequate to protect the resident's safety and welfare until the discharge hearing. The emergency plan shall address the resident's need for housing. For purposes of this subsection, a situation is an emergency when the behavior of a resident is causing or threatens to imminently cause physical injury or death to the resident, other residents, staff or neighbors.

No resident shall be discharged for any reason without prior notification to the Division as soon as reasonably practicable after the discharge decision is made.

61.1212 The admission criteria set forth in these regulations shall not apply to any resident who resides in a group home on the effective date of these regulations, provided that the admission criteria shall apply to such a resident if such a resident applies for admission to any other group home subsequent to the effective date of these regulations and provided further that these regulations shall apply to such a resident, if, subsequent to the effective date of these regulations, in the judgment of the consulting psychiatrist concurred in by the Division, such a resident's mental condition has deteriorated to the point where the resident poses an imminent threat to the health or safety of other residents, staff, or neighbors.

SECTION 61.13 - INTAKE

61.1301 Applications for admission to a group home shall be made to the service provider, who shall have the right to refuse or accept applicants based on the service provider's assessment of the criteria contained in Section 1304 and after the applicants have been evaluated by the service provider's consulting psychiatrist.

61.1302 Each service provider shall deliver to the

applicants or the applicants' guardians or family, upon notification of the applicants' selection, an admission agreement and a financial statement enumerating all charges for services, materials and equipment that may be furnished to the applicant during the period of residency.

61.1303 Residents and applicants may not live in a group home until their medications and physicians' orders for dosages and times are in the hands of the service provider's staff.

61.1304 The service provider shall develop an initial written treatment plan for each resident no later than the date of the resident's admission to the group home. The service provider shall comply with the provisions of such plan. Copies of all treatment plans shall be maintained for each resident at the resident's group home and shall be available for inspection by the Division upon request.

61.1305 The service provider shall obtain the following information prior to a resident's admission to the group home:

a. a psychiatric history, including certification of a psychiatric disability dated not more than six months prior to admission,

b. a drug and alcohol history,

c. recommendations pertaining to limitations on the applicant's diet or activities, if any, signed by a licensed physician,

d. a criminal records check. The criminal records check shall consist of a report from the agency charged with compiling and maintaining criminal records in each jurisdiction in which the applicant resided for the five (5) years preceding his application for admission to the group home.

61.1306 The service provider shall complete an assessment data base during the 30 days prior to each resident's admission to the group home with the assistance of the group home's consulting psychiatrist. An assessment shall be conducted by clinician staff members. Assessment instruments shall conform to formats approved by the Division.

A written summary of the assessment completed by the applicant's primary therapist must be clearly explained to the applicant. The summary of the assessment shall address all of the following:

a. current psychiatric symptomatology and mental status,

b. compliance with and response to prescribed medical/psychiatric treatment,

c. extent and effects of drug and/or alcohol use,

d. medical, dental, and optometric needs,

e. recent key life events and current social functioning,

f. vocational and educational functioning,

g. conditions of daily living,

h. a description of any violent or assaultive behavior that posed a real and present threat of harm to self, property or others, occurring within five years immediately preceding the proposed admission date.

SECTION 61.14 - PROGRAM OF CARE AND TREATMENT

61.1401 The service provider shall operate the group home in a manner consistent with the following principles:

a. Minimizing disability by providing residents with rehabilitative interventions in the course of their normal daily living,

b. Providing outreach to ensure that residents have access to and receive needed services,

c. Maximizing resident involvement and choice in all aspects of his/her treatment, rehabilitation and support,

d. Assisting residents to develop and maintain supportive social networks,

e. Recognizing the need for activities that will limit idle time for residents.

61.1402 The following requirements represent minimum guidelines to implement these principles:

a. Service providers shall provide a minimum of one (1) staff member who shall be on duty from 8:00 a.m. to 10:00 p.m. each day for every five (5) residents present in the home and one staff person at all other times when the residents are in the home. One (1) staff member shall be present at all times when fewer than five (5) residents are present within the home during the day. At least one additional staff member shall be available on-call to assist a staff member on duty alone. Where a staff member is on duty alone, either the on-call or the on-duty staff shall be a clinician or associate clinician.

b. The service provider shall develop emergency procedures and train staff to implement the emergency procedures before residents are placed in the group home. Emergency procedures shall include instructions on the fastest methods of acquiring assistance. The service provider shall arrange staff coverage so that a maximum of five (5) minutes will elapse before the on-site staff person has assistance for a major emergency, provided that when, despite its best efforts, the service provider is unable to arrange such staff coverage, the service provider shall dial 911 upon the occurrence of a major emergency. For purposes of this subsection, major emergency means a situation that threatens immediate and serious injury to the residents. Emergency procedures shall include provision for trained medical personnel involvement in a crisis situation, including access to the area's mobile crisis unit and the local hospital's emergency room.

Psychiatric on call coverage must be available at all times. The deterioration of a resident's mental state to the point that he is becoming a threat to himself or others shall be treated as an emergency. The unauthorized absence from a group home of a resident for whom psychotropic

~~medication has been prescribed or the refusal of a resident for whom psychotropic medication has been prescribed to take such medication as prescribed shall be treated as an emergency and the service provider shall notify the consulting psychiatrist and the Division within one (1) hour of such emergency.~~

~~c. Staff of the group home shall meet daily under the supervision of a clinician to review the status and treatment needs of each resident. The purpose of this meeting is to share up-to date information about the health status and needs of each resident and to make adjustments in staff schedules to meet the residents' needs.~~

~~d. Staff of the group home shall meet weekly under the supervision of the residence manager, or another clinician designated by the residence manager when the residence manager is unavailable, to conduct case conferences to formulate treatment plans and conduct treatment plan reviews.~~

~~e. Each resident shall have his/her progress and continuing treatment needs thoroughly reassessed at least once every six (6) months. The primary therapist designated pursuant to Section 1503, at least one other staff person with substantial involvement in the resident's care, and a clinical supervisor 'shall meet as a treatment team to discuss the resident's progress, assess continuing treatment needs, and formulate revisions to the treatment plan. Treatment plan revisions will be reviewed and signed by the consulting psychiatrist.~~

~~f. The consulting psychiatrist shall visit the group home at least once a week and spend a minimum of one-half hour per resident per month providing direct services to residents on site, participating in the assessment of residents' needs, planning service provision, and providing supervision/consultation to other program staff. The consulting psychiatrist shall spend 45 minutes per resident per month on direct services during the first three months of the inception of a new group home. The consulting psychiatrist shall review the medications of each resident at least every two (2) weeks. When at the group home, the consulting psychiatrist shall meet with the residents and the staff to hear from residents about problems related to medication or services and to provide support to the staff. The consulting psychiatrist shall have back-up arrangements with other psychiatrists for coverage when he is unavailable and shall provide them with an up-to-date listing of the medications and recommendations for each resident in the event of an emergency.~~

~~g. The service provider shall provide a full range of rehabilitation, treatment and support~~
~~services for each resident including the following:~~

~~1. 365 day per year services, with staff available to make face-to-face contact on a 24-hour basis,~~

~~2. Psychiatric treatment and linkage to community support programs or day hospital programs,~~

~~3. Clinical liaison during periods of psychiatric hospitalization,~~

~~4. Outreach and crisis response,~~

~~5. Social network in an effort to promote a stable social network for the resident,~~

~~6. Support to ensure educational and vocational training opportunities and help residents to get and keep a job,~~

~~7. Teaching and counseling to improve interpersonal skills and to assist residents to control psychiatric symptoms,~~

~~8. Support and assistance in activities of daily living such as personal hygiene, care and grooming, and training in community living in order to achieve a normative adult lifestyle,~~

~~9. Support and assistance in the receipt of entitlements and social services and decent and safe housing,~~

~~10. Active efforts to promote peer support and fulfill recreational needs, including training in ways to minimize idle time with emphasis on activities outside the home for residents as needed and prescribed by the consulting psychiatrist,~~

~~11. Transportation of residents, if necessary due to their level of functioning, to community programs as needed and called for in their treatment plan.~~

~~61.1403 The service provider shall designate an appropriate staff member to be the primary therapist for each resident and shall ensure that the primary therapist:~~

~~a. Maintains the clinical file for the resident,~~

~~b. Conducts and participates in treatment planning and case conferences with other staff of the group home, and other appropriate agencies,~~

~~c. Maintains a therapeutic alliance with the resident,~~

~~d. Refers and links the resident to all needed services provided outside the program,~~

~~e. Follows up to ensure that all needed services provided outside of the group home are received and monitor the resident's benefit from those services,~~

~~f. Coordinates the provision of emergency services and hospital liaison services when a resident is in crisis,~~

~~g. Coordinates overall independent living assistance services and works with community~~
~~agencies to develop needed resources including housing, employment options and income assistance,~~

~~h. Supports and consults with the resident's family.~~

~~61.1404 The duties of the primary therapist notwithstanding, all staff of the program shall share responsibility for resident care to the extent they are credentialed to provide such care.~~

~~61.1405 Within 30 days of the resident's admission, following the completion of intake assessments, a comprehensive written treatment plan shall be developed by the resident's primary therapist and reviewed by the~~

physician, clinical supervisor and other members of the program staff in a case conference. The service provider shall comply with the provisions of such plan.

61.1406 The treatment plan shall include both short-range and long-range goals, stated in measurable terms and including criteria for discontinuance of goals. It shall include the specific treatment, rehabilitation and support interventions, and their frequency, planned to achieve treatment goals.

61.1407 The resident's participation in the development of treatment goals shall be documented. With the permission of the resident, program staff shall engage the involvement of other service providers and members of the resident's social network in formulating treatment plans.

61.1408 The plan shall be prepared on forms approved by the Division. It shall be signed by the primary therapist, the residence manager, the resident, and the consulting psychiatrist.

61.1409 The treatment plan shall be reviewed in full at least every six months through a clinical case conference. The date, results of the review and any changes in the treatment plan shall be recorded.

61.1410 Incidents or unusual occurrences that significantly disrupt normal day-to-day operations in a group home shall be reported by phone to the Director within 12 hours of the incident and in writing within 48 hours.

61.1411 Notwithstanding the continuing enforcement and oversight responsibilities of the Department of Correction and the Department of Services for Children, Youth and Their Families, the service provider shall also be responsible for the compliance by any resident who is on probation or parole or any other conditional release program, however designated, of the terms of such conditional release program.

61.1412 If the Division learns of a violation of these regulations by a service provider or a situation that may be harmful to any resident, it shall promptly notify the Office of Health Facilities Licensure and Certificationin writing.

SECTION 61.15 - RECORDS

61.1501 The service provider shall maintain a treatment record for each resident that includes sufficient documentation of assessments, treatment plans and treatment to permit a clinician not familiar with the resident to evaluate the course of treatment. Resident treatment records shall be kept confidential and safeguarded in a manner consistent with the requirements of 16 Del. C_. Section 1121 and applicable federal law. The resident's record shall contain the following:

a. An up-to-date face sheet and resident consent to treatment and consent to any occasion of release of treatment information,

b. Results of all pertinent examinations, tests and other assessment information, reports from referral sources and clinical consults, and hospital discharge summaries,

c. Assessments and summary of assessments according to formats prescribed by the Division,

d. Listing of the resident's problems and assets,

e. A treatment plan in a format approved by the Division,

f. Weekly and monthly progress notes,

g. Documentation of at least semiannual reviews of treatment, including reassessment of current functioning, summary of progress and treatment plan revisions,

h. Medication history and orders that shall allow for ongoing monitoring and the detection of adverse drug reactions. All medication orders in the resident's case records shall specify the name of the medication, dose, route of administration, frequency of administration (dates and times exactly), and names and signatures of the person administering and the physician prescribing the medication. Medication records must be kept on the premises of the group home at all times. All medications shall be dispensed to residents by an individual or entity licensed to dispense medications.

i. Discharge documentation in a format prescribed or approved by the Division to include the following:

1. the reasons for discharge, which shall conform to 16 Del. C. Section 1121 and applicable federal law, and a description of the resident's status and condition at discharge;

2. a final evaluation summary of the resident's progress toward the goals set forth in the service plan;

3. a plan developed with the resident regarding the resident's continuing or future service needs.

j. In the event of the death of a resident, the resident's records shall be maintained by the service provider in their entirety for at least two (2) years after the date of death.

SECTION 61.16 - GENERAL HEALTH CARE

61.1601 The service provider shall ensure that each resident receives needed medical, dental and optometric care. Each resident shall have a complete physical examination by a physician within 30 days of admission to the group home unless he has had one within one year of admission and his medical records are available to his current primary care physician.

61.1602 The service provider shall identify generic medical services and the professional providing the services, including a physician and dentist, for each resident.

61.1603 The service provider shall implement written policies on periodic physical examinations for residents.

61.1604 The service provider shall ensure that dental evaluations are made at least annually.

61.1605 Upon confirmation of a reportable disease, the service provider shall notify the appropriate County Health Officer of the Division of Public Health.

61.1606 The service provider shall provide or arrange transportation for the resident's routine medical and dental care.

61.1607 The daily diet for each resident shall include a minimum of three balanced meals a day with food from the four basic food groups.

61.1608 The service provider shall immediately report a suspected occurrence of food poisoning, by telephone, to the County Health Officer, and the resident's physician.

61.1609 If the service provider's staff does not include a registered nurse, the service provider shall train sufficient staff to ensure that, at all times, one or more members of the staff on duty in the group home has basic knowledge in first aid, prevention of disease, proper handling of food, and care of sick persons. Reference books on nutrition, drugs, and illness shall be available to the staff.

61.1610 All group homes shall have on file results of tuberculin tests performed annually for all group home staff and residents. Mantoux techniques (5TU-PPD-T) is the tuberculin skin test recommended by the Division of Public Health. The service provider shall report the test results of any staff or resident found to react significantly to the skin test (10 mm of induration or greater) to the Division of Public Health.

61.1611 New group home staff and new residents 50 years of age or older who have an nonsignificant reaction to the tuberculin test, defined as less than 10 mm induration, should be retested within 10-14 days to identify those who demonstrate delayed reactions.

61.1612 Group home staff and residents who have a documented history of a significant tuberculin test should not be retested, ever. Clinical histories on such group home staff and residents should be taken and those with symptoms of pulmonary tuberculosis should have chest x-rays.

61.1613 The Division of Public Health may require a group home to conduct more frequent tuberculin screening should the Division of Public Health judge that the risk of tuberculosis in the group home warrants such action.

SECTION 61.17 - MEDICATIONS

61.1701 Medication monitoring is to be conducted as follows:

a. The consulting psychiatrist shall evaluate each resident's response to prescribed medication at least every two (2) weeks.

b. The service provider shall monitor and document as required in Section 1601(h) resident compliance in following prescribed medication treatment and medication effects and side effects. The service provider shall assist the resident in reporting side effects to the consulting psychiatrist or other physician prescribing the medication. Suspected drug reactions shall be noted in the medication record and reported to the consulting psychiatrist immediately.

c. A registered nurse or licensed practical nurse may administer medication from a multi-dose container or by injections at the direction of the prescribing physician.

d. Residents may retain in their possession only a single-day oral medication dose. Residents shall retrieve and take their medications under the direct supervision of a qualified staff member except as part of a discharge treatment plan.

61.1702 Residents receiving medication shall be trained to take their own medication, where possible. Staff who have successfully completed a Board of Nursing approved medication training program may assist residents in the taking of medication provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label.

61.1703 No prescription medication shall be administered to a resident without an order by a physician or other legally authorized person.

61.1704 No person other than a licensed nurse shall administer injectable medication.

61.1705 Group home staff shall immediately report medication errors to the consulting psychiatrist.

61.1706 A three-day supply of each resident's medication shall be available at all times.

61.1707 The service provider shall be responsible for the storage of medication. Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator.

61.1708 Medications not in possession of residents are to be kept in a locked cabinet, in a locked room.

SECTION 61.18 - RESIDENT RIGHTS AND RESPONSIBILITIES

61.1801 The resident should review his service contract and shall have an opportunity to accept or reject admission to the group home program prior to his enrollment. The service contract shall include the rules for the operation of the group home and the resident's individual treatment plan.

61.1802 Residents shall be kept informed through written guidelines and documentation in their clinical records of their rights and responsibilities contained in written policies and procedures including reference to:

a. Behavioral expectations and limitations including:

1. prohibition against the use of alcohol or other drugs other than those prescribed by their physicians,

2. respect for privacy rights of fellow residents and neighbors and respect for laws regarding conduct outside the group home,

3. cooperation with treatment,

b. Confidentiality,

c. Fees, and

d. Appeals of decisions by group home staff.

61.1803 The service provider shall establish a formal

process for soliciting residents' complaints and for reviewing decisions by staff with which residents disagree. The service provider shall comply with such process.

61.1804 The service provider shall not establish any general conditions of program participation that limit a resident's rights to self-determination. Each decision to limit the responsibility of a resident regarding normal adult discretion shall be based on judgments agreed to by his primary therapist and shall be based on clinical merit.

61.1805 The service provider's staff shall comply with DHSS Policy Memorandum 46 regarding reporting andresponding to allegations of abuse and neglect.

61.1806 The group home staff shall support and nurture efforts by residents to participate in mutual support and self-advocacy groups.

PART IV - QUALITY AND SAFETY OF LIVING ARRANGEMENTS

SECTION 61.19 PHYSICAL FACILITY STANDARDS

61:1901 Rooms or other areas of the group home that are not ordinarily sleeping rooms shall not be used for sleeping accommodations.

61.1902 Sleeping rooms shall be rooms with one outside wall and shall provide for quiet and.privacy.

a. Each bedroom shall have walls that go to the ceiling, a door that can be closed and that opens directly into a corridor, and at least one window that opens directly to the outside.

b. Bedrooms for one individual shall be at least 100 square feet in size and bedrooms for more than one individual shall provide at least 75 square feet of floor space per individual and be adequately spaced for resident care. Minimum room measurements shall not include toilet rooms, closets, lockers, wardrobes, alcoves or vestibules. The ceiling shall not be less than seven (7) feet from the floor. Each bedroom shall accommodate no more than two residents.

c. Each resident shall have a separate bed of appropriate size and height and in good repair with a comfortable, well-constructed mattress. There shall be closet space and a minimum of two drawers in a chest of drawers for storing personal belongings. There shall be a sturdy bedside stand and reading light for each resident.

d. Electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

e. The service provider shall insure adequate privacy and separation of sexes in sleeping arrangements, except in cases of husband and wife.

f. If bedroom doors of residents are locked by residents for privacy reasons, a master key shall be available to staff persons.

g. Bedroom windows shall have window treatments that close for privacy.

61.1903 Residents shall be permitted to indicate their preference for a roommate. Smoking and non-smoking residents, where practical, shall not share a room except by mutual agreement.

61.1904 No applicant or resident may be denied admission to a group home because of physical handicap. A group home serving physically handicapped residents shall be accessible to those physically handicapped residents according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

61.1905 There shall be a telephone in the group home accessible to staff and residents.

61.1906 There shall be sufficient heating, ventilation, and light in all living and sleeping quarters to provide a comfortable atmosphere.

61.1907 The exterior of the group home site shall be free from hazards as well as the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.

61.1908 The group home and grounds shall be clean and orderly and maintained in an attractive appearance reasonably consistent with the character of the immediate area in which the group home is located.

61.1909 There shall be provided one or more areas that are adequate in size and furnished for resident dining, recreational, and social activities. At least 30 square feet per resident shall be assigned to these areas. Basement space may be used for recreation activities if there is a minimum of two means of egress from the basement.

61.1910 Any physical alteration of a group home shall be approved by the Board in writing prior to the commencement of the alteration. Two copies of the building permit for the alteration, the application for the building permit and *accompanying plans* and specifications shall be submitted to the Board before the alteration may be considered.

61.1911 Each group home shall be equipped with musical instruments, arts and crafts materials, cook books, reading materials, two (2) radios and a television.

61.1912 All vehicles used to transport residents by the service provider shall be equipped with a seat belt for each resident and shall comply with applicable safety and licensing regulations established by the Delaware Division of Motor Vehicles. The service provider shall maintain liability insurance as required by Delaware law. Drivers of vehicles used to transport residents shall have a valid license.

61.1913 Emergency transportation shall be available. on a 24-hour basis. Each group home shall demonstrate the ability to transport residents on an as needed basis including provisions for emergency transportation as a condition of licensure.

SECTION 61.20 - HEALTH AND SANITATION

~~61.2001 The group home site shall be easily drained, suitable for the disposal of sewage, and furnished with a potable water supply that meets requirements of the appropriate State agencies.~~

~~61.2002 The water system in the group home be designed to supply adequate hot and cold water, under pressure, at all times.~~

~~61.2003 Hot water at shower, bathing and hand washing faucets in the group home shall not exceed 120 F.~~

~~61.2004 The plumbing in the group home shall meet the requirements of all applicable municipal, county, and state codes. Where there are no municipal or county codes, the plumbing in the group home shall meet the provisions of the State Board of Health's Sanitary Plumbing Code.~~

~~61.2005 There shall be private bathroom facilities with a toilet, shower or tub, and wash basin in each group home. These facilities shall be accessible to each resident according to his/her individual needs.~~

~~a. Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.~~

~~b. There shall be at least one window or mechanical ventilation to the outside of the bathroom.~~

~~c. Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped residents, as dictated by such residents' needs.~~

~~d. There shall be at least one toilet of appropriate size for each four residents:~~

~~1. Each toilet shall be equipped with a toilet seat.~~

~~2. Toilet tissue shall be readily accessible at each toilet.~~

~~e. There shall be at least one wash basin and one tub or shower for each four residents.~~

~~f. Wash basins with soap and towels shall be available in or immediately adjacent to bathrooms and/or toilet rooms.~~

~~g. Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant surfaces.~~

~~h . Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way as to minimize the danger of breakage.~~

~~61.2006 All group homes shall prepare regular and therapeutic menus. A copy of a recent diet manual shall be available for planning menus.~~

~~61.2007 A minimum of three (3) meals shall be served in each twenty-four (24) hour period. There shall not be more than a fourteen (14) hour span between the evening meal and breakfast.~~

~~61.2008 The food served shall be suitably prepared and of sufficient quality and quantity to meet the nutritional needs of the residents.~~

~~61.2009 Special diets shall be served on the written prescription of the physician.~~

~~61.2010 A registered dietitian shall be employed on a consultant basis.~~

~~61.2011 Menus showing food actually served shall be kept on file for at least one (1) month.~~

~~61.2012 A three (3) day supply of food for emergency feeding shall be kept on the premises.~~

~~61.2013 There shall be refrigeration for perishable foods in the group home. There shall be at least one refrigerator and one freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 45 F or below.~~

~~61.2014 Food returned from individual plates shall not be used in preparation of other food dishes or served again.~~

~~61.2015 There shall be at least one four-burner range and one oven (or combination thereof) that is in proper working order.~~

~~61.2016 There shall be at least one sanitary trash or garbage receptacle.~~

~~61.2017 There shall be adequate cleaning and disinfecting agents and supplies.~~

~~61.2018 There shall be separate areas of storage of:~~

~~a. food items,~~

~~b. cleaning agents, disinfectants and polishes,~~

~~c. poisons, chemicals and pesticides,~~

~~d. eating, serving and cooking utensils,~~

~~61.2019 All containers of poisonous and toxic materials kept in a group home shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to the residents and staff. All poisonous or toxic materials shall be locked in secure storage spaces.~~

~~61.2020 All outside doors and windows shall have screens if used for ventilation.~~

~~61.2021 There shall be a dishwasher, or facilities for performing a wash, rinse, and a final sanitizing rinse.~~

~~61.2022 There shall be at least one operable window or exhaust system for removal of smoke, odors and fumes.~~

~~61.2023 There shall be walls, floors and counters with coverings that are cleanable and impervious to water to the level of splash.~~

~~61.2024 Every part of the building shall be kept free of offensive odors.~~

~~61.2025 Written policies that outline maintenance, electrical maintenance, cleaning procedures, storage of cleaning material, pesticides and other potentially toxic materials shall be prepared and followed.~~

~~61.2026 There shall be a minimum of two sets of towels, wash cloths, sheets and pillowcases per resident that shall be changed at least weekly, or more often if soiled.~~

~~61.2027 Laundry should not be done in the kitchen area.~~

~~61.2028 Exterminator services shall be required when there is evidence of any infestation.~~

~~SECTION 61.21 - SAFETY~~

~~61.2101 Fire safety in group homes shall comply with the adopted rules and regulations of the State Fire Prevention Commission. All applications for the license or renewal of a license shall include, with the application, a letter certifying compliance by the Fire Marshall having jurisdiction. Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.~~

~~61.2102 The group home shall have a minimum of two doors to the outside and windows that can be opened.~~

~~61.2103 The group home shall have an adequate number of UL (Underwriter's Laboratory) approved smoke detectors in working order:~~

~~a. In a single level group home, a minimum of one smoke detector placed between the bedroom area and the remainder of the group home~~

~~b. In a multistory group home, a minimum of one smoke detector on each level. on levels that have bedrooms, the detector shall be placed between the bedroom area and the remainder of the group home.~~

~~61.2104 There shall be two (2) five pound ABC Fire Extinguishers that are readily accessible and visible in the group home. Extinguishers are to be checked annually.~~

~~61.2105 The group home shall have a written posted evacuation plan with specific responsibilities of each resident and staff member identified in case of fire. Residents and staff shall be trained in executing the evacuation plan.~~

~~61.2106 The service provider shall conduct a minimum of four (4) fire drills per year in each group home and shall record the attendance, content (including, inter alia, staff reactions and effectiveness), date, and time of such drills.~~

~~61.2107 The service provider shall prohibit firearms, chemical weapons, and other dangerous weapons within the buildings or on the grounds of the facility.~~

~~61.2108 Emergency telephone numbers, including telephone numbers for fire, police physicians, psychiatrists, poison control, mobile crisis intervention unit, and ambulance shall be conspicuously posted adjacent to the telephone(s).~~

~~61.2109 Glass shower doors shall be marked for safety.~~

~~61.2110 Smoking shall be limited to designated smoking areas.~~

~~61.2111 Stairways, ramps, and open-sided approaches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.~~

~~61.2112 All stairways and hallways shall be kept free and clear of obstructions at all times.~~

~~61.2113 Floors, walls, ceiling and other surfaces shall be kept clean and in good repair. Floor surfaces shall not be slippery. If rugs are used, they should be free of such hazards as curled edges, rips, and other irregularities that have a potential for tripping residents.~~

~~SECTION 61.22 - SEVERABILITY~~

~~Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of the regulations shall not be affected.~~

~~SECTION 61.23 - EFFECTIVE DATE~~

~~These regulations shall be effective upon their adopion by the Board, provided that the Board, based upon a recommendation by the Division, shall establish a future effective date for group homes in operation when the Board adopts these regulations. If the Board fails to establish an effective date for group homes in operation when the Board adopts these regulations, the effective date for such group homes shall be one (1) year from the date of adoption by the Board.~~

~~Effective date for these regulations, per State Board of Health action, is December 31, 1991.~~

PART I - STATE APPROVAL

SECTION 61.0 - PURPOSE

The Department is issuing these regulations to promote the health, safety and well-being of all residents of group homes. These regulations are also meant to insure that service providers will be accountable to their residents and the Department. They are not intended to limit additional contract standards for community support programs with which a service provider may be expected to comply.

SECTION 61.1 - AUTHORITY AND APPLICABILITY

The Department is authorized by 16 Del.C., Ch. 11 to license and regulate group homes for adults. These regulations shall apply to group homes as defined in Section 61.202. These regulations address the minimum acceptable level of living and programmatic conditions for residents of group homes. The term "Group Homes for Persons with Mental Illness" shall not be used as part of the official name of any facility in this State, unless it has been so licensed by the Department.

SECTION 61.2 - DEFINITIONS

The following terms found in these regulations shall have these specific meanings:

61.201 “Department” - The Department of Health and Social Services, the legal successor to the State Board of Health.

61.202 "Group Home" - Group home residence to provide mental health treatment, rehabilitation and housing, staffed substantially full-time when residents are present for between three (3) and ten (10) adults with primary diagnosis of psychiatric disabilities, licensed pursuant to 16 Del.C.,

Section 1101. Group home does not include supervised apartments or a residence licensed as an ICF/MR group home or neighborhood home under 16 Del.C., Chapter 11.

61.203 "Incident" - An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment.

61.204 "Program" - System of treatment and residential services developed by the service provider for use in a group home.

61.205 "Reportable Incident" - An occurrence or event which must be reported at once to the Division of Long Term Care Residents Protection and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety.

61.206 "Residence Manager" - An individual meeting the requirements for a Clinician as contained in Section 61.403 A.1.b. and to whom the overall responsibility for the day to day operation of the group home has been delegated by those persons with the legal authority to manage the affairs of the entity.

61.207 "Resident" - An individual who lives in a group home. As the context may require, the term resident may also refer to the individual's legal representatives.

61.208 "Resident's Treatment Team" - A group consisting of a psychiatrist, residence manager, resident and other professionals with expertise or background relevant to the resident's needs and supports.

61.209 "Satisfactory Compliance History" - Any facility operated by the applicant in any state or other jurisdiction that has not had a license revoked, terminated or otherwise withdrawn by the issuing authority or voluntarily surrendered a license during a period of restriction or regulatory investigation of incidents involving serious harm, injury, impairment or death of a resident within the past five (5) years.

61.210 "Service Provider" - A legally recognized entity (e.g. corporation, partnership, sole proprietorship) required to be licensed under Section 61.1.

SECTION 61.3 - LICENSING BY THE DEPARTMENT

61.301 The service provider shall maintain a license issued by the Department for each group home. The license shall be posted in a conspicuous place in the group home to which it applies. The license shall not be transferable directly or indirectly from one service provider to another.

61.302 Separate licenses are required for group homes maintained in separate locations, even though operated by the same service provider. A license shall not be transferable from one group home to another or from one location to another.

61.303 Application for a license for a group home shall be made on forms provided by the Department. The application shall bear the notice that false statements therein are punishable. The application shall be accompanied by:

A. Certification that the service provider shall comply with all applicable state and federal laws including, but not limited to, non-discrimination based on age, sex, race, nationality, religion, sexual orientation, or disability, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act;

B. A sworn affidavit of a satisfactory compliance history as defined in 16 Del.C., Section 1104(d) and other information to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the five year period preceding the date on which the application is made.

C. The applicable license fee;

D. Training and staff development plans offered by the service provider to staff, required by Section 61.403 B.;

E. Written operations and personnel policies & procedures manual, and quality assurance plan required by Sections 61.4 and 61.610;

F. A set of program plans which describe the service provider's capacity to implement Section 61.602 E.;

G. Written policies on periodic physical examinations, required by Section 61.803;

H. Evidence of the ability to transport residents on an as needed basis, including provisions for emergency transportation, required by Sections 61.1110 and 61.1111;

I. Written policies on medication maintenance and storage, required by Sections 61.9;

J. A letter from the Fire Marshal having jurisdiction certifying compliance by the group home with the rules and regulations of the State Fire Prevention Commission, required by Section 61.1301;

K. An evacuation plan required by Section 61.1305;

L. A staffing and work schedule;

M. An identification of those persons and entities listed in 16 Del.C., Section 1104(c);

N. An outline of arrangements for the provision of primary medical, emergency medical and dental care, in addition to access to community support services such as employment and day programming;

O. An operating budget;

P. A blueprint (or similar plan) of the group home;

Q. A specific plan for the safe and confidential

storage of residents' records and medication including anticipated compliance with Section 61.701 and Section 61.9.

61.304 The Department shall grant a provisional license to any new applicant provided that the requirements of these regulations are met. The term of such provisional license shall be ninety (90) days, and thereafter, the applicant shall be entitled to an annual license, provided that the requirements of these regulations are met.

61.305 All applications for renewal of licenses shall be filed with the Department at least ninety (90) days prior to expiration and shall be accompanied by the attachments set forth in Section 61.303. Licenses may be issued for a period not to exceed one year (12 months) from the date of issuance.

61.306 The program will affirmatively notify the Department of any change in circumstances which precludes compliance with any of the regulations of this part.

61.307 The Department shall monitor compliance with its regulations and procedures. The service provider shall make all documentation and records deemed necessary by the Department available for the Department's review, and site visits shall be permitted at any time. The Department shall have the right of access to any information directly or indirectly related to the service provider's operation of the group home.

61.308 A service provider shall operate the group home in accordance with its application for licensure. A service provider shall immediately report any deviations from such operation to the Department.

PART II - ADMINISTRATION

SECTION 61.4 - POLICIES AND PROCEDURES MANUAL

61.401 The service provider shall maintain and comply with a written procedures manual for its staff. A mechanism shall be in place to ensure that this manual is updated continuously to comply with changes in state and/or federal laws and regulations. The staff of the group home is to be notified promptly of changes. The manual shall be composed of two (2) sections, Operations and Personnel, as follows:

61.402 OPERATIONS

A. A statement of the group home program's values, mission and objectives;

B. Policies and procedures that:

1. Facilitate resident referral, admission, and discharge;

2. Provide detailed instructions for assessment, service planning and documentation procedures;

3. Describe the handling of on-call responsibilities and resident emergencies;

4. Provide detailed instructions for application to, and communication with, public benefit agencies such as Medicaid, Medicare, Division of Vocational Rehabilitation, etc.;

5. Outline the conditions underlying the lawful sharing of information about residents with family members or others;

6. Provide direction regarding handling financial resources of the group home;

7. Describe the management of residents' funds for whom the service provider has been designated payee;

8. Outline the management of resident medication and the monitoring of medication effects;

9. Involve the services of a crisis intervention service in the event of psychiatric emergencies;

10. Comply with state and federal laws and regulations for receiving and resolving resident grievances;

11. Describe the process of resident transition or termination from the program which is in compliance with state and federal laws and regulations and are intended to ensure continuity of service;

12. In conformity with 16 Del.C., Chapter 11, describe the system for reporting and processing of abuse/ neglect, mistreatment and/or financial exploitation allegations;

13. Describe a procedure for open communication with other residents of the community in which the home is located in order to facilitate group home residents' integration and social skills development; and

14. Include a provision for the development of any other policies and procedures otherwise required to be included by Departmental policy.

61.403 PERSONNEL

A. Staff

1. The minimum qualifications for staff associated with a group home shall be as follows:

a. Psychiatrist: A psychiatrist shall be a person with a medical degree or Doctor of Osteopathy degree, who is licensed to practice medicine in Delaware and is board certified in psychiatry or has served a residency in psychiatry.

b. Clinician: A clinician shall be a person with a doctoral or master's degree in clinical or counseling psychology, psychiatric social work, vocational/ psychiatric rehabilitation or education from an accredited college or university; a registered nurse with a certificate in mental health nursing from the American Nurses Association; or a person with a bachelor's degree with five (5) years experience in mental health service delivery with at least two (2) years experience in residential services.

c. Associate Clinician: An associate clinician shall be a person with a bachelor's degree in clinical or counseling psychology, social work, nursing, vocational/ psychiatric rehabilitation, education or other mental health

field from an accredited college or university; or a registered nurse. An associate clinician shall have had direct experience in mental health service.

d. Residential Service Assistant: A residential service assistant shall be a person who has a high school diploma or GED.

2. The group home shall have a residence manager who shall be responsible for the operation of the group home and shall have the qualifications as defined in Section 61.403 A.1.b. The residence manager shall be responsible for the supervision of residents' treatment plans.

3. Associate Clinicians and Residential Service Assistants shall have qualifications for the treatment activities in which they engage and shall be supervised by the residence manager. At least seventy-five (75) percent of the group home staff, including the residence manager, shall be clinicians or associate clinicians. Nothing in these regulations shall be construed to exempt or limit the application of professional licensing requirements, including those pertaining to professional counselors, psychologists, and clinical social workers under 24 Del.C., Chs. 30, 35, and 39, respectively.

4. The service provider shall maintain a current personnel policies and procedures manual that sets forth grounds for termination, adequately supports sound resident care and is made readily available to the program's staff in each home. The service provider shall comply with the provisions of such manual. The manual shall contain an explanation of the residents' rights pursuant to 16 Del.C., Section 1121 and applicable federal law.

5. The service provider shall comply with criminal background check and drug testing laws [16 Del.C., Sections 1141 and 1142] and implementing regulations.

B. Training and Core Competencies

1. The above staff shall meet competency and training standards compiled by the Department.

2. In order to be approved by the Department, the training required of the service provider staff shall, at a minimum, include each of the following topics:

a. A complete course in medications used in the treatment of mental illness including the medications' effects and side effects used alone or in combination with other prescription and non-prescription medication and alcoholic or caffeinated beverages;

b. A course in mental illness including symptoms of the major mental illnesses, mood and personality disorders and indications of deterioration of an individual's mental condition;

c. A course in first aid, including CPR training;

d. An explanation of the rights of adults with psychiatricdisabilities in residential care in Delaware;

e. Expectations for confidentiality and ethical behavior towards residents who will reside in the group home;

f. Policies and procedures that apply to a group home on both a daily and emergency basis;

g. Fire safety and evacuation procedures;

h. Health care, sanitation, and safe handling of food;

i. Familiarization with community mental health services available in the county in which the group home to which the residential service assistant will be assigned is located;

j. Orientation to situational counseling, behavioral deescalation techniques, stress management and social interaction.

k. Training in appropriate activities and entertainment for residents;

l. Demonstration of a clear understanding of these regulations; and

m. A plan for the continuing education and development of staff.

3. This list of topics is not intended to be exhaustive and shall in no way limit the training requirements set forth by the Department.

4. A service provider need not require training in discrete areas in which the staff person has demonstrated competency to the satisfaction of the service provider and the Department.

5. Staff may be provisionally hired and perform job duties pending completion of training within thirty (30) days. Such provisional staff shall not be on duty without on-site supervision.

PART III - PROGRAM

SECTION 61.5 - ADMISSION AND DISCHARGE

ADMISSION

61.501 The purpose of a group home is to provide a supportive and rehabilitative environment for consumers of mental health services who are unable to live independently at a given time, who demonstrate a willingness to develop the skills for independent living, and who would benefit from group living as an alternative to their existing living situation.

61.502 A service provider shall ensure that no applicant is denied any benefits or services or is subject to illegal discrimination based on age, sex, race, nationality, religion, sexual orientation or disability.

61.503 Unless otherwise authorized by statute, admission to a group home shall be limited to adults with a psychiatric disability who apply for admission to the group home, meet the criteria contained in Section 61.504, and require intensive home and community-based support services as a result of the degree of their psychiatric disability.

61.504 In order to be accepted as a resident of a group home, the following criteria must be met:

A. Be eighteen (18) years of age or older;

B. Require a twenty-four (24) hour supervised community residence because of a primary diagnosis of serious mental illness and not require the services of a psychiatric hospital;

C. Agree to abide by the rules and regulations of the program;

D. Be assessed not likely to be dangerous consistent with the following standard:

1. Individuals shall not be eligible for group home admission if their residency, even with reasonable accommodation, would either constitute a direct threat to the health or safety of self or others, or result in substantial physical damage to the property of others. Such determination shall be made on an individualized basis by a multi-disciplinary team of the group home, which shall include a psychiatrist.

2. Individuals shall agree to comply with treatment plans.

E. Not be a current user of illegal drugs during the assessment period. A drug-screening test may be required to demonstrate the remission or current nonuse of illegal drugs at the time of admission.

61.505 Prior to admission, the service provider shall provide the applicant or legal representative an admission agreement, including the following:

A. An itemized statement of services, equipment, and supplies expected to be furnished to the applicant during the period of residency;

B. The cost and expected source of funding for each item, highlighting any items chargeable to the applicant's personal funds;

C. Discharge standards;

D. By attachment, the Patients' Bill of Rights Act (16 Del.C., Section 1121). Receipt shall be acknowledged by signature of the applicant or legal representative and retained in the service provider's file; and

E. Each provider shall adopt a reasonable fee schedule, which shall be shared with an applicant in writing prior to admission and at such intervals thereafter as prescribed by the Department. Fees charged residents receiving state and/or federal financial assistance shall not exceed amounts available to such persons under law. Residents of all group homes shall be given thirty (30) days written notice of any increase in fees.

61.506 The service provider shall complete an assessment prior to each resident's admission to the group home with the assistance of the group home's psychiatrist.

A written summary of the assessment completed by the applicant's primary clinician must be clearly explained to the applicant. The summary of the assessment shall address, at a minimum, the following:

A. Current psychiatric or behavioral health symptomatology and mental status;

B. Compliance with and response to prescribed medical/psychiatric treatment;

C. Medical, dental, and visual needs;

D. Recent key life events and current social functioning;

E. Vocational and educational functioning;

F. Accommodations and supports to facilitate activities of daily living;

G. Recommendations pertaining to limitations on the applicant's diet or activities, if any, signed by a licensed physician; and

H. Drug and alcohol history and history of assaultive behavior up to five (5) years prior to institutionalization.

61.507 Based on the results of the assessment, the service provider and resident shall develop an initial individualized treatment plan no later than the date of the resident's admission to the group home. The service provider shall comply with the provisions of such plan. Copies of such plan and all amendments shall promptly be provided to the resident. In addition, copies of such plans shall be maintained for each resident at the resident's group home and shall be available for inspection by the Department upon request.

DISCHARGE

61.508 Consistent with 16 Del.C., Section 1121, a provider may seek discharge of a resident for good cause. Prior to discharge, the provider shall ensure the development of a written discharge plan in consultation with the resident; his guardian or legal representative, if any; anticipated post-discharge providers; and a multidisciplinary team which shall include a psychiatrist.

A. Content of a Discharge Plan

At a minimum, the discharge plan shall include:

1. A realistic assessment of the resident's post discharge social financial, vocational, housing, and treatment needs;

2. Identification of available support services and provider linkages necessary to meet the assessed needs; and

3. Identification and a timetable of discrete, predischarge activities necessary to promote the resident's successful transition to the post-discharge setting.

B. Good Cause

Good cause for discharge includes the following:

1. The resident has demonstrated the ability and willingness to live in a less restrictive setting;

2. The resident, even with reasonable accommodation, poses either a direct threat to the health or

safety of self or others; or direct threat of substantial physical damage to the property of others;

3. The resident requires a level of care beyond the scope of that reasonably available within the group home; or

4. The resident has materially violated essential rules of operation of the group home and such violation seriously affects the welfare of the resident or other residents of the group home.

61.509 A resident to be discharged shall be given thirty (30) days prior notice of the discharge and the reasons therefore, and shall be entitled to an impartial hearing to challenge the discharge. In emergency situations, a resident may be discharged without notice and a hearing, provided that as soon as practical a resident will be provided an opportunity to challenge the discharge through a hearing after the discharge has occurred, and further provided that no resident may be discharged before the service provider develops and implements an emergency discharge plan adequate to protect the resident's safety and welfare until the discharge hearing.

The emergency plan shall address the resident's need for housing. For purposes of this subsection, a situation is an emergency when the behavior of a resident is causing or threatens to imminently cause physical injury or death to the resident, other residents, staff, or others.

No resident shall be discharged on an emergency basis without prompt notification to the Division of Substance Abuse and mental Health.

61.510 Short-term transfer to a medical treatment setting, including a psychiatric hospital, shall not result in discharge.

SECTION 61.6 - CARE, TREATMENT AND QUALITY ASSURANCE

61.601 The service provider shall operate the group home in a manner such that residents will be able to maximize their quality of life as a result of the following:

A. Involvement and choice in all aspects of their care, rehabilitation and support;

B. Development and maintenance of supportive social networks;

C. Access to services, programs, and activities in the most integrated setting; and

D. Access to rehabilitative support during the course of day to day activities.

61.602 The following requirements represent minimum guidelines to implement these principles:

A. The service provider shall maintain the following staffing pattern:

1. Between the hours of 8 AM and 10 PM:

a. A minimum of one (1) clinician or associate clinician shall be on duty and on site for every one (1) to five (5) residents present in the home.

b. A minimum of two (2) staff members, at least one (1) of whom shall be a clinician or associate clinician, shall be on duty and on site whenever six (6) or more residents are present in the home.

2. At all other times, a minimum of one (1) clinician or associate clinician shall be on duty and on site whenever any residents are present in the home.

3. At all times, at least one (1) clinician, associate clinician, or residential service assistant shall be available on call. When a staff member is on duty and on site alone, the on-call person must be a clinician or associate clinician.

4. The Department may require a modified staffing patternbased on extenuating circumstances or resident need.

B. The service provider shall develop procedures for facility and resident emergencies/crises and shall train all staff to implement such procedures prior to their assumption of an in-home resident support role. Emergency procedures shall include prompt methods for acquiring assistance of the following: facility on-call and other appropriate staff; 911 personnel; and medical/psychiatric personnel, including the area's crisis intervention service and local hospital/medical aid unit's emergency room. Psychiatric on-call coverage must be available at all times.

C. Each resident shall have his/her progress and continuing treatment needs thoroughly reassessed at least once every six (6) months. The reassessment will be conducted by a multi-disciplinary team, which shall include a psychiatrist.

D. A service provider shall employ, or have under contract, a psychiatrist who shall participate in staff support and training, resident intake evaluation, emergency responses, and staff performance plans and reviews in each group home. This psychiatrist may be a physician other than the primary treating physician for one or all of the patients. The psychiatrist shall visit the group home at least once a week and spend a minimum of one-half hour per resident per month providing direct services to residents on site, participating in the assessment of residents' needs, planning service provision, and providing supervision/consultation to other program staff.

E. The service provider shall offer a full range of rehabilitation, treatment and support services for each resident including, but not limited to, the following:

1. Three hundred sixty-five (365) day per year services, with on-site staff available to make face-to-face contact on a twenty-four (24) hour basis;

2. Psychiatric treatment and linkage to community support programs or day hospital programs;

3. Clinical liaison during periods of psychiatric hospitalization;

4. Outreach and crisis response;

5. Social networking in an effort to promote

a stable social network for the resident;

6. Support to ensure educational and vocational training opportunities and help residents to get and keep a job;

7. Teaching and counseling on-site to improve interpersonal skills and to assist residents to control psychiatric symptoms;

8. Support and assistance in on-site activities of daily living such as personal hygiene, care and grooming, and training in community living;

9. Support and assistance in the receipt of entitlements and social services;

10. Provision and encouragement of participation in activities outside of the home, to the maximum extent possible. In addition, providers shall create incentives for residents to become involved in the activities of their choice;

11. Transportation of residents to community activities; and

12. Support and encouragement to promote resident participation in mutual support and self-advocacy groups.

61.603 The service provider shall designate a clinician or associate clinician to be the service coordinator for each resident who shall:

A. Maintain the clinical file for the resident;

B. Conduct and participate in treatment planning and case conferences with other staff of the group home, and other appropriate agencies;

C. Maintain a therapeutic alliance with the resident;

D. Refer and link the resident to all needed services provided outside the program;

E. Follow up to ensure that all needed services provided outside of the group home are received and monitor the resident's benefit from those services;

F. Coordinate the provision of emergency services and hospital liaison services when a resident is in crisis;

G. Coordinate overall independent living assistance services and work with community agencies to develop needed resources including housing, employment options and income assistance; and

H. Support and consult with the resident's family.

61.604 The duties of the service coordinator notwithstanding, all staff of the program shall share responsibility for resident care to the extent they are credentialed to provide such care.

61.605 Within thirty (30) days of the resident's admission, the individualized treatment plan shall be revised and updated by the resident and the resident's treatment team.

61.606 The treatment plan shall include both short-range and long-range goals, stated in measurable terms and including criteria for revision of goals. It shall include the specific treatment, rehabilitation and support interventions, and their frequency, planned to achieve treatment goals.

61.607 The resident's participation in the development of treatment goals shall be documented. With the permission of the resident, the resident's treatment team shall engage the involvement of other service providers and members of the resident's social network in formulating treatment plans.

61.608 The treatment plan shall be prepared on forms which are subject to Departmental approval. It shall be signed by members of the resident's treatment team and the resident.

61.609 The treatment plan shall be reviewed in full at least every six (6) months by the resident and the resident's treatment team. The date, results of the review, and any changes in the treatment plan shall be recorded.

61.610 The service provider shall develop, implement, and adhere to a documented, ongoing, quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

SECTION 61.7 - RECORDS

61.701 The service provider shall maintain an on-site treatment record for each resident that includes sufficient documentation of assessments, treatment plans and treatment to permit a clinician not familiar with the resident to evaluate the course of treatment. Resident treatment records shall be kept confidential and safeguarded in a manner consistent with the requirements of 16 Del.C., Section 1121, applicable federal law and Departmental guidelines adopted in conformity with 16 Del.C., Section 1119 A.

The resident's records shall be maintained by the service provider in their entirety for at least seven (7) years after the date of discharge or as otherwise directed by the Department.

The resident's record shall contain the following:

A. An up-to-date face sheet and resident consent to treatment and consent to any occasion of release of treatment information;

B. Results of all pertinent examinations, tests and other assessment information, reports from referral sources and clinical consults, and hospital discharge summaries;

C. Assessments and summary of assessments;

D. A treatment plan;

E. Weekly and monthly progress notes;

F. Documentation of at least semiannual reviews of treatment, iincluding reassessment of current functioning, summary of progress and treatment plan revisions;

G. Medication history and orders including the following:

1. The brand or established name and

strength of medication to extent measurable;

2. Identity of dispensing pharmacy;

3. Identity of prescribing physician;

4. Date of order;

5. Dose;

6. Special instructions included on the prescription;

7. Frequency and, if specified, time period of intended administration; and

8. For each discrete self-administration/ administration of medication, the following:

a. Time and date;

b. Amount or dose;

c. Route of administration;

d. Identity of person administering, assisting with aministration, or, if applicable, monitoring self-administration of medication; and

e. Any adverse reactions.

H. Discharge plan developed in conformity with Sections 61.508, 61.509 and 61.510.

61.702 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate. Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; telephone number: 1-877-453-0012; fax number: 1-877-264-8516.

SECTION 61.8 - GENERAL HEALTH CARE

61.801 The service provider shall ensure that residents receive needed medical, dental, visual and behavioral health care. Residents shall have a complete physical examination by a physician within thirty (30) days of admission to the group home unless they have had one within one (1) year of admission and their medical records are available to their current primary care physician.

61.802 The service provider shall identify generic medical services and the professional providing the services, including a physician and dentist, for each resident.

61.803 The service provider shall ensure that each resident has an annual physical exam.

61.804 The service provider shall ensure that dental evaluations and preventive care are provided at least annually.

61.805 Upon confirmation of a reportable disease, the service provider shall notify the appropriate County Health Officer of the Division of Public Health.

61.806 The service provider shall provide or arrange transportation for the resident's routine medical and dental care.

61.807 Unless otherwise prescribed, the daily diet for each resident shall include a minimum of three balanced meals a day.

61.808 The service provider shall immediately report, by telephone, a suspected occurrence of food poisoning to the County Health Officer of the Division of Public Health, and the resident's physician.

61.809 If the service provider's staff does not include a registered nurse, the service provider shall train sufficient staff to ensure that, at all times, one or more members of the staff on duty in the group home has basic knowledge in first aid (including CPR), prevention of disease, proper handling of food, and care of sick persons. Reference materials on nutrition, drugs, and illness shall be available to the staff.

61.810 All group homes shall have on file results of tuberculin tests performed annually for all group home staff and residents. Mantoux techniques (5TU-PPD-T) is the tuberculin skin test recommended by the Division of Public Health. The service provider shall report the test results of any staff or resident found to react significantly to the skin test (ten (10) mm induration or greater) to the Division of Public Health.

61.811 New group home staff and new residents fifty (50) years of age or older who have a nonsignificant reaction to the tuberculin test, defined as less than ten (10) mm induration, should be retested within ten (10) to fourteen (14) days to identify those who demonstrate delayed reactions.

61.812 Group home staff and residents who have a documented history of a significant tuberculin test should not be retested, ever. Clinical histories on such group home staff and residents should be taken and those with symptoms of pulmonary tuberculosis should have chest x-rays.

61.813 The Department may require a group home to conduct more frequent tuberculin screening should the Department judge that the risk of tuberculosis in the group home warrants such action.

SECTION 61.9 - MEDICATIONS

61.901 Medication monitoring is to be conducted as follows:

A. The psychiatrist shall evaluate each resident's response to prescribed medication at least every two (2) weeks;

B. The service provider shall monitor and document, as required in Section 61.701G., resident compliance in following prescribed medication treatment and medication effects and side effects. The service provider shall assist the resident in reporting side effects to the psychiatrist or other physician prescribing the medication. Suspected drug reactions shall be noted in the

medication record and reported to the psychiatrist immediately;

C. A registered nurse or licensed practical nurse may administer medications, including injections, at the direction of the prescribing physician; and

D. Residents shall retrieve and take their medications under the direct supervision of a qualified staff member except as specifically authorized by the treatment plan.

61.902 Residents receiving medication shall be trained to take their own medication, where possible. Staff who have successfully completed a Board of Nursing approved medication training program may assist residents in the taking of medication provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label.

61.903 No prescription medication shall be administered to a resident without an order by a physician or other legally authorized person.

61.904 No person other than a physician or licensed nurse shall administer injectable medication.

61.905 Group home staff shall immediately report medication errors to the prescribing physician.

61.906 A minimum of a three (3) day supply of each resident's medication shall be available at all times.

61.907 The service provider shall be responsible for the storage of medication. Medications not in the authorized possession of residents are to be kept in a locked cabinet or in a locked box in a refrigerator, in a locked room.

SECTION 61.10 - RESIDENT RIGHTS AND RESPONSIBILITIES

61.1001 Consistent with Section 61.303 A., residents may solicit, and the service provider shall consider, resident requests for reasonable accommodation based on disability. Residents should review their admissions agreements and shall have an opportunity to accept or reject admission to the group home program prior to enrollment.

61.1002 Residents shall be kept informed through written guidelines and documentation in their clinical records of their rights and responsibilities contained in written policies and procedures including reference to:

A. Behavioral expectations and limitations including:

1. Prohibition against the use of alcohol or other drugs other than those prescribed by their physicians;

2. Respect for privacy rights of fellow residents and others and respect for laws regarding conduct outside the group home; and

3. Cooperation with treatment;

B. Confidentiality; and

C. All applicable appeal processes.

61.1003 Each service provider shall maintain a fair, timely, and impartial grievance system, whose operational standards may be prescribed by the Department, to address resident complaints. The availability of such system shall not preclude or diminish a resident's right to pursue remedies in alternate forums, including those authorized by 16 Del.C., Sections 1121, 1125, and 1152.

61.1004 Subject to 16 Del.C., Section 1121, the service provider shall adopt reasonable program or house rules which promote resident safety and responsibility without unnecessarily compromising individual self-determination and choice. On a case-by-case basis, a resident's treatment team may authorize a variance from application of such rules (e.g. during transition to and from the residence). Any variance that restricts personal activities within the general scope of adult discretion shall be based on clinical necessity and the specific rationale included in the resident's treatment plan.

61.1005 The service provider shall comply with all applicable state laws, regulations, and policies regarding reporting and responding to allegations of abuse and neglect.

61.1006 The service provider shall comply with the applicable posting and disclosure requirements of 16 Del.C., Section 1108.

61.1007 The service provider shall comply with the Patient's Bill of Rights set forth in 16 Del.C., Section 1121. A copy of the Patient's Bill of Rights shall be conspicuously posted within the home.

PART IV - QUALITY AND SAFETY OF LIVING ARRANGEMENTS

SECTION 61.11 - PHYSICAL FACILITY STANDARDS

61.1101 Rooms or other areas of the group home that are not sleeping rooms shall not be used for sleeping accommodations.

61.1102 Sleeping rooms shall be rooms with one (1) outside wall and shall provide for quiet and privacy.

A. Each bedroom shall have walls that go to the ceiling, a door that can be closed and that opens directly into a corridor, and at least one (1) window that opens directly to the outside.

B. Bedrooms for one (1) individual shall be at least one hundred (100) square feet in size and bedrooms for more than one (1) individual shall provide at least eighty (80) square feet of floor space per individual and be adequately spaced for resident care. Minimum room measurements shall not include toilet rooms, closets, lockers, wardrobes, alcoves or vestibules. The ceiling shall not be less than seven (7) feet from the floor. Each bedroom shall accommodate no more than two (2) residents.

C. Each resident shall have a separate bed of appropriate size and height and in good repair with a comfortable, well-constructed mattress. There shall be closet space and a minimum of two (2) drawers in a chest of drawers for storing personal belongings. There shall be a

sturdy bedside stand and reading light for each resident.

D. Electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

E. The service provider shall ensure adequate privacy and separation of sexes in sleeping arrangements, except in cases of husband and wife.

F. If bedroom doors of residents are locked by residents for privacy reasons, a master key shall be available to staff persons.

G. Bedroom windows shall have window treatments that close for privacy.

61.1103 Every resident shall receive notice before the resident's room or roommate is changed, except in emergencies. The service provider shall endeavor to honor the room or roommate requests of the resident whenever possible. Smoking and non-smoking residents, where practical, shall not share a room except by mutual agreement.

61.1104 There shall be a telephone in the group home accessible to staff and residents.

61.1105 There shall be sufficient heating, ventilation, and light in all living and sleeping quarters to provide a comfortable atmosphere.

61.1106 The exterior of the group home site shall be free from hazards as well as the accumulation of litter.

61.1107 The group home and grounds shall be clean and orderly and maintained in an attractive appearance reasonably consistent with the character of the immediate area in which the group home is located.

61.1108 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational, and social activities, and which shall include TV, radio and entertainment. At least thirty (30) square feet per resident shall be assigned to these areas. Basement space may be used for recreation activities if there is a minimum of two (2) means of egress from the basement.

61.1109 Any physical alteration of a group home shall be approved by the Department in writing prior to the commencement of the alteration. One (1) copy of the building permit for the alteration, the application for the building permit and accompanying plans and specifications shall be submitted to the Department before the alteration may be considered.

61.1110 All vehicles used to transport residents by the service provider shall be equipped with a seat belt for each resident and shall comply with applicable safety and licensing regulations established by the Delaware Division of Motor Vehicles. The service provider shall maintain liability insurance as required by Delaware law. A driver of a vehicle used to transport residents shall have a valid license.

61.1111 Emergency transportation shall be available on a twenty-four (24) hour basis. Each group home shall demonstrate the ability to transport residents on an as-needed basis, including provisions for emergency transportation, as a condition of licensure.

SECTION 61.12 - HEALTH AND SANITATION

61.1201 The group home site shall be easily drained, suitable for the disposal of sewage, and furnished with a potable water supply that meets requirements of the appropriate State agencies.

61.1202 The water system in the group home shall be designed to supply adequate hot and cold water, under pressure, at all times.

61.1203 Hot water at shower, bathing and hand washing faucets in the group home shall not exceed 120° F.

61.1204 The plumbing in the group home shall meet the requirements of all applicable municipal, county, and state codes. Where there are no municipal or county codes, the plumbing in the group home shall meet the provisions of the Department's Sanitary Plumbing Code.

61.1205 There shall be private bathroom facilities with a toilet, shower or tub, and wash basin in each group home. These facilities shall be accessible to each resident according to his/her individual needs.

A. Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

B. There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.

C. Toilets, bathing and toileting appliances shall be equipped for use by residents with physical disabilities, as dictated by such residents' needs.

D. There shall be at least one (1) toilet of appropriate size for each four (4) residents. Each toilet shall be equipped with a toilet seat and toilet tissue.

E. There shall be at least one (1) wash basin and one (1) tub or shower for each four residents.

F. Wash basins with soap and towels shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

G. Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant surfaces.

H. Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way as to minimize the danger of breakage.

61.1206 All group homes shall prepare regular and therapeutic menus. A copy of a recent diet manual shall be available for planning menus.

61.1207 A minimum of three (3) meals shall be served in each twenty-four (24) hour period. There shall not be more than a fourteen (14) hour span between the evening meal and breakfast.

61.1208 The food served shall be suitably prepared and of sufficient quality and quantity to meet the nutritional needs of the residents.

61.1209 Special diets shall be served on the written prescription of the physician.

61.1210 A registered dietitian shall plan, review, revise and document menus with resident input.

61.1211 Menus showing food actually served shall be kept on file for at least one (1) month.

61.1212 A three (3) day supply of food for emergency feeding shall be kept on the premises.

61.1213 There shall be refrigeration for perishable foods in the group home. There shall be at least one (1) refrigerator and one (1) freezing unit in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41º F. or below.

61.1214 Food returned from individual plates shall not be used in preparation of other food dishes or served again.

61.1215 There shall be at least one (1) four (4) burner range and one (1) oven (or combination thereof) that is in proper working order.

61.1216 There shall be at least one (1) sanitary trash or garbage receptacle.

61.1217 There shall be adequate cleaning and disinfecting agents and supplies.

61.1218 There shall be separate areas of storage for:

A. Food items;

B. Cleaning agents, disinfectants and polishes;

C. Poisons, chemicals and pesticides; and

D. Eating, serving and cooking utensils.

61.1219 All containers of poisonous and toxic materials kept in a group home shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to the residents and staff. All poisonous or toxic materials shall be locked in secure storage spaces.

61.1220 All outside doors and windows shall have screens if used for ventilation.

61.1221 There shall be a dishwasher or facilities for performing a wash, rinse, and a final sanitizing rinse.

61.1222 The kitchen shall be equipped with at least one (1) operable window or exhaust system for removal of smoke, odors and fumes.

61.1223 There shall be walls and floors that are cleanable and counters that are both cleanable and impervious to water.

61.1224 Every part of the building shall be kept free of offensive odors. Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair.

61.1225 Written policies that outline maintenance, electrical maintenance, cleaning procedures, storage of cleaning material, pesticides and other potentially toxic materials shall be prepared and followed.

61.1226 There shall be a minimum of two (2) sets of towels, wash cloths, sheets and pillowcases per resident that shall be changed at least weekly, or more often if soiled.

61.1227 Laundry should not be done in the kitchen area.

61.1228 Exterminator services shall be required when there is evidence of any infestation.

SECTION 61.13 - SAFETY

61.1301 Fire safety in group homes shall comply with the adopted rules and regulations of the State Fire Prevention Commission. All applications for the license or renewal of a license shall include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.

61.1302 The group home shall have a minimum of two (2) doors to the outside and windows that can be opened.

61.1303 The group home shall have an adequate number of UL (Underwriter's Laboratory) approved smoke detectors in working order:

A. In a single level group home, a minimum of one (1) smoke detector placed between the bedroom area and the remainder of the group home.

B. In a multistory group home, a minimum of one (1) smoke detector on each level. On levels that have bedrooms, the detector shall be placed between the bedroom area and the remainder of the group home.

61.1304 There shall be two (2) five (5) pound ABC Fire Extinguishers that are readily accessible and visible in the group home. Extinguishers are to be checked annually.

61.1305 The group home shall have a written posted evacuation plan with specific responsibilities of each resident and staff member identified in case of fire or emergencies. Residents and staff shall be trained in executing the evacuation plan. Sufficient staff will be present to ensure timely resident evacuation in the event of an emergency.

61.1306 Evacuation drills shall be held quarterly for each shift of group home personnel. Drills shall be held on different days of the week. Drills shall be held at different times of the day, including times when residents are asleep.

61.1307 The service provider shall prohibit firearms, and other dangerous weapons within the buildings or on the grounds of the group home.

61.1308 Emergency telephone numbers, including telephone numbers for fire, police, physicians, psychiatrists, poison control, crisis intervention services, and ambulance shall be conspicuously posted adjacent to the telephones.

61.1309 Glass shower doors shall be marked for safety.

61.1310 Smoking shall be limited to designated

smoking areas.

61.1311 Stairways, ramps, and open-sided approaches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.

61.1312 All stairways and hallways shall be kept free and clear of obstructions at all times.

61.1313 Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair. Floor surfaces shall not be slippery. If rugs are used, they should be free of such hazards as curled edges, rips, and other irregularities that have a potential for tripping residents.

SECTION 61.14 - NONCOMPLIANCE

61.1401 Upon receipt of written notice of a violation of these regulations, the service provider shall submit a written plan of action to correct deficiencies cited within ten (10) days or such other time period as may be required by the Department. The plan of action shall address the corrective actions to be taken and include all measures to prevent their recurrence.

61.1402 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

61.1403 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

Section 61.15 - WAIVER OF STANDARDS

Waivers may be granted by the Division of Long Term Care Residents Protection for good cause.

SECTION 61.16 - SEVERABILITY

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of the regulations shall not be affected.

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1101 (16 **Del. C.** §1101)

Regulations for Nursing Homes Admitting Pediatric Residents

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared seven (7) revised draft regulations governing Nursing Homes Admitting Pediatric Residents as required in 16 Del. C., Section 1119C. The remainder of the regulations addressing general and facility requirements and medical, therapy, nutritional, nursing, educational and family services in nursing homes admitting pediatric residents appear as final regulations in the May 1, 2002 Register of Regulations. The following seven (7) draft regulations, revised after the March 4 and March 6 public hearings, will be the subject of a further public hearing: Regulations 79.307, 79.403, 79.503, 79.507, 79.608, 79.701 and 79.1203.

INVITATION FOR PUBLIC COMMENT

A public hearing will be held as follows:

Wednesday, June 12, 2002, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

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

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

Robert Smith
Division of LongTerm Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing June 12, 2002.

Section 79.100 - Purpose

79.101 - As set forth in 16 Del. C., Chapter 11, Section 1101:

"…the primary purpose of the licensing and regulation of nursing facilities and similar facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents."

79.102 - Given that most nursing facilities and similar facilities provide services to adults who are elderly and/or physically disabled, children with special needs housed in these facilities require unique and carefully coordinated plans of pediatric care as well as developmentally appropriate, family-friendly environments.

79.103 - These regulations outline minimum acceptable levels of care and treatment for this population.

79.104 - A facility must be in compliance with all state and local laws and regulations applicable to facility personnel, provision of services and physical plant.

Section 79.200 - Authority and Applicability

79.201 - These regulations are adopted in

implementation of 16 Del. C., Chapter 11 and are applicable to any licensed nursing facility which provides care or services to one or more persons under 18 years of age.

79.202 These regulations are intended to supplement, and not supplant, general regulations promulgated in conformity with 16 Del. C., Chapter 11 and other applicable laws.

Section 79.300 - Definitions

79.301 - "Adult Resident" - any person residing in the facility 18 years of age and older.

79.302 - "Care Plan" - a specific document that includes, but is not limited to, identified resident-based goals and defined action steps for providing appropriate care and treatment.

79.303 - "Certified Nursing Assistant " - an individual certified in accordance with 16 Del. C., Chapter 30A, under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the persons(s) to whom they are providing care.

79.304 "Department" - Department of Health and Social Services.

79.305 "Division" - Division of Long Term Care Residents Protection.

79.306 "Licensee" - the person or organization to whom a license is granted and who has full legal authority and responsibility for the governance and operation of a nursing home and/or similar facility.

79.307 "Pediatric Resident" - any person residing in a nursing facility under 18 years of age and for whom there is a care plan including medical care, treatment and other related services.

79.308 "Primary Care Nurse (PCN)" - a Registered Nurse with at least a Bachelor's Degree in nursing with expertise in the care of children with special needs. The PCN is responsible for the day to day delivery of all services specified in the care plan.

79.309 "Primary Care Provider (PCP)" - a physician licensed to practice in the State of Delaware with expertise in the care of children with special needs designated to coordinate medical care on a day to day basis.

79.310 - "Social Worker" - an individual with a bachelor's degree in social work or in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology. An individual with a bachelor's degree in any other related field may qualify if the individual can demonstrate competency in coordinating care for medically fragile populations either through course work or experience. A minimum of one year of supervised experience is required in a long term care setting working directly with individuals and their families.

Section 79.400 - General Requirements

79.401 - Prior to admission, an interdisciplinary team of healthcare professionals shall evaluate the potential pediatric resident to determine whether the licensee can meet the pediatric resident's needs. The care plan must contain documentation of the pre-admission assessment with approval by the primary care provider and parents/guardian with notification to the responsible state agencies.

79.402 The licensee shall admit and retain only children with special needs whose specific medical, nursing, and psychosocial needs the licensee can meet.

79.403 The licensee through licensed healthcare professionals shall ensure that an interdisciplinary team is formulated for each pediatric resident. The interdisciplinary team shall include, but not be limited to, the Primary Care Nurse, a representative from each pediatric service received by the pediatric resident, a nutritionist, a representative from the educational program, social worker, Primary Care Provider and the parents/family/guardian. The team shall meet quarterly or more frequently as needed and review and document the care plan, and the Individual Education Plan (IEP) or Individualized Family Services Plan (IFSP) formulated for the pediatric resident.

Section 79.500 - Facility Requirements

79.501- Pediatric residents shall only share rooms with other residents of the same sex.

79.502 The licensee must provide a tobacco-free environment for pediatric residents.

79.503 The licensee must provide and maintain all clinically indicated pediatric resuscitation equipment for children with special needs. For rooms occupied by such children, oxygen, suction equipment and electrical outlets must be at each bedside with access to an emergency power system. A pediatric resuscitation cart shall be provided on each pediatric unit/wing and shall include: dosage appropriate emergency drugs, resuscitation equipment including a pediatric backboard for cardiopulmonary resuscitation (CPR), and an easily readable list of drug dosages. A defibrillator designed for pediatric use with paddle sizes appropriate for pediatric residents and an easily readable chart indicating jolt dosages must be provided on each pediatric unit/wing. Equipment must be in good working order and must be checked daily by a registered nurse for proper functioning and must be documented as such.

79.504 - A nursing staff member certified in Pediatric Advanced Life Support (PALS) shall be present in the unit where pediatric residents reside and when pediatric residents are present.

79.505 - All nurses caring for pediatric residents must be certified in infant and pediatric cardiopulmonary

resuscitation (CPR).

79.506 - An audio monitoring system shall be utilized whenever a pediatric resident is left unattended. The monitoring system must include heart rate and respiratory rate alarms audible to the nursing station. Any pediatric resident with a tracheotomy and/or ventilator must also be monitored by a pulse oximetry with alarms audible to the nursing station. The monitors must be used when pediatric residents are unsupervised and/or in their rooms for quiet time and nap/bed time. A plan to answer and respond to alarms must be in place and reviewed by all facility staff members.

79.507 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident is assessed by appropriate professionals for the need for assistive technology. The licensee shall ensure provision of appropriate assistive technology as prescribed as well as training in its use for staff members. Parents/family/ guardian may also be trained when determined to be appropriate by the interdisciplinary team.

Section 79.600 - Medical Services

79.601 - The licensee through licensed healthcare professionals shall ensure the delivery of individualized, comprehensive services to each pediatric resident in conformity with a care plan.

79.602 - The PCN shall be the liaison among treating physicians.

79.603 - Pediatric services must be multidisciplinary and individualized. The services provided to each pediatric resident must be developmentally specific and appropriate to the age group being served.

79.604 - The licensee shall provide access to emergency medical care 24 hours a day, 7 days a week, as outlined in a written policy which is updated annually. The policy shall be reviewed with all staff members and mock situations performed and documented at least twice a year.

79.605 The licensee through licensed healthcare professionals shall ensure complete physical assessments are performed on pediatric residents by the PCP or a Primary Care Nurse on admission/readmission and monthly thereafter. Documentation of complete physical assessment must be included in the pediatric resident's chart for review by all medical and nursing staff.

79.606 The licensee through licensed healthcare professionals shall ensure that each pediatric resident receives immunizations in accordance with current national pediatric standards.

79.607 - The licensee through licensed healthcare professionals shall ensure timely medically necessary referrals to pediatric medical sub-specialists and pediatric surgical specialists as needed.

79.608 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident over the age of 3 years receives dental exams according to current national dentistry standards and necessary treatment.

79.609 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an age-appropriate eye, hearing and vision exam according to current national pediatric standards.

Section 79.700

79.701 - The licensee shall ensure that qualified individuals specializing in the healthcare of children with special needs (e.g., physical therapist, occupational therapist, speech therapist, nutritionist, qualified interpreter) plan and administer the treatments for each pediatric resident.

79.702 - The licensee through licensed healthcare professionals shall ensure that the plan for therapy and progress toward goals is reviewed and revised at least quarterly and is incorporated into the care plan. The nature, duration, frequency, and provider of therapy services shall be specified in the care plan.

Section 79.800 - Nutritional Services

79.801 The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an individually appropriate care plan that addresses the nutritional needs of that resident including the recommended daily allowance (RDA) of vitamins and minerals according to current national pediatric standards.

79.802 The licensee through licensed healthcare professionals shall ensure that infants and children are held during oral feeding as needed.

79.803 The licensee through licensed healthcare professionals shall consult with the PCP regarding the introduction of solid foods and the pediatric resident's progress in advancing to table foods.

79.804 The licensee through licensed healthcare professionals shall ensure each pediatric resident is meeting his/her optimal developmental potential regarding eating habits/eating techniques.

79.805 The licensee through licensed healthcare professionals and support staff shall assist pediatric residents to convene in a common dining area and partake in social gatherings around meal times, including children who are fed by tube.

79.806 The licensee shall ensure proper documentation of meal intake every shift.

Section 79.900 - Nursing Services

79.901 - The licensee shall ensure that at least one registered nurse is present on every shift. That nurse must have at least one year of previous employment in a pediatric setting. This nurse may be the Primary Care Nurse (PCN).

79.902 The licensee through licensed healthcare professionals shall ensure that a sufficient number of nursing staff are assigned to the pediatric care unit to provide care in accordance with each pediatric resident's care plan and to

meet each pediatric resident's needs. The licensee shall provide sufficient nursing and support staff so that each pediatric resident receives daily interaction from a variety of staff members. Interaction includes, but is not limited to, frequent conversation, play and holding/cuddling of pediatric residents to provide daily stimulation.

79.903 The licensee shall ensure that all pediatric nursing procedures are written in a policy and procedure manual. The manual must be accessible to all staff members caring for pediatric residents. Each individual policy must be reviewed and updated at least annually.

79.904 - In addition to the facility standard orientation, the licensee shall ensure that upon hiring, all pediatric nursing and support staff complete an orientation to the pediatric unit/wing which is documented in the staff members' personnel files.

79.905 - The licensee shall ensure that each nursing and support staff member providing care to pediatric residents receives training and demonstrates competence prior to performing any specialized skill or procedure on a pediatric resident. Written evidence of training and demonstration of competence must be included in each nursing and support staff member's personnel file.

79.906 - The licensee through licensed healthcare professionals and support staff shall ensure that mouth care, skin care, passive range of motion, hygiene and other dependent care activities are performed as specified in the care plan.

Section 79.1000 - Educational Services

79.1001 - The licensee in coordination with appropriate educational professionals shall ensure that each pediatric resident eligible for services under the Individuals with Disabilities Education Act (IDEA) is offered such services in conformity with 14 Del.C., Chapter 31 and 16 Del. C., Chapter 2, Subchapter II, and any regulations implemented under those laws.

79.1002 The licensee shall maximize the coordination of each pediatric resident's care plan with any Individual Education Plan (IEP) or Individual Family Service Plan (IFSP) to ensure consistency and promotion of the pediatric resident's optimal benefit. In implementation of this duty, the PCN and Social Worker shall collaborate with responsible schools or school districts in development and revision of care plans, IEPs, and IFSPs.

Section 79.1100 - Family Services

79.1101 - The Social Worker and other involved staff members shall promote positive family interaction and provide comprehensive instruction in providing care, as needed. The licensee shall have written guidelines for:

- family visits to the facility and flexibility in accommodating such visits,
- the pediatric resident's visits to the home setting,
- telephone contacts between the pediatric resident and the family,
- the provision of privacy between the pediatric resident and the family,
- the inclusion of the family in planning of care.

79.1102 The Social Worker and other involved staff members shall ensure that family support services are provided which include, but are not limited to, transportation, health education, counseling/support groups, home visiting, and coordination of care. The provision of quality services shall be family-based, community-based and culturally appropriate.

79.1103 The Social Worker shall provide assistance to families to obtain services including Social Security, Medicaid, and other public/private assistance programs.

79.1104 The licensee through licensed healthcare professionals shall facilitate discharge planning and coordination of outside resources. The licensee shall encourage the option of discharging the pediatric resident to the home if resources are available and the family is willing.

Section 79.1200 - Miscellaneous Services

79.1201 - The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.

79.1202 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.

79.1203 <u>The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:</u>

- o <u>neurosensory,</u>
- o <u>fine motor development,</u>
- o <u>gross motor development,</u>
- o <u>social/emotional,</u>
- o <u>speech/language/communication,</u>
- o <u>hearing, audiology.</u>

79.1204 - The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.

79.1205 - The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.

79.1206 - The licensee though the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to

participate in group activities.

79.1207 - The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.

79.1208 - The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.

79.1209 - A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

Section 79.1300 - Resuscitation Orders

79.1301 - Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.

79.1302 - The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

Section 79.1400 - Waiver

79.1401 - Waivers may be granted by the Division for good cause.

Section 79.1500 - Severability

79.1501 - Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7405, 7406 (16 **Del.C.** §1705, 1706)

Delaware Radiation Control Regulations

These regulations, "Delaware Radiation Control Regulations," replace by recision the current "Delaware Radiation Control Regulations" previously adopted on July 22, 1969 and most recently amended September 1, 1995.

The Regulations are modeled after the Conference of Radiation Control Program Directors, Inc. Suggested State Regulations. Due to the large size of these regulations, a summary of major changes from the rescinded regulation to this (proposed) regulation is published below. The (proposed) regulation can be viewed in its entirety by contacting the Office of Radiation Protection as indicated in the notice of public hearing.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Delaware Radiation Control Regulations. This public hearing will be held on Monday, June 3, 2002 at 5:30 p.m., in the first floor conference room, Bayhealth Medical Center, 640 S. State Street, Dover, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control, Jesse Cooper Building
P.O. Box 637
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 739-3787

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 739-4700 by close of business Wednesday, May 29, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business June 7, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

*** PLEASE NOTE: DUE TO THE LENGTH OF THE PROPOSED RADIATION REGULATION THE FULL-TEXT IS NOT BEING PRINTED. FULL-TEXT COPIES OF THE REGULATION ARE AVAILABLE FROM THE REGISTRAR OR MAY BE VIEWED ON THE REGISTER OF REGULATION WEBSITE.**

FULL-TEXT PDF VERSION DOWNLOAD

INDIVIDUAL PDF SECTIONS DOWNLOAD

Summary of Regulatory Amendments

REQUIREMENTS	CHANGE	IMPACT
PART D * Radiation Protection Program(RPP) * Indicates Federal Requirement	**Old** Program not specified; only the Radiation Safety Officer (RSO) is specified **New** D.101 Requires the registrant to implement a radiation protection program	Agency – Add to inspection protocol Industry – Implementation of RPP plan Public – Establishes and assures that safety protocols are in place.
* Occupational Dose Limits (Adults)	**Old** Quarterly Dose limits Whole body, eyes or gonads 1½ rems (5 rems/yr) Hands and feet 18 ¾ rems (75 rems/yr) Skin of whole body 7 ½ rems (30 rems/yr) Bank concept discontinued 5(N-18) at 3 rem/qrt **New** D.201 Annual whole body (TEDE) external & internal 0.05 Sv (5rem) Whole body(CEDE) internal 0.05 Sv (5rem) Eyes 0.15 Sv (15rem) Skin and Extremities 0.5 Sv (50 rem)	**Agency** – Must incorporate new terminology, quantities, units into inspection protocol. **Industry** – Minimal impact due to changes being already implemented **Public** – Provides a safe and protective limit of dose
* Occupational Dose Limits For Minors (less than 18 years of age)	**Old** Dose limits for minors were 10 percent of old occupational limits **New** D. 207 The annual dose limits for minors are 10 percent of occupational doses given in D. 201 above	**Agency** – Must incorporate new technology, quantities, units into inspection protocol. **Industry** – Minimal due to changes being implemented . **Impact to minors** – 10 percent of occupational dose limits I **Impact to public** – Reduced exposure limit
* Dose Limit To Embryo/ Fetus (Of Pregnant Worker)	**Old** Not specified **New** D. 208 Dose limit to embryo/ fetus during entire pregnancy of declared pregnant woman from occupational exposure can not exceed 5 mSv (0.5 rem) in 9 months.	**Agency** – Must incorporate into inspection protocol. **Industry** – Minimal due to already being implemented. **Public** – Provides protection by specifying dose limits.
* Dose Limits To Individual Members Of The Public	**Old** Public dose is not directly specified. Public dose is controlled by limiting radiation exposure rates in unrestricted areas (D105) to 2 mrem in hour, 20 mrem in a 7 day week or 0.1 rem in a year. **New** D.301 Public dose is specified directly under dose limits for the individual members of the public. The total effective dose for individuals of the public from external and internal sources is 0.02 mSv (0.002 rem) hr or 1mSv (0.1 rem) a year. The 7 day week limit (20 mrem) has been discontinued.	**Agency** – Must incorporate changes into inspection protocol. **Industry** – Minimal due to limits already being implied **Public** – Improved protection of the members of the public
* Location of Individual Monitoring Devices	**Old** Employer is required to provide a monitoring device to each worker (D.202). Location not specified except in medical x-ray. **New** D.503 Monitoring device of a declared pregnant woman shall be worn at waist level under a protective apron	**Agency** - Incorporate items in industry inspections as well as medical x-ray. **Industry** – Minimal due to already being implemented but effects the workers **Public** – None

* Records General Provisions	**Old** Records were kept in Rems, Roentgens and Curies (a.k.a. special units) **New** D.1101 Records are to be kept in Standards Internationale (SI Units) primarily but special units of Rems, Roentgens and Curies are allowed temporarily. The Sievert (Sv), Gray (Gy) and Becquerel (Bq) are SI units.	**Agency** – Must incorporate new terminology, quantities, units into inspection protocol **Industry** – Minimal due to being already implemented **Public** –None
* Records of Radiation Protection Program	**Old** Not specified **New** D.1102 Registrant shall implement and maintain records of the Radiation Protection Program(see D.101)including provisions and audits. The registrant shall retain records for Agency inspection.	**Agency** – Must incorporate a review of these records in inspection protocols. **Industry** – Minimal due to already being implemented. **Public** -Enhanced quality control to the facilities
PART F X-ray Utilization Record	**Old** Not specified **New** F.3.a Except for veterinary facilities each radiation facility shall maintain a record of patient's name, date and radiological exam.(F.3.a.xiii)	**Agency** - More time spent on reviewing Additional record items. **Industry** – Facilities will have to begin keeping (separate) records of these items for Agency review; Heretofore not required. **Public**- Enhanced quality control
X-ray Film Processing Facilities and Practices	**Old**- Not specified **New** F.3.c Facilities using radiographic film shall have suitable handling and processing equipment. Also facilities shall develop film in accordance with specific time & temperature and dark room light tight conditions.	**Agency** - Must incorporate new changes into inspection protocol. **Industry** – Minimal effect due to the manufacturer requirements for processing. **Public**- Improved X-ray film quality and less repeat studies done
* Computer Tomography [CT] X-ray Systems	**Old**- Not specified **New** F.11 Requires that provisions be made for exposure termination, plane adjustment, "on/off" shutter status and control switch conditions on CT x-ray systems. Also requires that surveys, calibrations, and spot checks be preformed by a qualified expert and that a written report be made available to the Agency.	**Agency** - Must incorporate new changes into inspection protocol **Industry** – Minimal impact due to changes being implemented several years ago. **Public**-Verification that unit is properly maintained and calibrated

* Mammography Non-Certified Mammography Equipment Certified mammography Equipment	**Old** Required that only equipment with specified attachments for mammography be provided with beam limitation.[F.6.a(4)] and transmission limitation (for image receptor supporting devices on mammography equipment) [F.6.f(8)] **New** F.12 Mammography standards specified in Federal Register 10 CFR 900 are to be applied to equipment in Delaware. These Federal Standards are both comprehensive and detailed.	**Agency** – Must incorporate these comprehensive and detailed changes of Federal mammography Quality Standards into inspection Process (via FDA contract). **Industry** – Update practices to comply with changes to the Register 10 CFR 900 **Public** – Improved equipment and techniques to provide greater protection

PART G * Use of Radionuclides in the Healing Arts	**Old** Part G The scope was entirely related to the use of brachytherapy sealed sources in the healing arts (Part G consisted of 2 pages). **New** G.1 The Scope specifies the use requirement for the production, preparation compounding, calibration and use of NARM radionuclides as well as the use of brachytherapy sources.(Part G consists of 46 pages)	**Agency** – Must incorporate these changes into inspection protocol. **Industry** – Minimal impact due to changes already implemented **Public** - Assures better quality control over sources
* ALARA "As Low As Reasonably Achievable"	**Old**- Not specified **New** G.6 The licensee is required to have an ALARA program as defined in Part A [basically intended to keep radiation doses as low as reasonably achievable].	**Agency** – Must incorporate into inspection protocol. **Industry** – Minimal impact due to changes already implemented **Public** – Exposed to lower magnitude of radiation in unrestricted areas.
* RSO "Radiation Safety Officer"	**Old** A individual had to be designated as a RSO on the facility registration application; no duties specified. **New** G.7 Requires the licensee to appoint a RSO and specifies the duties of the RSO.	**Agency** – Incorporate these changes into inspection protocol. **Industry** – Minimal impact due to changes already implemented **Public** – Greater protection due to oversight by the RSO
Radiation Safety Committee	**Old**- Not specified **New** G.8 Requires that each medical institution licensee shall establish a radiation safety committee to oversee the use of radioactive material and specifies the composition and activities of the committee	**Agency** – Must incorporate these changes into inspection protocol. **Industry** – Minimal due to already being implemented. **Public**- Greater protection due to oversight by the committee
Misadministrations	**Old**- Not specified **New** G.14 Requires that the misadministration of a radiation dosage to a patient be recorded and reported to the Agency (defined in Part A).	**Agency** – Must change inspection protocol. **Industry** – Minimal due to already being implemented. **Public**- Improves Agency's ability to inspect and correct causes of Misadministration.
* Patient Release Dose Rates	**Old**- Not specified **New** G.27 Specifies conditions for the release of patients containing radiopharmaceuticals including dose rates emitted from the patients.(Rates listed in Part G tables 1,2 & 3)	**Agency** – Must incorporate these changes into inspection protocol. **Industry** – Minimal impact due already being implemented. **Public** – Reduces exposure from a radioactive patient
PART X * Therapeutic Radiation Machines	**Old**- User training not specified **New** X.3.c Specifies training requirements for users of external beam equipment.	**Agency** – Must incorporate these changes into inspection protocol. **Industry** – Implement requirements into therapy procedures in order to comply with the regulations. **Public** – Provides a qualified work force
Physicist Training	**Old**- Not specified **New** X.3.d Specifies training requirements for the radiation therapy physicist.	**Agency** - Must incorporate these changes into inspections **Industry** – Adopt changes according to the regulations. **Public** – Provides a qualified workforce

Quality Management Program	**Old**- Not specified **New** X.5 Specifies the requirements for the quality management program.(program essentials specified in Appendix B Part X)	**Agency** – Must incorporate these changes into inspection protocol. **Industry** – Must implement the requirements for a quality management program. **Public** – Improved quality control
Note- Division Point Between "High" and "Low" Energy Machines	**Old** the division was set at one 1 MeV in F.8 and F.9 **New** X.6 & X.7 sets the division, point at 500 kv instead of 1 Mev. (>500 kv but less than 1Mev are now "high" energy machines.)	**Agency** – Must incorporate these changes into inspection protocol. **Industry** - Some machines that were considered "low" energy are now "high" energy **Public** – None
Physicist Support	**Old**- Not specified **New** X.7.r Requires physicist support for machines ≥ 500 kv and specifies physicist responsibilities.	**Agency** – Must change inspection protocol. **Industry**- Must implement these items to comply with regulations. **Public** – More qualified work force
Acceptance Testing	**Old**- Not specified **New** X.7.t Requires acceptance testing, commissioning and full calibration measurements for machines ≥500 kv	**Agency** – Must change inspection protocol. **Industry** – Minimal impact due to changes already being implemented. **Public** – Improved quality control

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7406 (16 **Del.C.** §1706)

Regulation for the Certification of Radiation Technologists/Technicians

These regulations, "Regulation for the Certification of Radiation Technologists/Technicians," replace by recision the current "Regulation for the Certification of Radiation Technologists/Technicians" previously adopted on February 27, 1989 and most recently amended July 24, 1995.

The Regulations establishes criteria and methods of certifying Radiation Technologists/Technicians.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Regulation for the Certification of Radiation Technologists/ Technicians. This public hearing will be held on Monday, June 3, 2002 at 5:30 p.m. in the first floor conference room, Bayhealth Medical Center, 640 S. State Street, Dover, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control
Jesse Cooper Building
P.O. Box 637
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 739-3787

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 739-4700 by close of business Wednesday, May 29, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business Friday, June 7, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

REGULATION FOR THE CERTIFICATION OF RADIATION TECHNOLOGISTS/TECHNICIANS
by the
AUTHORITY ON RADIATION PROTECTION
In conformance with
16 Delaware Code 7406 (c)
Effective XXX xx, XXXX
DELAWARE

This Regulation is approved by the Authority on Radiation Protection on XXX xx, XXX pursuant to 16 Del. C. §7406(c). Radiation Technologists/Technicians are "users of ionizing radiation" and, therefore, subject to certification by the Authority on Radiation Protection. This Regulation is effective XXX xx, XXX

SECTION I FINDINGS

The Authority hereby finds and declares that the citizens of the State of Delaware are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate education and training of individuals operating medical and dental equipment and sources emitting ionizing radiation; and that it is therefore necessary to establish certification standards in radiation protection principles for these operators and to provide for their appropriate examination and certification.

SECTION II TITLE OF REGULATION

This regulation shall be known as the "Radiation Technologist/Technician Certification Regulation".

SECTION III 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.

SECTION IV DEFINITIONS

As used in this regulation:

A. "Agency" means the administrative agent of the Authority on Radiation Protection; i.e., the Office of Radiation Control, Division of Public Health, Department of Health and Social Services.

B. ARRT: American Registry of Radiologic Technologists. A national certifying body that credentials through a national test graduates of JRCERT approved radiologic technology programs. The ARRT also provides the State Limited Scope Licensing Examination to be used by individuals who do not meet the national registry requirements.

C. "Authority" means the Authority on Radiation Protection as specified by 16 Del. C. §7404.

D. "Certificate" means a document issued by the Agency recognizing the successful completion of an Authority approved Certification Exam. The "Certificate" allows for the practice of radiation technology as specified by the level of examination the individual has passed. Other credentials include "Temporary".

1. Temporary - means a certificate issued by the Agency as a temporary authorization to practice Radiation Technology to any applicant who has complied with the provisions of this regulation and is scheduled for the next available examination.

E. "Certification Examination" means any examination satisfactory to the Authority that is used to determine the competency of Radiation Technologists/ Technicians in the "principles and practice of radiation protection".

F. CODA: Commission on Dental Accreditation.

G. "Dental Assistant" means an individual, other than a "Licensed Practitioner", who applies radiation to humans for diagnostic purposes in dentistry.

H. DANB: Dental Assisting National Board which provides national registration for dental assistants.

I. "Fee" means the money [see schedule A] an individual must pay:

1. to apply for and to take the certification examination

2. for Re-certification - to reinstate an expired certificate

3. for Renewal - to renew a valid certificate

J. JRCERT: Joint Review Committee on Education in Radiologic Technology

K. "Licensed Practitioner" means an individual licensed to practice medicine, dentistry, dental hygiene, podiatry, chiropractic, or osteopathy in this State.

L. "Medical Radiographer" means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for diagnostic purposes in medicine, podiatry, chiropractic, or osteopathy.

M. NMTCB: Nuclear Medicine Technologist Certification Board which provides national certification of Nuclear Medicine Technologists.

N. "Nuclear Medicine Technologist" means an individual, other than a Licensed Practitioner, who uses radiopharmaceutical agents on humans for diagnostic and/or therapeutic purposes.

O. "Radiation Technician" means any individual who has not graduated from a approved program in radiation technology, but has passed an Authority approved examination.

P. "Radiation Technologist" means any individual who has successfully completed a JRCERT approved program in radiation technology and/or has passed a national certification examination in his/her field of specialization.

Q. "Radiation Technology" means the use of a radioactive substance or equipment emitting ionizing radiation on humans for diagnostic or therapeutic purposes.

R. "Radiation Therapist" means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for therapeutic purposes.

S. "Source of Radiation" means a radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

T. "User of Ionizing Radiation" means an individual who supervises the application of ionizing radiation and/or applies ionizing radiation to human beings for diagnostic, therapeutic and/or research purposes (16 Del. C. §7403(9)).

SECTION V LEGAL TITLES

No individual, other than a Licensed Practitioner or Certified Radiation Technologist/Technician, shall use a

Source of Radiation on humans for diagnostic, therapeutic and/or research purposes.

A. The Authority shall establish certification requirements for Radiation Technologists/Technicians; i.e., Dental Assistant, Medical Radiographer, Nuclear Medicine Technologist, and Radiation Therapist. Individuals holding these certificates shall be recognized by such title(s).

B. Any individual certified under this regulation is authorized to use a source of radiation on humans for diagnostic or therapeutic purposes under the supervision of a Licensed Practitioner, and in accordance with the Delaware Radiation Control Regulations.

C. Holders of a certificate (legal title) under this regulation shall display the official certificate or a verified copy in each place of regular employment.

SECTION VI CREDENTIALING PROCESS

A. Classification of Credentials

1. Certificate (Section VII A)
2. Temporary Certificate (Section VII B)

B. Application

1. The Agency shall accept an application for credentialing from any Radiation Technologist/Technician who is at least 18 years of age or who is currently enrolled in and attending an educational program in radiation technology and who pays a non-refundable application and examination fee (if applicable) established by rule of the Authority.

2. One or more booklets on basic radiation protection and terminology, examination specifications, and requirements for certification and examination shall be prepared and distributed under the supervision of the Authority on Radiation Protection in consultation with appropriate professional associations (see Schedule B). Upon acceptance of the application and examination fee, a copy of the booklet shall be sent to all applicants.

3. The application shall be valid for a period of six (6) months.

C. Examinations

1. The examination process shall be administered by the Authority on Radiation Protection or its designee, the ARRT (American Registry of Radiologic Technologists) or Experior Assessments. The fee for examination shall accompany the application request.

2. The Authority may accept, in lieu of an examination, a current credential by a recognized national voluntary credentialing body, (See Schedule C) issued on the basis of an examination consistent with the requirements established by the Authority, provided that the radiation protection standards to which that body adheres are at least as stringent as those established by the Authority.

3. An examinee who fails to pass the certification examination may be re-examined, provided the prescribed application and examination fees for each re-examination are paid.

SECTION VII ISSUING CREDENTIALS

A. The Agency may issue a Certificate or Temporary Certificate to each applicant who has successfully met the requirements under Section VI, Subsection B, and has paid the prescribed fees. Furthermore, the Certificate shall be issued on verifying that the applicant has passed a certification examination acceptable to the Authority [see C.1. and C.2. above]. The initial Certificate shall expire after a period of four (4) years from date of issue. Certificates based on national credentials will automatically terminate if the national credentials are permitted to lapse.

B. Temporary Certificate--The Agency may issue a Temporary Certificate to any person whose certification or re-certification may be pending and when issuance is justified by special circumstances. A Temporary Certificate may be issued if the Agency finds that it will not violate the purpose of this regulation or endanger the public health and safety. A Temporary Certificate shall grant the same rights as the credential for which the applicant is awaiting examination. Such credential may not be renewed by the Agency without the approval of the Authority and only for just cause.

The Temporary Certificate shall expire:

1. on the date of notification of the results of the certification examination; or,
2. on the certification examination date if the applicant does not take the examination; or,
3. in any case, after a maximum of 365 days from the date of issue.

C. A valid certificate may be renewed by the Agency for a period of four (4) years upon payment of a renewal fee (see Schedule A) established by the Authority.

1. Applicants for renewal of certificates based on national credentials must provide proof that the national credentials are currently valid.

D. A Radiation Technologist/Technician whose certificate has lapsed for a period of less than 180 days shall apply for re-certification provided that he/she presents evidence of having previously passed a Certification Examination approved by the Authority and pays the re-certification fee

A Radiation Technologist/Technician whose certificate has lapsed for more than 180 days shall:

1. Apply for re-certification
2. Apply to take the appropriate certification examination or show proof of currently valid national credentials
3. Pay the re-certification and re-examination fees

A radiation technologist/technician who has allowed his/her certificate to expire shall not expose humans to ionizing radiation until and unless he/she is re-certified .

SECTION VIII LIMITATIONS OF CREDENTIALS

A. Nothing in the provisions of this regulation relating to Radiation Technology shall limit, enlarge, or affect the practice of Licensed Practitioners herein defined.

B. The requirement for certification shall not apply to a resident physician, dentist, dental hygienist or to a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, or radiation technology who applies ionizing radiation to humans in such an educational program while under the supervision of a certified Radiation Technologist.

C. A certificate, registration or license issued by another state will not be accepted as a valid equivalent Radiation Technologist/Technician certification by the Authority.

SECTION IX APPEALS, ENFORCEMENTS AND PENALTIES

A. OFFENSES

The following is a list of offenses which are grounds for disciplinary actions of a certified Radiation Technologist or certified Radiation Technician and are the basis for refusal of an application for certification:

The certificate holder or applicant:

1. has been found guilty of fraud or deceit in procuring or attempting to procure a certificate to practice radiation technology; or

2. has been convicted of a felony; or

3. has been convicted of a crime involving moral turpitude or gross immorality; or

4. is unfit or incompetent by reason of gross negligence; or

5. is addicted to the use of habit-forming drugs and not currently under treatment for the addiction; or

6. has a physical or mental condition that prohibits the certificate holder from performing the essential functions of the practice authorized by the certificate; or

7. has a certificate to practice as a registered technologist that has been suspended or revoked in any jurisdiction; or

8. is guilty of unprofessional conduct, or the willful neglect of a patient.

B. DISCIPLINARY SANCTIONS

The Authority on Radiation Protection may impose any of the following sanctions singly or in combination when it finds a certificate holder or an applicant is guilty of any offense described in Section A:

1. Permanently revoke a certificate to practice

2. Suspend a certificate until the certificate holder provides proof that the conditions in response to which the suspension was issued no longer exist.

3. Censure a certificate

4. Issue a letter of reprimand

5. Refuse a certificate (Applicant)

6. Refuse to renew a certificate

C. PROCEDURE

1. THE AUTHORITY

a. The Agency may, upon complaint or upon its own initiative, investigate whether a certificate holder or applicant has engaged in activities specified in this section as grounds for disciplinary action. The Agency shall file a complaint with the Authority seeking to impose sanctions against the alleged violator.

b. The Authority shall notify the alleged violator of the complaint and offer the alleged violator the opportunity for a hearing, which must be requested within 30 days of the date of notification. If the alleged violator does not timely request a hearing, the proposed sanctions shall become final. If the alleged violator makes a timely request for a hearing, the Authority shall schedule the hearing and give the alleged violator at least 15 days notice prior to the date fixed for the hearing.

c. In all proceedings herein:

1) The alleged violator may be represented by counsel who shall have the right of examination and cross-examination.

2) The alleged violator and the Agency may subpoena witnesses. Subpoenas shall be issued by the Chairman or Vice Chairman of the Authority upon written request.

3) Testimony before the Authority shall be under oath. Any member of the Authority shall have power to administer oaths for this purpose.

4) A stenographic record of the hearing shall be made by a qualified court reporter. At the request and expense of either party such record shall be transcribed with a copy to the other party.

5) The decision of the Authority shall be based upon a preponderance of the evidence. If the charges are supported by such evidence, the Authority may refuse to issue, or may revoke or may suspend a certificate, or otherwise discipline a certificate holder as outlined in these regulations.

6) The decision of the Authority will be sent to the alleged violator by certified mail.

7) Any final order of the Authority may be appealed to the Superior Court.

8) All findings of the original action, hearing, appeal and conclusions will be held in file at the Agency.

9) The Agency shall notify the employer of the alleged violator of any final order of the Authority regarding any action taken against the certification of that employee by registered, return receipt mail.

D. JUDICIAL REVIEW BY SUPERIOR COURT

Any final order entered in any proceeding by the Authority shall be subject to judicial review by the Delaware Superior Court per 16 Del. C. §7412(c).

E. UNLAWFUL PRACTICE OF RADIATION TECHNOLOGY

No person shall practice or offer to practice radiation technology or claim to be a registered or certified radiation worker in Delaware, or shall use any title, abbreviation, sign, card, or device to indicate that such person is certified pursuant to this regulation unless such person is actually certified by the Authority on Radiation Protection.

SCHEDULE A
Credential Fees

Certificate Category	Application	Examination	Renewal
Dental Assisting	Included in examination fee per testing organization	Per Testing Organization	$10.00 for 4 years

Medical Radiation Technician	$10.00	Per Testing Organization	$10.00 for 4 years
Medical Radiation Technologist	$10.00	Per National Board	$10.00 for 4 years

Nuclear Medicine	$10.00	Per National Board	$10.00 for 4 years
Radiation Therapy	$10.00	Per National Board	$10.00 for 4 years

SCHEDULE B

Delaware Professional Associations

Dental Assistants Association
Dental Hygienists Association
Medical Society of Delaware
Society of Nuclear Medicine Technologists Section
Delaware Society of Radiology Professionals
Dental Society of Delaware

SCHEDULE C

LIST OF NATIONAL CREDENTIALING ORGANIZATIONS ACCEPTABLE FOR DELAWARE CERTIFICATION

1. American Registry of Radiologic Technologists
2 Dental Assisting National Board
3 Nuclear Medicine Technologist Certification Board

DIVISION OF SOCIAL SERVICES

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/ Medical Assistance Program is proposing to implement new policy in the Division of Social Services Manual (DSSM): DSSM 50000 - 50930, the Chronic Renal Disease Program. This regulatory action provides written policy for procedures already in place.

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

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

NEW:

50000 CHRONIC RENAL DISEASE PROGRAM

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be used before CRDP funds are utilized.

The mission of the CRDP is to "improve the quality of life for Delawareans with ESRD by promoting health and well-being, fostering self-sufficiency, and protecting a vulnerable population."

The Chronic Renal Disease Advisory Board is composed of 11 members who are appointed by the Secretary of Delaware Health and Social Services. The role of this Advisory Board is to consult with the Secretary in the administration of the Chronic Renal Disease Program, as needed. Board members represent hospitals and medical centers, which establish dialysis centers, voluntary agencies interested in kidney diseases, related public agencies,

physicians licensed to practice medicine and the general public.

50100 Services Provided by CRDP

Services provided by the CRDP can consist of payment for medications, nutritional supplements and transportation. Electronic Data Systems (EDS) is the CRDP's fiscal intermediary. They are responsible for processing all eligible CRDP claims.

50100.1 Medications

The CRDP has the ability to fund prescription medications, over-the-counter medications (OTC's) or both. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner.

Reimbursement for medications will be made only for client's authorized by the CRDP. Client's eligibility for the medication benefit is based upon the outcome of their medical and financial assessment.

Prescription medications potentially will be funded if prescribed by a physician for eligible clients. Refills may be authorized in compliance with appropriate pharmacy laws.

Reimbursements for OTC products for eligible clients are those, which the physician/practitioner has provided written or verbal authorization to the pharmacist. These products must be for the client's personal use only. There will be no reimbursement for OTC products that are not prescribed by a physician/practitioner. Supplies such as mouthwash, toothpaste, shampoo, etc. will not be reimbursed.

At point of sale, the pharmacist will determine electronically if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must have a Delaware Medicaid provider number.

Note: All third party resources must be used before CRDP funds are utilized.

50100.2 Nutritional Supplements

The CRDP funds oral nutritional supplements for ESRD clients. An oral nutritional supplement is a supplement required to nutritionally support clients who, due to renal failure cannot receive all the necessary nutrition through their daily oral intake. This item is ingested orally and is utilized as a supplement to their daily oral intake.

Nutritional supplements will only be funded by the CRDP if the client is diagnosed with ESRD, AND on dialysis, AND exhibits signs and symptoms of malnutrition as determined by documentation of specific laboratory values. Additionally, the only nutritional supplements funded by the CRDP are those currently on the formulary as dictated by First Data Bank.

Other criteria that must be met include:

- it is reasonable and necessary part of the client's treatment plan;
- ordered by a physician or certified nurse practitioner as indicated by completion of a Medical Necessity Form;
- not furnished for the convenience of the client, client's family, attending practitioner, or other practitioner or supplier;
- necessary and consistent with generally accepted professional medical standards;
- monitored and assessed regularly by the attending practitioner to determine effectiveness and necessity.

The CRDP will fund oral nutritional supplements for a durational period of 6 months or less as needed. The durational period is dependent upon the client's medical and financial situation. If the client will need the supplement past the authorized durational period, the practitioner must submit another Certificate of Medical Necessity Form. Upon submission CRDP will redetermine eligibility. Claims submitted without prior approval, or exceeding the authorized durational period may be denied.

50100.3 Transportation

The CRDP may reimburse for transportation to and from the dialysis unit, transplant hospital, or in exceptional cases, related medical appointments. Once determined eligible, all types of reimbursable transportation will be explored for cost effectiveness.

The types of transportation funded by CRDP are:

- Mileage Reimbursement - the CRDP may reimburse the client, client's spouse, caregiver, or anyone who consistently transports clients. Round trip mileage must be greater than 10 miles to be eligible.
- Delaware Authority for Regional Transit (DART) tickets - the CRDP will purchase DART tickets for client use. A monthly supply of DART tickets is sent to the dialysis social worker for distribution. These tickets are replaced monthly based on the previous month's usage.
- Private Transportation Companies - The CRDP may contract with private transportation companies. Transportation may be supplied via company vehicle or by a volunteer who is trained by the Transportation Company.

50200 Services Not Provided by CRDP

The CRDP will not pay health insurance premiums; nor will the program pay for medical, hospital, or ancillary services, medical supplies, or transportation not directly related to the care of End State Renal Disease (ESRD).

50300 Referral Process

The CRDP can receive referrals from many sources. Client, family, caretaker, physicians and/or other professionals may initiate the referral process by calling the CRDP office. Dieticians and dialysis social workers may begin the referral process by calling or by mailing/faxing a completed referral form to the CRDP office. Once the referral has been received, the client or referral source will be contacted to set up an appointment to complete the CRDP assessment.

50400 Application Process

The client must complete an application in person or via the telephone. The individual must also provide the requested verifications necessary to determine eligibility.

CRPD will consider applications without regard to race, color, age, sex, disability, religion, national origin, or political belief, as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

At time of application and/or redetermination, each individual must be informed that they are responsible for notifying the CRDP worker of all changes in their circumstances, which could potentially affect their eligibility for the CRDP.

50450 Disposition of Applications

Each applicant's case record must include facts to support the eligibility decision. Each application will be determined eligible or ineligible, unless:

a. there is an entry in the case record that the applicant voluntarily withdrew the application

b. there is a supporting entry in the case record that the applicant has died; or

c. there is a supporting entry in the case record that the applicant cannot be located.

Certain factors of eligibility must be verified. If all information requested is not received, eligibility cannot be determined or redetermined. 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.

All applicants will receive a notice of action taken on the applications.

Eligibility for CRDP will be redetermined on an annual basis.

50500 Technical Eligibility

Only persons who are residents of the State of Delaware shall be eligible for services. Additionally, the individual must be an U.S. citizen or a lawfully admitted alien.

50600 Medical Eligibility

The client must be diagnosed with ESRD, receive dialysis or have had a renal transplant.

50700 Financial Eligibility

CRDP staff determines financial eligibility. The amount of assistance received from the CRDP is dependent upon the applicant's financial situation. Applicant's/client's income and resources need to be below 300% of the Federal Poverty Level (FPL). Applicants/clients with income and resources above 300% of the FPL may be eligible for an annual medication cost deduction from the applicant's/client's annual income and resources. If, after this deduction, income and resources are below 300% of the FPL, the individual may be eligible.

Additional factors that may be considered for eligibility include, but are not limited to:

- Number of household members financially dependent on applicant/client
- Cost of certain medications
- Household expenses
- Income/resources of applicant/client
- Income/resources of any household member that contributes to household expenses.

50750 Income

Income is the total amount of money authorized and received for the applicant's benefit. Income includes anything received by the individual in cash or in kind, that can be used to meet needs for food, clothing or shelter. Gross income is used to determine eligibility. Some examples of income include, but are not limited to the following: Social Security, Railroad Retirement, pensions, wages, rental income, etc.

50775 Resources

Resources are items that can be converted to cash to be used for food, clothing or shelter. Some examples of resources include, but are not limited to the following: bank accounts, stocks, bonds, certificates of deposit, money market funds, retirement funds, etc.

If the individual has the right, authority or power to liquidate his or her share of the property, it is a resource. In addition, the individual must have:

- Some form of ownership interest in the property;
- A legal right to access the property;
- The legal ability to use the property for his/her own support and maintenance.

50800 Resident of a Long Term Care Facility

An individual who has been admitted to a nursing facility for placement other than rehabilitation will not be eligible for or continue to be eligible for CRDP services. If the individual is discharged from the nursing facility, they may reapply for CRDP services.

50900 Fair Hearings

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM sections 5000-5607.

50910 Waiting List Policy

50920 General Statement

The applicant must meet certain medical and financial criteria in order to be eligible for benefits from the Chronic Renal Disease Program. (For eligibility criteria see DSSM sections 50600 and 50700) A waiting list will be maintained according to the need of each client/potential client, with those with most critical needs served first.

Referrals are prioritized on the waiting list according to medical/financial need.

The number of clients served by the CRDP program is limited by the amount of available funds. If the CRDP budget has been depleted prior to the end of the fiscal year, clients on the CRDP waiting list will be processed for CRDP benefits at the beginning of next fiscal year.

50930 Medical Criteria

Within 24 hours of referral receipt, medical eligibility specific to the individual's need will be determined. The order of priority will be medications/supplements and transportation services.

50940 Financial Criteria

Within 24 hours of referral receipt, financial eligibility and specific need will be determined. Clients, who have a documented medical need and appear to be financially eligible for CRDP, with limited income and no insurance, will be given highest priority.

The order of priority will be clients with limited income and no insurance coverage, minimal insurance coverage, or insurance copays.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

SAN # 2000-12

1. TITLE OF THE REGULATIONS:

"REPORTING OF A DISCHARGE OF A POLLUTANT OR AN AIR CONTAMINANT"

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend the Reporting of a Discharge of a Pollutant or an Air Contaminant regulation to replace the current regulation that describe the requirements for reporting the environmental release or discharge of a pollutant or air contaminant with new requirements. Senate Bill 33 modified the definition of an environmental release to mean substances and their reportable quantities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or regulations enacted under Title 7 §6028. The amendment to the regulation include wording changes required by Senate Bill 33, updates and changes to the Delaware list of substances and their reportable quantities, and the inclusion of a mandatory follow-up written report.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed amendment will extend through June 7, 2002. Interested parties may submit comments in writing during this time frame to: Jay Brabson, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, May 30, 2002 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Jay Brabson (302) 323-4542 January 25, 2002

PROPOSED AMENDMENT TO
REPORTING OF A DISCHARGE OF A POLLUTANT
OR AN AIR CONTAMINANT

Section 1 - General Provisions

1.1 The purpose of this Regulation is to describe the requirements ~~to~~ for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del. C., Section 6028.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection ~~at any Department office~~ in accordance with 29 Del.C., Chapter 100 and Department of Natural Resources and Environmental Control (Department) Freedom of Information Act (FOIA) regulations except where such information is of confidential nature as defined in 7 Del. C., Section 6014.

1.3 The list of chemicals and substances subject to the reporting requirements of this Regulation and the associated Delaware Reportable Quantity (DRQ) for each chemical and substance is contained in Section 3. The Department may, after providing proper public notice and an opportunity for public hearing, add or delete chemicals or substances or change the DRQ of any chemical or substance. ~~for the listed chemicals.~~

1.4 The reporting requirements under this ~~Section~~ Regulation are in addition to and not in lieu of, any other discharge reporting requirement found in any other state, federal, county or local government statutes, permits, regulations or ordinances. ~~, such as the provisions found in the "Delaware Regulations Governing Hazardous Waste" at Sections 264.56 and 265.56~~.

1.5 [Reserved] ~~Emissions normally reported on Excess Emission Reports (EER's) when required by state or federal permits or regulations are exempt from the requirements of this regulation~~

~~1.6 Continuous discharges are exempt from the requirements of this regulation.~~

~~1.7~~ 1.6Definitions

~~A. "Continuous Discharge" - a discharge that occurs without interruption or abatement or that is routine, anticipated and intermittent during normal operations or treatment processes. Episodic discharges such as those associated with accidents, equipment malfunctions, emergency shutdowns, or pipe ruptures, however, are not routine or regular and do not come within the definition of continuous.~~

A. "Delaware Reportable Quantity" (DRQ) – means the reportable quantity of chemicals, ~~compounds,~~ substances or mixtures listed in Section 3 of this regulation notwithstanding any reporting requirements by other state, federal, county or local government statutes, regulations or ordinances. To be reportable, the DRQ is based on the total quantity discharged over a rolling 24-hour period.

B. "Discharge" - means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing into the environment of any chemical or substance listed in Section 3 but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, waterborne vessel or pipeline pumping station engine. Discharge includes any environmental release. ~~To be reportable, a discharge/DRQ is based on any 24-hour period.~~

C. "Environmental Emergency Notification and Complaint Number" – means the 24-hour DNREC telephone number(s) used for reporting the discharge of a pollutant or an air contaminant.

D. "Environmental Release" – means any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.

E. "Extremely Hazardous Substance" – means substances listed in 40 CFR Part 355 Appendices A and B as amended May 7, 1996.

F. "Heating oil" - means petroleum that is ~~of~~ one of nine technical grades. These are: No. 1; No.2; No.4-light; No.4-heavy; No.5-light; No.5-heavy; No.6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene or diesel when used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

~~G. "Medical Treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.~~

G. "Motor Fuel" - means petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, jet fuel, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

H. "Petroleum Substance" - means oil of any kind or in any form, including but not limited to petroleum, fuel oil, heating oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Vegetable-based oils such as soybean oil are not included.

I. "Sewage" - means water-carried human or animal wastes from septic tanks, water closets, residences,

buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

Section 2 - Reporting Requirements

2.1 Applicability

A Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land~~, or disposal of solid waste~~ in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or discharge while ~~immediately upon discovery of said discharge and after~~ activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.

B Discharge ~~or disposal~~ in compliance with a validly issued state or federal permit(s) or in compliance with other state and federal regulations is exempt from ~~this~~ the reporting requirements of this Regulation.

C An owner or operator responsible for a transportation related discharge may meet the requirements of this Regulation by providing the information indicated in 2.4 to the 911 operator and, if applicable, to the responding Department representative at the scene. For the purposes of this paragraph, a "transportation related discharge" means a discharge during transportation when the stored chemical or substance is moving under active shipping papers and has not reached the ultimate consignee.

D This Regulation does not apply to the proper application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et. seq. as amended August 3, 1996).

E Any discharge that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8 (b) is exempt from reporting requirements of this regulation except:

(i) Initial notifications as required by 40 CFR part 302.8 (d) and (e).

(ii) "statistically significant increase" as defined in 40 CFR 302.8(b),

(iii) notification of a "new release" as defined in 40 CFR 302.8(g) (1), or

(iv) notification of a change in the normal range of the release as required under 40 CFR 302.8(g) (2).

Telephone notification required by 40 CFR 302.8 to the State of Delaware State Emergency Response Commission (SERC) shall be fulfilled by notifying the Department. Written notification reports required by 40 CFR 302.8 and sent to the EPA regional office shall serve as written notification to the State of Delaware SERC when copied to the Department.

(Reference: 40 CFR 302.8 as promulgated on July 24, 1990).

2.2 Discharges ~~of an air contaminant or pollutant~~ (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements of this Regulation ~~Sections 2.1 and 2.3~~. Should such a wholly contained discharge be discharged outside the building at a later time for any reason, that eventual discharge, when exceeding the DRQ, shall activate these reporting requirements.

2.3 [Reserved] ~~When an owner, operator or responsible representative of a facility obtains knowledge that a discharge of any listed or unlisted chemical in any quantity results in injuries outside the workplace which require medical treatment or result in death to anyone affected by the discharge, the incident must be reported under 2.4 and if required by the Department, under 2.5, and this notice shall be made at the time this knowledge is obtained. This provision does not apply if it takes longer than 7 days to learn about the injury, but it does apply whenever the knowledge of a death attributable to a discharge is obtained.~~

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or 2.3 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must contain~~ing~~ the following information which details the facts and circumstances of the discharge to ~~the extent known~~ the maximum extent practicable at the time of notice: ~~and so long as no delay in notice or emergency response results:~~

A. Facility name and/or location of the discharge.

B. Type of incident, e.g. discharge, fire, explosion, associated with discharge and whether assistance from outside emergency responders, e.g. 911, has been requested.

C. The chemical or substance involved with the incident of discharge including the Chemical Abstract System (CAS) number for the chemical or of the constituent chemicals when a mixture is discharged.

D. An indication of whether the chemical or chemicals are an extremely hazardous substance. ~~. as defined under the SARA Section 302 (EHS) list or Table I of the Delaware Regulation for the Management of Extremely Hazardous Substances.~~

E. An estimate of the quantity of any such chemical(s) or substance(s) ~~or compound(s)~~ that was discharged into the environment.

F. The beginning time and the duration of the

discharge.

G. The medium or media, e.g. soil, groundwater, surface water, air , etc., into which the discharge occurred.

H. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

I. Proper precautions to take as a result of the discharge, including evacuation ~~(unless such information is readily available to the community emergency coordinator pursuant to the emergency plan)~~.

J. ~~Name of the reporting person and a call-back phone number.~~ The name(s) and telephone number(s) of the person(s) to be contacted for further information.

K. ~~An indication of whether or not this is a complete report. Incomplete reports must be completed when the information is available but in no case more than 24 hours later than the initial contact.~~ Such other information as the Department may require.

2.5 (A) Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department updating the information required under section 2.4 and including the following additional information to the extent known:

Part I.

i. Actions taken to respond to and contain the release in the form of a chronology,

ii. Any known or anticipated acute or chronic health risks associated with the release, and

iii. Where appropriate, advice regarding medical attention necessary for exposed individuals.

Part II.

iv. The facts and circumstances leading to the environmental release including a detailed identification of the pathway through which the discharge to the environment occurred and potential environmental impacts,

v. Measures proposed to prevent such a discharge from occurring in the future and to remedy the deficiencies, if any, in the prevention, detection, response containment, cleanup or removal plan components,

vi. Such other information which the Department may require.

Except where Part II information is of confidential nature as defined in 7 Del. C., § 6014, all written information obtained through this subsection shall be made available to Local Emergency Planning Committees (LEPCs) and the public.

(B) The Department reserves the right to require a written report for any environmental release, regardless of the substance or quantity, if there is concern for public health and safety or environmental welfare has been adversely affected. At the Department's discretion, the Department may require said person to file a written follow-up report, within 30 days or any shorter time as required by validly issued state or federal permits or by any pertinent regulations, setting forth all details contained in Sections 2.4 and 2.5.

The written report shall be in a format approved by the Department and submitted to the appropriate addresses for report submissions provided by the Department. The Department may establish procedures for notification and submission of written reports by computerized and electronic methods, including but not limited to, the submission of information through the internet.

~~If not already required SARA Section 304, and at the Department's discretion, the Department may require said person to file a written report, within 30 days or any shorter time as required by validly issued state or federal permits or by any other pertinent regulations, setting forth all details contained in Section 2.4, updating as necessary, and providing further information as detailed below:~~

~~A. Name, address and phone number of the owner or operator.~~

~~B. Actions taken to respond to and contain the discharge in the form of a chronology.~~

~~C. Any known or anticipated acute or chronic health risks associated with the discharge.~~

~~D. Where appropriate, advice regarding medical attention necessary for exposed individuals.~~

~~E. Anticipated environmental impact.~~

~~F. An evaluation of all pertinent prevention and response plans and policies in light of the discharge and the owner's or operator's response thereto.~~

~~G. A detailed identification of the pathway through which the discharge to the environment occurred with drawings, if necessary, to clearly explain this path.~~

~~H. Measures proposed to prevent such a discharge from occurring in the future and to remedy the shortcomings in the prevention, detection, response containment, cleanup or removal plan components.~~

Section 3 - Chemicals, ~~Compounds and~~ Substances and Mixtures and Associated Reportable Quantities.

3.1 The purpose of this Section is to detail those chemicals, ~~compounds,~~ substances and mixtures applicable to the reporting requirements of this Regulation and to identify the DRQ at which reporting of the chemical ~~compound~~ or substance release or discharge is required.

3.2 ~~The list~~ Table A attached to this Section contains all chemicals and chemical categories and DRQ's that are subject to the~~se~~ reporting requirements of this Regulation. Notification of the discharge of a DRQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, zinc or any other

solid substance on the DRQ list is not required if the mean diameter of the particles discharged is larger than 100 micrometers (0.004 inches).

3.3 When any incident of discharge occurs involving more than one (1) chemical or chemical category listed in this Section, the DRQ for the total discharge shall be ~~is~~ the lowest DRQ of any constituent of that total, unless the mixture is known ~~to the responsible person~~. In this case, the word "known" means that a determination of constituent levels ~~may be~~ is made either by direct testing or by ~~application~~ calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, ~~where the constituent levels have been determined,~~ the discharge is subject to these notification requirements only when a ~~component~~ constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ.

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 § 6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation~~, including~~ and the written requirements of Section 2.5 (B).

3.5 In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements unless the petroleum substance is contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. For discharges of petroleum substances that are contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater or are confined to the location of the discharge on an impervious surface, the following shall apply:

A. Discharges of 25 gallons or more on land of motor fuel, jet fuel, heating oil, used oil or used petroleum substances must be reported.

B. Discharges of 150 gallons or more to land of any other petroleum substance not listed above or not uniquely identified on the Section 3 list, must be reported.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE POLICE

Statutory Authority: 21 Delaware Code, Section 6901(c) (21 **Del.C.** 6901(c))

PUBLIC NOTICE

Notice is hereby given that the Department of Public Safety, Division of State Police, in accordance with 21 **Del.C.** Section 6901(c) proposes to adopt Regulations. These Regulations will regulate nonconsensual towing of abandoned or disabled vehicles, or vehicles from the scene of an accident or arrest. These regulations do not apply if a vehicle owner or driver requests a specific towing service, unless, in the opinion of the Division of the State Police there may an unreasonable time delay or traffic safety hazard. A public hearing will be held on Tuesday, June 25, 2002 at 10:00 a.m., in the second floor main conference room (rm. 205) of the Public Safety Building, 303 Transportation Circle, Dover, DE. The Department of Public Safety will receive and consider input in writing from any person on the proposed towing regulations. Any written comments should be submitted to the Department of Public Safety, in care of William G. Bush, IV, at P.O Box 818, Dover, DE 19903-0818 on or before June 25, 2002. Anyone wishing to obtain a copy of the proposed Regulations may do so by sending a written request to the Department of Public Safety, P.O. Box 818, Dover, DE 19903-0818. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

REGULATION "B" - NONCONSENSUAL TOWING

Pursuant to Section 6901(c) of Title 21 of the Delaware Code, the Department of Public Safety proposes to adopts regulations for nonconsensual towing of abandoned or disabled vehicles, or vehicles from the scene of an accident or arrest. These regulations do not apply if a vehicle owner or driver requests a specific towing service, unless, in the opinion of the Division of State Police, there may be an unreasonable time delay or traffic safety hazard.

Section 1. Statement of Purpose

The purpose of these regulations is to protect and promote the public safety and to maintain hazard-free streets and highways by: requiring tow vehicles and equipment to meet minimum specifications; requiring tow truck operators to be licensed and insured and to hire only competent and responsible drivers; and by creating a more equitable and uniform system of handling towing calls.

Section 2. Definitions

(A) **"The Department"** means the Department of Public Safety.

(B) **"The Division"** means the Division of State Police.

(C) **"The Troop"** means the State Police Troop or, where appropriate, the officers and troopers thereof.

(D) **"Tow vehicle"** means a motor vehicle altered or designed for, and used in the business of towing vehicles by means of a flat bed or other specially designed truck that is equipped with a tow sling, tow bar, tow plate or wheel lift apparatus, attached to the rear of the truck; or a crane or hoist that is attached to the bed or frame of the tow vehicle.

Wrecker, garage tow truck, and slide back or roll back car carriers are synonymous with and included within the definition of "tow vehicle."

(E) **"Towing"** means the transportation on the streets and highways of the State of Delaware of damaged, disabled, unattended or abandoned vehicles together with personal effects and/or cargo by tow trucks. Wrecking or wrecker service, tow car service, and garage tow truck service are synonymous with and included within the definition of "towing."

(F) **"Approved Tower"** means a towing operator that has applied to the Division for certification and been approved by the Division after meeting all criteria for approval, including but not limited to the inspection of the operator's tow vehicle(s).

(G) **"Troop Area"** means the areas of the numbered State Police troops (1, 2, 3, 4, 5, 6, 7, and 9).

(H) **"Special Assigned Area"** means a geographical part of the Troop Area as determined by the Troop Commander for the purpose of designating one or more Approved Towers to service that area.

Section 3. Tow Vehicles and Equipment

(A) Tow vehicles shall not exceed the manufacturer's gross vehicle weight or the manufacturer's rated capacity for the towing assembly. All tow vehicle components (winches, booms, wire rope, clamps, thimbles, sheaves, guides, controls, blocks, slings, chains, hooks, and hydraulic components) must be maintained in good condition at all times.

(B) The minimum standards for each class of tow vehicles shall be determined solely by the manufacturer's specifications for the capabilities and capacities of the tow vehicles and towing equipment.

1. Class "A" Tow Vehicles - Minimum Specifications

a. A gross vehicle weight of at least 10,000 pounds. A crane and a winch with a rating of at least four tons must be mounted on the chassis. A roll back bed may substitute for the crane.

b. A wire rope attached to each tow vehicle winch at least 100 feet long with a minimum thickness of 3/8 inches.

c. A tow sling or wheel lift manufactured to prevent damage to the vehicle.

d. At least two safety chains to be attached between the tow vehicle and the towed vehicle.

2. Class "B" Tow Vehicles - Minimum Specifications

a. A gross vehicle weight rating of at least 17,500 pounds. A complete crane and winch having a rating of at least ten tons must be mounted on the chassis. A roll back bed may substitute for the crane.

b. A wire rope attached to each winch at least 100 feet long with a minimum thickness of ÿ inches.

c. A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.

d. A minimum of two safety chains to be attached between the tow vehicle and the towed vehicle.

e. At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.

3. Class "C" Tow Vehicles - Minimum Specifications

a A gross vehicle rating of at least 30,000 pounds. A complete crane and winch having a rating of at least twenty-five (25) tons must be mounted on the chassis.

b. A wire rope attached to each winch at least 150 feet long with a minimum thickness of 5/8 inches.

c. Brakes constructed to comply with federal motor carrier safety regulations and the Delaware motor vehicle code where applicable.

d. A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.

e. At least two safety chains to be attached between the tow vehicle and the towed vehicles, or combination of vehicles.

f. At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.

4. Accessories

a. Each tow vehicle shall be commercially lettered with the operator's business name, city, state, and telephone number visible from both sides of the vehicle, in permanent letters at least 2 ½ inches high. Each tow vehicle shall also bear a sticker, to be issued by the DSP, indicating which troop area(s)/specially designated area(s) the vehicle is authorized to serve.

b. Each tow vehicle shall be equipped at all times as required by the Delaware motor vehicle code and with the following accessories:

(i) An amber rotor beam or strobe light mounted on the top so as to be seen when in use from front, rear, and both sides. Such beam or light is to be used only when there is a hazardous condition.

(ii) Minimum of two work lights on the rear.

(iii) One snatch block for each winch with matching manufacturer's rating.

(iv) A set of scotch blocks for wheels, metal type with tail gate chains, or hydraulic rear extendable scotch blocks (Class B and C vehicles only).

(v) External air hookup and hoses (Class C vehicles only).

(vi) A set of nylon recovery straps or chains rated at 25,000 pounds(Class B and C vehicles only).

(vii) At least one broom, shovel, axe, crowbar or pry bar, set of jumper cables, flashlight, and fire extinguisher.

(viii) Box or container to carry debris.

(ix) Sand or commercial oil and grease absorber for a reasonably small cleanup that does not require the intervention of the Department of Natural Resources and Environmental Control.

Section 4. Approved Towers

(A) Applications for status as an Approved Tower shall be made in writing and under oath to the Division on forms provided by the Division. The application shall contain all information required therein and shall be sent to the Traffic Control Section, Delaware State Police, P.O. Box 430, Dover, Delaware 19903-0430.

(B) The Traffic Control Section shall review each application for form and completeness. The applicant must attach to the application: (i) business license; (ii) proof of insurance for all towing vehicles; (iii) the driving record for each driver; (iv) a criminal background record for each driver, and authorization for the Division to conduct future criminal background checks; and (v) schedule of towing and storage rates. If the application is in good order, the Traffic Control Section will notify the applicant in writing that it has been conferred Approved Tower status, and send a copy of the application and approval to the Troop.

(C) No tower will be considered for approved status unless it has continuously been in the towing business for at least twelve (12) months prior to the date the application is received. No tower will be considered for approved status unless it has at least two vehicles meeting all of the specifications in these regulations.

(D) No later than January 31 of each year (but not earlier than January 2), each Approved Tower shall complete and return to the Troop a renewal form to be provided by the Division. The renewal form shall attest, under oath, that all of the information in the original application form is either correct and complete, and/or notify the Division of any changes in the information in the original application form or since the last renewal form. The renewal form shall attach the Approved Tower's business license, proof of insurance for each towing vehicle, driving record for each driver, and schedule of rates for towing and storage services. The renewal form does not need to attach criminal background records except for employees newly hired or re-hired since the date of the original application or last renewal form. The Division reserves the right, based on prior authorization, to conduct its own criminal background checks on employees of Approved Towers.

(E) An Approved Tower must notify the Troop in writing within ten days of the date of any change in the information supplied on the original application. For example, if the Approved Tower hires a new driver or buys a new towing vehicle, then that information must be provided to the Troop in writing.

1. Vehicles and Equipment

As soon as practicable after the filing of an application, the Traffic Control Section will inspect the applicant's tow vehicle(s) and equipment to determine if they are fit for operation and otherwise in compliance with these regulations and the motor vehicle and traffic laws and federal motor carrier safety regulations, including but not limited to U.S. Department of Transportation rules or regulations. Thereafter, the Troop may conduct periodic or random inspections to determine if a tow vehicle continues to meet all federal, state, and local standards. If, at any time, the Troop finds that a tow vehicle does not meet the minimum specifications for its class, or is not in compliance with any federal, state, or local standards, the Troop shall immediately stop using the services of that Approved Tower until such repairs are made and the tow vehicle is re-inspected by the Troop.

2. Drivers

a. All tow vehicle drivers must be at least eighteen (18) years of age and have the appropriate driver's license for the Approved Tower's tow vehicle.

b. Every driver shall be competent by reason of experience or training to safely operate the type of tow vehicle(s) certified.

c. No driver shall have had within the last ten years: two or more convictions for driving under the influence of alcohol or drugs; any criminal conviction involving theft, dishonesty, or fraud; any felony conviction involving or related to the operation of a tow vehicle; or any judgment (civil or criminal) of having operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property.

3. Towing Service

a. All vehicles and equipment owned and operated by the Approved Tower must meet the minimum specifications set forth in these regulations.

b. All vehicles and equipment owned and operated by the Approved Tower must provide proof of insurance for each tow vehicle to the Division at the time of its application for certification, and each year that the Approved Tower renews its certification, or upon demand by the Division. The following minimum coverage is required:

Comprehensive Vehicle Liability Insurance	Limits of Liability
Bodily Injury	$300,000 each occurrence $100,000 each person
Property Damage	$50,000 each occurrence
Additional Umbrella	$1,000,000

Garage Liability Insurance

Bodily Injury	$100,00 each person

Garage Keeper's Insurance (owned vehicles, hired vehicles, non-owned vehicles)

Bodily Injury	$300,000 each occurrence
Property Damage	$50,000 each occurrence.

Worker's Compensation	as required by statute
Employer's Liability Insurance	as required by statute

All insurance policies required shall be issued only by companies authorized to do business in Delaware. Coverage must provide for loss from any vehicle or contents such as radios and computers while being handled, towed or stored by the approved tower. Approved Towers must notify the Division of any modification, amendment, cancellation or substitution of any insurance policy required by these regulations within ten days the Approved Tower learns of the change in circumstances.

(F.). To be eligible to provide towing services in a Troop Area or Special

Assigned Area, the Approved Tower must have a principal place of business located in that Troop Area or Special Assigned Area which is under the exclusive control of the Approved Tower, is not used by any other towing service, and is the premises listed on the Approved Tower's application. Each Approved Tower must maintain a telephone system at that location to answer calls from the Troop duty officer twenty-four hours a day, and must maintain at least one tow vehicle and one qualified driver for that place of business. The Approved Tower's place of business shall be open to the public from 8 a.m. to 6 p.m. Monday through Friday, and the business must be available to release stored vehicles on Saturdays from 8 a.m. to 12 noon, and on Sundays and holidays from 12 noon to 4:00 p.m.

(G.) The Approved Tower's storage facility must be located on the same premises or adjacent to its principal place of business in the Troop Area or Special Assigned Area it services. The Approved Tower shall maintain a secure outside storage facility for the control and safekeeping of motor vehicles, enclosed by a fence at least six feet high to deter trespass and vandalism. With the approval of the Troop Commander, an Approved Tower may use a satellite storage facility on a seasonal basis that is not located on or next to its principal place of business if the satellite facility will be more convenient for the public. The Approved Tower will operate that satellite facility in accordance with the conditions of operation in Section 4.D. above.

(H.) The Approved Tower must be able to provide emergency service, twenty-four hours a day, seven days a week, 365 days a year within the Troop Area or within a Special Assigned Area if such area is designated. An Approved Trooper can remove itself from the rotation list or Special Assigned Area for a specified time for vacation, sick, family leave or the like by notifying the Troop a reasonable time in advance.

Section 5. Denial of Approved Tower Status

The Division may refuse to approve an application for Approved Tower status for failure: (1) to provide complete, true, timely, and accurate information on the application, inspection, or renewal forms, or for omitting any material fact on the application, inspection, or renewal forms; (2) to satisfy or meet any of the requirements of these regulations; (3) to submit to a tow vehicle inspection; or (4) to have or maintain any federal, state, or local license required for the operation of a towing service or tow vehicle or for its drivers.

Section 6. Towing Service Allocation System

(A) Based on the needs of public safety, the Troop Commander may designate part of the Troop Area as a Special Assigned Area to be served by one or more Approved Towers taking into account such criteria as, but not limited to, motor vehicle accident statistics; traffic patterns; and other relating to the response time of towing companies; the density of approved towing companies; and prior history of reliable and expeditious towing services.

(B) Each Troop Commander shall have the discretion, based on the needs of public safety, to designate one or more Approved Towers to provide all non-consensual towing services in either the Troop Area or a Special Assigned Area. The Troop Commander shall establish the number of Approved Towers based on the need to maintain adequate and timely public service to minimize management of a rotation system. The Troop Commander may revise the number of Approved Towers if he or she finds that the public is not being appropriately served by the exiting number of towers.

(C) If there are more than one Approved Tower for the Troop Area or Special Assigned Area, they shall be placed on a rotating list and shall be called by the Troop duty officer to remove a wrecked, disabled, stolen or abandoned vehicle, or a vehicle following an arrest, according to the tower's placement on a Troop towing rotation list for that area and according to the tow vehicle classification for the size of the vehicle to be towed. Approved Towers will be called in succession from the top of the list. An Approved Tower shall promptly respond to a call with a tow vehicle classified to meet or exceed the size of the vehicle to be towed. If an Approved Tower truck does not respond to a request for service, that tower shall be rotated to the bottom of the list.

(D) Approved Towers will be listed only once on each

list and only in the name under which they are certified under these regulations. It is prohibited for an Approved Tower to receive multiple listings or classifications using a different or fictitious name for tow vehicles operating out of the same location or out of different locations within the same Troop Area.

(E) Approved Towers shall be on-call twenty-four hours a day, seven days a week, and shall have no more than one day and one night telephone number. Answering services are not permitted for purposes of responding to calls under these regulations. The Approved Tower must acknowledge the rotation call by contacting the duty officer at the Troop within five minutes after the rotation call. If the Approved Tower does not acknowledge the call, or calls to say it will not or cannot respond, then the duty officer shall cancel the call, rotate the Approved Tower to the bottom of the list, and call the next Approved Tower on the list. When an Approved Tower responds to a call to remove an abandoned vehicle, the Approved Tower shall not be rotated to the bottom of the rotation list but shall remain at the top of the list for the next available call.

(F) Out-of-area towing requests are permitted in the event of an emergency or the absence of a tow vehicle of proper classification, or the unavailability of any Approved Tower. In the event of specialized recovery requirements not otherwise met by Approved Towers, the Troop may call specialized recovery equipment on a nearest available basis.

Section 7. Recovery Procedures at Scene of Accident

(A) Approved Towers shall not use sirens, mechanical or electronic, but shall use rotating beacons or strobes when in the actual process of recovering a vehicle from the scene of an accident, or while towing that vehicle under conditions that present a potential hazard to the public.

(B) Approved Towers shall sweep all glass and remove all debris from the highway and the right-of-way promptly and prior to leaving the incident or collision scene. Approved Towers shall also spread sand or a commercial oil and grease absorber over small spills of oil, anti-freeze, or other fluids.

(C) Approved Towers shall follow instructions issued by any on-the-scene Trooper with respect to the preservation of physical evidence that may be lost or contaminated where towing, removing or storage of any wrecked, disabled, or abandoned vehicle is involved.

(D) When the owner or operator of a vehicle surrenders physical custody of a vehicle, the Trooper shall prepare in triplicate a vehicle storage form with an inventory of its contents and a description of any damage to the vehicle or its contents. The inventory shall be signed by the Trooper and the Approved Tower, and shall indicate whether the Trooper has instructed that the tower should withhold repossession or delivery of the vehicle to the rightful owner or his agent. The original will be for the Troop records, a copy for the towing service's record, and a copy to be given to the vehicle's owner or agent, to present to the towing service in order to release the vehicle.

Section 8. Prohibited Acts

(A) No Approved Tower shall stop at the scene of an accident or at or near a disabled vehicle for the purpose of soliciting an engagement for towing service, unless directed to do so by a Trooper.

(B) No Approved Tower shall, without authorization from the Troop, move any vehicle from any public highway, street, or other public area when such vehicle has been abandoned, stolen or damaged as the result of an accident, or following an arrest. Approved Towers may move a vehicle damaged as the result of an accident if the removal is for the purpose of extracting a person from the wreckage or to remove an immediate hazard to life, person, or property. In no event shall any such movement be more than is reasonable or necessary under the circumstances then existing. When movement is necessary, the Approved Tower shall be able to identify the original resting place of the vehicle.

Section 9. Rates

Approved Towers shall charge reasonable fees for towing and storage comparable to other towers providing similar services in the Troop Area. The Approved Tower's basic towing or service fees shall be furnished with the certification application and the annual renewal form. These fees should include: the base tow charges for day and night; storage charges per day; base charge for use of winch and dollies; and the base charge for road service for vehicles requiring fuel, battery jumps, belts, etc. If there is an interim change in any rate charged by the Approved Tower, it must be reported to the Traffic Control Section within ten days.

Section 10. Subcontracting and Assignment

(A) No Approved Tower shall subcontract, on a formal or informal basis, any request for nonconsensual towing service from the Division, or delegate or request assistance from another tower to respond to such a call, or refer a call to another tower or substitute for each other, unless approved in advance by the Troop for good cause.

(B) An Approved Tower's certification, place on the towing rotation system, or Special Assigned Area, cannot be sold, leased, assigned, transferred, pledged, surrendered or otherwise encumbered or disposed of to another towing operator, person, or entity. A successor towing service must make a new application for certification to the Division under these regulations. Upon the sale, lease, assignment, transfer, pledge, surrender, or other encumbrance or disposition of the Approved Tower, its business, name, or all or substantially all of its assets, the certification approval terminates immediately by operation of law and that

Approved Tower will be dropped from the approved towing list.

(C) These regulations supersede all prior regulations, contracts, agreements, arrangements, or understandings, formal or informal, regarding nonconsensual towing at the request of the Division. These regulations constitute whatever written notice of termination may have been required by those prior regulations, contracts, agreements, arrangements, or understandings. These regulations will take effect one hundred and twenty (120) days after their final publication in the Delaware State Register to allow towing services that currently do business with the Division to make application to the Division for certification under these regulations.

Section 11. Loss of Approved Status

(A) The Division may revoke the approved status of any Approved Tower if the Approved Tower or, where applicable, one of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has: (1) violated any of these regulations; (2) made a false or misleading statement of fact or omission of a material fact to the Division in connection with the application, inspection, or renewal; (3) subcontracted any towing work; (4) been found bankrupt, insolvent, or in receivership; (5) been the subject of two or more substantiated complaints within any twelve-month period from citizens about the Approved Tower's nonconsensual towing services, including but not limited to complaints about charging unreasonable rates for towing or storage, or the refusal to release a vehicle after presentation of sufficient proof of ownership and payment of authorized charges; (6) the cancellation or non-renewal of the required insurance on any of the Approved Tower's tow trucks or for the operation of the tower's business, or the loss of any required federal, state or local license required for the operation and driving of a tow vehicle; or (7) was unavailable to respond to a Division dispatch or failed to respond to a Division dispatch on at least three occasions within any six month period, or did not have at least a seventy-five (75) percent response rate for calls within any twelve month period. The Division may also revoke the approved status of any Approved Tower which employs or uses any driver who has, during the period of certification: (8) been convicted of driving under the influence of alcohol, narcotics, or dangerous drugs during the period of certification; (9) has had his or her driver's license suspended or revoked; (10) been convicted of any crime involving theft, fraud or dishonesty, or any felony involving the operation of a tow vehicle, or been adjudged (civilly criminally) to have operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property; or (11) has imperiled the safety of the public.

(B) If there is an imminent threat to public safety, the Superintendent or his designee may summarily suspend Approved Tower status in writing with a written statement of reasons. If there is no imminent threat to public safety, the Division shall give notice to the Approved Tower in writing of its intent to revoke its approved status and the reasons therefor. If, within ten days of the date of such notice to suspend or revoke, the tower requests a hearing in writing, then the Division will schedule a hearing within thirty days of the tower's request before the Superintendent or his designee. The decision of the Superintendent or his designee shall be in writing and shall be final.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b), (30 **Del.C.** 1815(b))

1. Title:

Regulations Governing the Historic Preservation Tax Credit.

2. Brief Synopsis:

Chapter 18 Subchapter II of Title 30 was enacted by the General Assembly in 2001. It contained the Historic Preservation Tax Credit Act. Regulations were proposed and published in the August 2001 Register of Regulations. After receiving and reviewing comments, the agency determined that statutory changes were necessary. Amendments to Chapter 18 Subchapter II of Title 30 were enacted in 2002. The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property. The proposed regulations will provide requirements that will govern certification of historic rehabilitation projects under application for this tax credit.

3. Statutory Basis or Legal Authority to Act:

Title 30 **Delaware Code** Chapter 18 Subchapter II Section 1815(b), (as amended)

4. Other Regulations that may be Affected by the Proposal:

The State Bank Commissioner and the Division of Revenue will adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

5. Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.**

Chapter 101, the Division of Historical and Cultural Affairs proposes to adopt rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 604 Otis Drive, Dover, DE 19901. The final date to submit written comments is May 31, 2002. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Daniel R. Griffith at the above address or call 302-739-5313. This notice will be published in two newspapers of general circulation.

6. Prepared by:

Daniel R. Griffith, Director
302-739-5313
April 15, 2002

Proposed Regulations Governing the Historic Preservation Tax Credit Act

1.0 Scope

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner.

2.0 Statutory Authority

These regulations are created pursuant to Chapter 18, Subchapter II of Title 30 **Delaware Code** (as amended) which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

3.0 Definitions

3.1 **"Act"** means Chapter 18, Subchapter II of Title 30 **Delaware Code**, as amended.

3.2 **"Application"** means the Delaware Historic Preservation Tax Credit application that shall consist of three parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); and the Request for Certification of Completion (Part 3).

3.3 **"Certified historic property"** shall mean a property located within the State of Delaware that is:

3.3.1 individually listed in the National Register of Historic Places; or

3.3.2 located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or

3.3.3 individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

3.3.4 located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

3.4 **"Certification of Completion"**, **"Completion Certificate" or "Certificate"** shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

3.5 **"Certified rehabilitation"** shall mean that rehabilitation of a certified historic structure that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

3.6 **"Credit award"** shall mean the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate amount as determined in Section 1813 of Chapter 18, Subchapter II of Title 30 **Delaware Code,** (as amended).

3.7 **"Delaware State Historic Preservation Officer"** shall mean the person designated and appointed in accordance with 16 **USC** Sec. 470a(b)(1)(a), as amended.

3.8 **"Federal tax credit"** shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

3.9 **"Fiscal Year"** shall mean the State's fiscal year.

3.10 **"National Register of Historic Places"** or "National Register" shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

3.11 **"Office" or "State Office"** shall mean the Delaware State Historic Preservation Office.

3.12 **"Owner-occupied historic property"** shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. "Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

3.13 **"Person"** shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

3.14 **"Property"** shall mean real estate, and shall include any building or structure, including multiple-unit structures.

3.15 **"Qualified expenditure"** shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

3.15.1 acquisition of real property, or acquiring an interest in real property;

3.15.2 any addition to an existing structure, except where the combined square footage of all additions is twenty percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

3.15.2.1 preserving the character-defining features of the certified historic property,

3.15.2.2 adequately differentiating the new construction from the existing structure, and

3.15.2.3 complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

3.15.3 paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;

3.15.4 sales and marketing costs; or

3.15.5 expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

3.16 **"Substantial rehabilitation"** shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

3.16.1 for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(I)(C) of the Internal Revenue Code; and

3.16.2 for owner-occupied historic property, five thousand dollars ($5,000).

3.17 **"Taxpayer"** shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30

4.0 Procedures for Certification of Historic Property

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. An incomplete application will not be processed until all required application information has been received. The State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.2 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the taxpayer of the decision.

4.3 Taxpayers of properties individually listed in the National Register do not need to submit a Part 1 application. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

5.0 Procedures for Certification of Rehabilitation

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed substantial rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete application will not be processed until all required application information has been received.

Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 The Delaware State Historic Preservation Officer shall determine whether the proposed substantial rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination and of the credit award. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

5.5 The Part 2 application must provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator for the proposed rehabilitation. This information will be used to determine the credit award for approved Part 2 applications.

5.6 The amount of tax credit applied against the qualified expenditures in accordance with Section 1813 of Title 30 **Delaware Code** (as amended) shall represent the "credit award."

5.7 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office.

5.8 In the alternative, the Delaware State Historic Preservation Officer may certify a rehabilitation plan and issue a Part 2 approval to any taxpayer who has obtained a Part 1 and Part 2 certification from the federal government pursuant to 36 CFR 67, where applicable. Under this provision, taxpayers must file the State of Delaware Part 2 cover form containing the information required under section 5.5 of these regulations.

5.9 All taxpayers must begin construction on the approved Part 2 plan within one year of receiving the Part 2 approval. Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and is being diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum twenty-five percent (25%) of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10 The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved Part 2 plan or the project has substantially commenced and is being diligently pursued.

6.0 Procedures for Certification of Completion

6.1 Upon completion of a certified rehabilitation, the taxpayer must submit a Part 3 application, with required documentation, to the Delaware State Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2 Upon approval by the State Office that the completed rehabilitation meets the definition of a certified rehabilitation, the State Office shall submit the documentation to the Division of Revenue or the State Bank Commissioner, as appropriate, and request a determination of the value of the tax credit.

6.3 Upon receipt of the certification of the value of the tax credit associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer.

6.4 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

7.0 Fees for Processing Rehabilitation Certification Request

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over $100,000 is $250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed $2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under $100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. All checks shall be made payable to the State of Delaware.

8.0 Administrative Review

8.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

8.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

8.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29

Delaware Code Section 10101 et. seq.

8.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

DEPARTMENT OF TRANSPORTATION

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

Regulations for Outdoor Advertising
Nature of the Proceedings

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

The Department received and evaluated nine letters that set out a wide range of comments. The results of the evaluation are summarized below. The Department then revised the draft regulations as a result of the comments received and published the new draft in the January, 2002 Register of Regulations, along with the original 1975 regulations for comparison. The Department invited written comments on the new draft until February 1, 2002. A limited number of comments were received at that time, and the Department is hereby re-publishing the Draft Regulations as published in the January Register of Regulations, along with the 1975 regulations, and re-opening the comment period for sixty (60) days, closing on June 30, 2002. Comments from both comment periods will be evaluated at the close of this comment period. Comments should be sent to:

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Field Services
P.O. Box 778
Dover, DE 19903

SUMMARY OF EVIDENCE/FINDINGS OF FACT

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

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

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

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

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

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

In addition, 17 Del.C. Section 1110's restrictions are taken directly from a DelDOT and FHWA agreement entitled 'Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System.' The Department entered into this agreement with FHWA on May 1, 1968, pursuant to 23 U.S.C. Section 131 and the State's own enactment of Subchapter II of 17 Del.C. Chapter 11.

The agreement was directed toward regulation of off-premise signs used for outdoor advertising. The Federal statute was amended in 1978 at Section 131(c)(3) to allow the Department to approve the use of electro-mechancial variable message signs for display of on-premise activities adjacent to the primary system, if the signs met established State test criteria for on-premise activities and if messages were displayed at reasonable intervals. However, 17 Del.C. Chapter 11 was not also amended to give this authority to the Department under the applicable state law. The Department's proposed regulations for outdoor advertising are now consistent with the current limitations of Chapter 11.

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

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

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

RESPONSE: See response to Comment 3.

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

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

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

RESPONSE: See response to Comment 5.

COMMENT 7: Time for message display is too long.

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

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

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

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

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

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

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

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

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

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

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

COMMENT 13: Add definition for "message content" so there is no misunderstanding by advertisers on what is permitted and what is specifically not permitted.

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

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

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

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

RESPONSE: The Department promulgates regulations for outdoor advertising on Interstate Highways, Primary System Highways, and, outside of the boundaries of incorporated municipalities, all other state maintained

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

COMMENT 16: Condense prohibitions into one section entitled "General Prohibitions"

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

COMMENT 17: Correct typographical error "oving" for moving.

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

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

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

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

RESPONSE: The 15-foot limit of height or length is intended to preclude the erection of long, narrow "ticker-tape" or "streamer" type signs. The face limit of 150 square feet is based on the model of the City of Dover's sign ordinance, but increased from the City's 100 square foot limit for electronic variable message signs to 150 square feet, to allow greater visibility of advertising on roadways with higher speed limits outside of municipal boundaries than within.

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

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

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

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

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

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

Copy of orignial 1975 Outdoor Advertising Rules & Regulations . Signed by Clifford Hall , Secretary Department of Highways and Transportation, February 27, 1975.

~~CHAPTER~~
~~SECTION 1.00 ..... OUTDOOR ADVERTISING~~
~~PARAGRAPH~~
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SECTION I - OUTDOOR ADVERTISING AUTHORITY
1.01 - AUTHORITY

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

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

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

1.02 - APPLICABILITY

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

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

1.03 - PURPOSE

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

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

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

1.04 - DEFINITIONS

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

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

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

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

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

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

7. "Sign Panels" means one sign facing.

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

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

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

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

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

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

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

15. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. in the case of a divided highway, the traveled way of each of the separated

roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

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

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

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

19. "Maintain" means to allow to exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Outdoor Advertising structures.

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

(c) Transient or temporary activities.

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

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

(f) Railroad tracks and minor sidings.

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

36. "Customary maintenance" means the action necessary to keep a sign in good condition by (1) replacement of parts damaged or worn by age and (2) painting of areas exposed to the weather as the major portion

of the sign, but shall not include either maintenance which would be necessary for signs over 50% damaged (except Act of God circumstances) or in 50% disrepair or maintenance which would increase the size or monetary value of the sign.

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

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

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

1. 05 - STATUTORY REQUIREMENTS

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

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

2. On Premise signs which shall include only:

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

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

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

B. For ease of operation, the aforementioned limitations shall be applicable to all other highway systems with the approval of these rules and regulations.

1.06 STANDARDS FOR DIRECTIONAL SIGNS

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

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

2. The following directional signs are prohibited:

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

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

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

(d) obsolete signs.

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

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

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

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

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

B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area ... 150 square feet

(b) Maximum height ... 20 feet

(c) Maximum length ... 20 feet

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

C. Lighting

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

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

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

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

D. Spacing

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

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

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

the Division.

4.

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

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

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

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

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

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

E. Message Content

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

F. Criteria for Eligibility

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

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

G. Eligible Activities

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

1.07 STANDARDS FOR OFFICIAL SIGNS AND NOTICES

A. General

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

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

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

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

C. The following signs are prohibited:

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

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

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

D. Size

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

(a) Maximum area ... 15 square feet

(b) Maximum height ... 5 feet

(c) Maximum length ... 5 feet

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

E. Lighting

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

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

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

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

F. Spacing

1. Each location of official sign or notice sign must

be approved by the Department.

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

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

1.08 STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS

A. General

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

B. Size

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

(a) maximum area… 4 square feet

(b) Maximum height ... 4 feet

(c) Maximum length ... 4 feet

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

C. Lighting

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

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

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

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

D. Spacing

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

1.09 STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES

A. General

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

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

(b) Signs and notices of charitable associations.

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

2. The following signs are expressly prohibited:

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

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

(c) Obsolete signs.

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

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

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

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

B. Size

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

(a) Maximum area ...4 square feet

(b) Maximum height … 2 feet

(c) Maximum length ... 2 feet

C. Lighting

1. Illumination of service club and religious notices is prohibited

D. Spacing

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

E. Number

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

1.10. STANDARDS FOR PUBLIC SERVICE SIGNS

A. General

1. Public service sign shall be erected or maintained without first securing a permit from the Department as required by these regulations. Applications for permits shall be processed in accord with procedures promulgated by the Department. A certification by the Department of Public

instruction that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location shall accompany each application. Applications and approval shall be processed in accord with procedures promulgated by the Department.

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

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

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

3. Which contain no other message.

C. Size

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

D. Lighting

1. Lighting of public service signs is prohibited.

E. Spacing

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

1.11 - STANDARDS FOR ON PREMIISE SIGNS

A. General

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

B. Eligibility

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

(a) It is located on the same premises as the activity or property advertised and

(b) It has as its purpose the identification of the activity conducted on the premises or Advertises the sale or lease of the property on which it is located.

(c) meets the size requirement as specified by law.

C. Premise Test

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

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

(a) Any lands not used as an integral part of the principal activity, or

(b) Any land used for a separate purpose unrelated to the advertised activity, or

(c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal, activity, and which serve no reasonable purpose other than to. qualify the land for signing purposes, or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the Principal activity other than for signing purposes, or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland, or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located,

(g) With the exception of agri-produce signs, any land in excess of 50 feet from the principal activity or accessory uses.

D. Purpose Test

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

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

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

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

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

(a) A sign which brings rental income to the property owner, or

(b) Which consists principally of brand or trade name advertising, or

(c) Which advertises a product only incidental to the principal activity, or

(d) Which advertises, in addition to the activities conducted on the premises, activities not

conducted an the premises, or

(c) One which in addition to the sale or lease aspects of the property advertises any product or service not located upon and unrelated to the business of selling or leasing the land on which the sign is located.

E. Applications

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

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

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

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

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

4. obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

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

G. Size

1. A sign either attached or free standing erected or maintained upon property to identify a business conducted thereon shall not exceed 30 square feet in area.

2. A sign advertising the sale or lease of property shall not exceed 6 square feet in area.

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

H. Lighting

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

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

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

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

I. Spacing

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

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

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

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

J. Subdivision Signs

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

(a) They are erected within the subdivision limits,

(b) The prime intent is identification

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

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

1.12 - STANDARDS FOR AGRI-PRODUCE SIGNS

A. General

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

2. On other systems, agri-produce signs shall be considered as "on premise" signs and shall be subject to the same requirements and conditions as described for "on premise" signs in Section 1.11 of these regulations with the following exceptions:

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

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

B. Size

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

(a) Maximum area… 30 square feet

(b) Maximum height … 8 feet

(c) Maximum length ... 8 feet

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

C. Lighting

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

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

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

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

D. Spacing

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

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

E. Number

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

F. Safety of traveling public

1. At all times the Division must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign until such time that corrective measures have been implemented.

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

A. General

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

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

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

B. The following signs shall be prohibited:

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

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

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

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

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

C. Size

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

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

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

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

5. A sign which exceeds 600 square feet in area may not be on the same sign facing with any other sign.

D. Lighting

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

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

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

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

or signal is prohibited.

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

E. Spacing

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

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

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

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

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

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

7. Official and "on premise" signs, as defined in these regulations shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

F. Non-Conforming Signs

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

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

G. Control by Political Subdivisions

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

1.14 - BONDING REQUIREMENTS

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

1.15 - MAINTENANCE OF SIGNS

A. General

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

B. Alterations

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

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

(b) Alterations do not exceed permit limits and

(c) Other requirements of these regulations are met.

C. Relocation of Signs

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

D. Maintenance of Non-conforming Signs

1. General

(a) Non-conforming signs may be maintained

or rebuilt when destroyed by vandalism or by acts of God providing they are rebuilt to substantially be the same as they are in existence an June 30, 1970. Such signs may continue as long as they are not abandoned, destroyed or discontinued.

2. Discontinued signs

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

3. Abandoned signs

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

4. Destroyed signs

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

5. Owners Liability

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

1.16 - DESTRUCTION OF TREES

A. General

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

B. Penalties

1. Persons who undertake such action will be

(a) Subject to possible criminal prosecution and

(b) Have the permit for the involved sign revoked and

(c) Responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

1.17 PERMITS AND FEES

A. General

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

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

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

B. Duration of Permits

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

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

C. Fees

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

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

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

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

1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS

A. General

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

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

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

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

~~in accordance with procedures promulgated by the Department.~~

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

~~1.19 - POLITICAL SUBDIVISION REGULATIONS~~

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

~~1.20 - PENALTIES~~

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

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

~~1.21 - SEPARABILITY~~

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

1.01 - AUTHORITY

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

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

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

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

1.02 - APPLICABILITY

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

B. The following regulations shall also apply to all outdoor advertising or outdoor advertising signs which are or shall be erected and maintained within sight of the nearest edge of the right-of-way (or within 660 feet, if within a defined urban area) of any State-maintained roadway in this State that is a limited-access State toll road, and which are visible from the main traveled way of any such roadway, as established by Title 17 DE Code, chapter 11, subchapter III, section 1131.

C. In order to provide equal and consistent protections and opportunities for all citizens of this State, the following regulations shall also apply to all outdoor advertising or outdoor advertising signs which are and shall be erected and maintained within sight of the nearest edge of the right-of-way (or within 660 feet, if within a defined urban area) of any State-maintained roadway in this State that is not a limited-access State toll road nor part of the Interstate or federal-aid primary systems in this State, and which are visible from the main traveled way of any such roadway, except that such controlled areas shall not be established, nor

shall the State regulate such advertising and signs adjacent to the rights-of-way of such roadways that are within the boundaries of incorporated municipalities of the State of Delaware, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (c).

1.03 - PURPOSE

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

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

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

1.04 - DEFINITIONS

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

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

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

3. **"Primary system"** means that portion of connected main highways of this State officially designated as such, or as may hereafter be designated as such, by the Department and approved by the Secretary of Transportation of the United States, pursuant to Title 23, United States Code, "Highways."

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

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

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

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

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

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

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

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

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

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

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

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

16. **"Scenic area"** means any area of particular scenic beauty or historical significance as determined by the

Federal, State, or local officials having jurisdiction thereof, and includes interests in lands which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

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

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

19. **"Maintain"** means to allow to exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Outdoor advertising structures.

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

(c) Transient or temporary activities.

(d) Activities more than 600 feet from the nearest edge of the right-of-way along Interstate and Federal-aid primary routes and all other State-maintained roadways.

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

(f) Railroad tracks and minor sidings.

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

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

36. **"Free-standing sign"** means any sign not

attached or affixed to a building for its principal means of support.

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

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

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

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

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

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

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

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

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

46. **"State"** means the State of Delaware.

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

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

1.05 - STATUTORY REQUIREMENTS

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

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

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

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

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

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

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

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

B. As per rule 1.02 ("Applicability"), part 'C,' the limitations established by this rule (1.05) shall also apply within the controlled areas of all other State-maintained roadways, except that controlled areas shall not be established, nor shall outdoor advertising or outdoor advertising signs be regulated by the State, adjacent to the rights-of-way of roadways that are not limited-access State toll roads or parts of the Interstate or federal-aid primary systems, where such roadways are within the boundaries of incorporated municipalities of the State of Delaware, as established by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (c).

1.06 - STANDARDS FOR DIRECTIONAL SIGNS

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

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

the Department.

2. The following directional signs are prohibited:

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

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

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

(d) Obsolete signs.

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

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

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

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

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

B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area: 150 square feet

(b) Maximum height: 20 feet

(c) Maximum length: 20 feet

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

C. Lighting

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

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

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

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

D. Spacing

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

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

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

4. Number and mileage requirements

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

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

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

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

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

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

E. Message content

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

F. Criteria for eligibility

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

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

G. Eligible activities

1. Privately owned activities or attractions eligible for directional signing shall be limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor

recreational areas, any of which must be nationally or regionally known, and of outstanding interest to the traveling public, as determined by the appropriate State agency authority.

1.07 - STANDARDS FOR OFFICIAL SIGNS AND NOTICES

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

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

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

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

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

C. The following signs are prohibited:

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

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

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

D. Size

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

(a) Maximum area: 15 square feet

(b) Maximum height: 5 feet

(c) Maximum length: 5 feet

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

E. Lighting

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

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

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

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

F. Spacing

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

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

3. An official sign or notice, except when erected by the Department, shall be located beyond 2,000 feet of a rest area, parkland, or scenic area (measured as for an interchange or intersection at grade, as described above).

1.08 - STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS

A. General: The erection of a public utility or railroad sign may be undertaken without Department approval.

1. Such signs will be limited to warning signs, informational signs, and notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operation.

B. Size

1. The following limits shall apply to public utility and railroad signs:

(a) Maximum area: 4 square feet

(b) Maximum height: 4 feet

(c) Maximum length: 4 feet

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

C. Lighting

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

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

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

otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

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

D. Number and spacing

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

1.09 - STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES

A. General: Service club or religious notices shall be erected or maintained only after first securing approval from the Department.

1. Requests for permission must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

B. Service club and religious notice signs shall be limited to the following:

1. Signs and notices relating to meetings of nonprofit service clubs.

2. Signs and notices of charitable associations.

3. Signs and notices stating place and time of religious services.

C. The following service club and religious notice signs are prohibited:

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

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

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

5. Signs which move or have any animated or moving parts.

6. Signs located in rest areas, parklands or scenic areas.

D. Size

1. The following limits shall apply to service club and religious notices:

(a) Maximum area: 4 square feet

(b) Maximum height: 2 feet

(c) Maximum length: 2 feet

E. Lighting

1. Illumination of service club and religious notices is prohibited.

F. Spacing

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

G. Number

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

1.10 - STANDARDS FOR PUBLIC SERVICE SIGNS

A. General: Public service signs shall be erected or maintained only after first securing approval from the Department.

1. Requests for permission must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

2. A certification by the Delaware State Department of Education that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location, shall accompany each application.

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

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

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

3. Which contain no other message.

C. Size

1. Public service signs shall not exceed 32 square feet in area.

D. Lighting

1. Illumination of public service signs is prohibited.

E. Number and placement

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

1.11 - STANDARDS FOR SIGNS REQUIRING A LETTER OF PERMISSION FROM THE STATE

A. General: Section 1114, Subchapter I, Chapter 11, Title 17 of the Delaware Code exempts certain signs from all provisions of Subchapter I, except that such signs shall be subject to the regulations established by the Department as required by Section 1103 of Subchapter I, Chapter 11 of Title 17.

B. Eligibility

1. An outdoor advertising sign, display, or device in a controlled area shall require a letter of permission from

the State, but shall not require a State outdoor advertising permit, if:

(a) It is located on the same premises as the activity or property advertised; and

(b) It has as its sole purpose the identification of the activity conducted on the premises, or the advertisement of the sale or lease of the property on which it is located; and

(c) It meets the size requirements as specified in Title 17 DE Code, Chapter 11, Subchapter I , Section 1114 (1) or (2); or

(d) It is a sign of one of the classes of signs specified as excepted in Title 17 DE Code, Chapter 11, Subchapter I , Section 1114 (3) through (7).

C. Premise test

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

2. The following will not be considered to be a part of the premises on which an activity is conducted, and any signs located on such land will be considered signs requiring a State outdoor advertising permit:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the roadway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses (except that this restriction shall not apply to agri-produce signs).

D. Purpose test

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

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

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

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

2. Signs in the following categories shall be considered as not fulfilling purpose requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

E. Applications

1. No sign, unless it is specifically exempted from State regulation by DE Code or the terms of these regulations, shall be erected before written approval is secured from the Department.

2. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

F. The following are prohibited:

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

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

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

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

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

G. Size

1. In order not to require a State outdoor

advertising permit, a sign (either attached or free-standing) erected or maintained upon property to identify a business conducted thereon may not exceed 32 square feet in total area (sum of all faces and / or panels).

2. A sign advertising the sale or lease of property may not exceed 12 square feet (sum of all faces and / or panels) for a residential zoned property and 32 square feet for any other zoning.

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

4. Signs exceeding these size limits shall be considered as not fulfilling size requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit.

H. Lighting

1. Signs may be illuminated subject to the following:

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

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

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

I. Spacing

1. Spacing requirements shall not apply except that a maximum of 10 signs, with a combined total area of not more than 500 square feet, shall be allowed at any one location.

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

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

J. Decorative subdivision entrance signs

1. Decorative subdivision entrance signs which state the name of an individual suburban community are allowable, provided:

(a) They are erected within the subdivision limits.

(b) The sole intent is identification.

(c) They have received prior approval from the Department.

(d) They meet all tests and requirements established by this rule (1.11).

1.12 - STANDARDS FOR AGRI-PRODUCE SIGNS

A. General: Agri-produce signs may not be erected on the Interstate system unless they meet fully the requirements for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, as established in section 1.11 of these regulations.

1. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

2. On other systems, agri-produce signs shall be considered as signs requiring a letter of permission from the State and shall be subject to the same requirements and conditions as described for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, in section 1.11 of these regulations, with the following exceptions:

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

(b) Free-standing agri-produce signs may be located more than 50 feet, but not more than 500 feet, from the activity, and on the same property as the activity being conducted.

B. The following signs are prohibited:

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

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

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

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

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

C. Size

1. The following limits shall apply to agri-produce signs:

(a) Maximum area: 32 square feet

(b) Maximum height: 8 feet

(c) Maximum length: 8 feet

(d) Total sign area allowable per property: 100 square feet (maximum)

D. Lighting

1. Signs may be illuminated, subject to the

following:

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

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

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

E. Spacing

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

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

F. Number

1. Each location may have a variable number of agri-produce signs, provided the total sign area allowable per property is not exceeded.

G. Safety of the traveling public

1. At all times the Department must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign or signs until such time that corrective measures have been implemented.

1.13 - STANDARDS FOR SIGNS REQUIRING A STATE OUTDOOR ADVERTISING PERMIT

I. STATIC-MESSAGE SIGNS

A. General: Except as otherwise provided in DE Code and these regulations, no static-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

3. This category includes manually-changeable-message signs.

B. Order of consideration of applications

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a State outdoor advertising permit shall be issued one.

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

C. The following static-message signs are prohibited:

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

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

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

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

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

7. Signs which move or have any animated or moving parts.

D. Size

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

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

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

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

5. A static-message sign panel which exceeds 600 square feet in area may not be on the same sign facing with any other panel.

E. Lighting

1. Static-message signs may be illuminated, subject to the following restrictions:

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

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

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

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

F. Spacing

1. Within controlled areas of Interstate and other State-maintained controlled-access highways, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 500 feet from any other such structure.

2. Within controlled areas of State-maintained non-controlled-access roadways outside of incorporated municipalities, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 300 feet from any other such structure.

3. Within controlled areas of State-maintained non-controlled-access roadways that are part of the federal-aid primary system and are within the boundaries of incorporated municipalities, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 100 feet from any other such structure.

4 When static-message outdoor advertising signs requiring State outdoor advertising permits are separated by buildings or other permanent obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply.

5. The distances between static-message outdoor advertising signs requiring State outdoor advertising permits shall be measured along the nearest edge of the pavement between points directly opposite the signs and shall apply only to outdoor advertising structures located on the same side of a roadway.

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

7. Except for a free-standing sign against the wall of a building, no outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road grade, whichever is higher.

8. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

9. Except for signs, displays or devices advertising the sale or lease of, or activities conducted upon, the real property where they are located, or any outdoor advertising signs displayed on any school bus waiting shelter located and approved by the State Department of Education, as provided in 17 DE Code 11, Section 1108 (c), no outdoor advertising sign, display or device requiring a State outdoor advertising permit shall be erected within 25 feet of the right-of-way line of any public highway if visible from any portion of the same, as provided in 17 DE Code 11, section 1108 (a).

G. Non-conforming signs

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirements, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

H. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in

commercial and industrial zones, and enforces such laws, and applies for and is certified under the provisions of section 1.18 of these regulations, control of outdoor advertising and outdoor advertising signs located entirely within such political subdivision shall pass to such political subdivision.

II. ELECTRO-MECHANICAL VARIABLE-MESSAGE SIGNS

A. General: Except as otherwise provided in DE Code and these regulations, no electro-mechanical variable-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

B. Eligibility

1. An electro-mechanical variable-message outdoor advertising sign, display or device shall be eligible for a State outdoor advertising permit only if:

(a) It is located on the same property and premises as the activity or property advertised; and

(b) It has as its purpose the identification of the activity conducted on the premises, or advertises the sale or lease of the property on which it is located; and

(c) It meets the size and other requirements as specified in these regulations.

C. Premise Test

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

2. The following will not be considered to be a part of the premises on which an activity is conducted:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses.

D. Purpose test

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

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

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

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

2. Signs in the following categories shall be considered as not fulfilling purpose requirements:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

E. Order of consideration of applications

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of

them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a State outdoor advertising permit shall be issued one.

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

F. The following are prohibited:

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

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

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

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts other than the electro-mechanical variable-message part.

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

G. Size

1. The maximum area for any electro-mechanical variable-message outdoor advertising sign facing shall be 150 square feet with a maximum height or length not to exceed 15 feet.

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

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

4. Two electro-mechanical variable-message sign facings may be placed back-to-back or in a V-type configuration, but in no event shall the total area of any facing exceed 150 square feet.

H. Lighting

1. Electro-mechanical variable-message signs may be illuminated, subject to the following restrictions:

(a) Electro-mechanical variable-message signs shall have a time of message display for complete messages of no less than 30 seconds and have a time interval between messages of 2 seconds or less. Message changes must be accomplished by nondistractive means.

(b) Electro-mechanical variable-message signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of any roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Electro-mechanical variable-message signs so illuminated as to interfere with the effectiveness of, or obstruct, an official traffic sign, device, or signal, are prohibited.

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

I. Spacing

1. Electro-mechanical variable-message outdoor advertising signs within controlled areas of limited-access highways must be at least 500 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

2. Outside of the boundaries of incorporated municipalities, electro-mechanical variable-message outdoor advertising signs within controlled areas of non-limited-access State-maintained roadways must be at least 300 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

3. Within the boundaries of incorporated municipalities, electro-mechanical variable-message outdoor advertising signs within controlled areas of non-limited-access State-maintained roadways that are part of the federal-aid primary system must be at least 100 feet from any static-message outdoor advertising signs requiring State outdoor advertising permits.

4 When electro-mechanical variable-message outdoor advertising sign structures are separated from any static-message outdoor advertising sign requiring a State outdoor advertising permit by buildings or other permanent obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply. This exception shall not be construed to mean that electro mechanical variable-message outdoor advertising signs may be erected nearer to each other than specified in paragraphs five and six (following) if only one of them could be seen from the roadway at any one time due to an intervening obstruction (as above).

5. An electro-mechanical variable-message outdoor advertising sign that is within the controlled area of any State-maintained roadway shall not be located less than 5,280 feet (one mile) from any other electro-mechanical variable-message outdoor advertising sign that is within the controlled area of the same roadway (whether on the same or the opposite side of the roadway).

6. Where State-maintained roadways intersect, if there is an electro-mechanical variable-message outdoor advertising sign within the controlled area of one of them,

and the sign is within a mile of the intersection, no electro-mechanical variable-message outdoor advertising signs may be erected on the other roadway(s) within a mile of the intersection.

7. The distances between electro-mechanical variable-message outdoor advertising signs and static-message signs requiring State outdoor advertising permits shall be measured along the nearest edge of the pavement between points directly opposite the signs and shall apply only to outdoor advertising structures located on the same side of a roadway.

8. The distances between electro-mechanical variable-message outdoor advertising signs shall be measured along the nearest edge of the pavement (or, if on opposite sides of the controlling roadway, the edge nearest to the existing or the oldest existing sign) between points directly opposite the signs and shall apply to outdoor advertising structures located on the same or opposite sides of a roadway.

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

10. Except for a free-standing sign against the wall of a building, no outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road grade, whichever is higher.

11. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

J. Non-conforming signs

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirement, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

K. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in commercial and industrial zones, and enforces such laws, and applies for and is certified under the provisions of section 1.18 of these regulations, control of outdoor advertising and outdoor advertising signs located entirely within such political subdivision shall pass to such political subdivision.

L. Number of panels

1. An electro-mechanical variable-message sign facing may not contain more than one electro-mechanical variable-mesage panel. A static message panel may be affixed to the same sign facing as an electro-mechanical variable-message panel, but the total square footage of the facing may not exceed 150 square feet.

M. Message content

1. Every message displayed on an electro-mechanical variable-message outdoor advertising sign must be a complete message. No message or display on an electro-mechanical variable-message outdoor advertising sign may in any way entice or encourage a viewer to continue looking at the sign after they have read its current message. The viewer is not to be enticed or encouraged to desire to see what message the electro-mechanical variable-message outdoor advertising sign will display when it changes from the message currently being displayed.

1.14 - BONDING REQUIREMENTS

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

1.15 - MAINTENANCE OF SIGNS

A. General

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

B. Alterations

1. The size and shape of signs may be altered during repair, with the exception of non-conforming signs, providing that:

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

(b) Alterations do not exceed permit limits; and

(c) Other requirements of these regulations are met.

C. Relocation of signs

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

D. Maintenance of non-conforming signs

1. General

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

2. Discontinued signs

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

3. Abandoned signs

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

4. Destroyed signs

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

5. Owner's liability

(a) If any signs as described in subparagraphs 2, 3 and 4 of this paragraph are removed by Department personnel, the sign owners shall be responsible for all costs incurred.

1.16 - DESTRUCTION OF TREES

A. General

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

B. Penalties

1. Persons who undertake such action shall:

(a) Be subject to possible criminal prosecution; and

(b) Have the permit for the involved sign revoked; and

(c) Be responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

1.17 - PERMITS AND FEES

A. General

1. Section 1104, Subchapter I, Chapter 11, Title 17 of the Delaware Code includes provisions for:

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

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

B. Duration of permits

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

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

C. Fees

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

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

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

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

D. Non-payment of permit renewal fees

1. Failure to pay the full and correct annual outdoor advertising sign permit renewal fee within 60 days of being notified to do so by a second written notice (invoice) shall cause the applicable permit(s) to lapse and become null and

void.

1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS

A. General

1. Subsection (a) of Section 1110, Subchapter I, Chapter 11, Title 17 of the Delaware Code provides for the Department to certify a political subdivision as having effective control when such political subdivision has established and is enforcing regulations as to the size, spacing, and lighting of outdoor advertising signs, displays and devices in zoned commercial and industrial areas within its zoning jurisdiction.

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

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

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

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

1.19 - POLITICAL SUBDIVISION REGULATIONS

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

1.20 - PENALTIES

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

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

1.21 - SEVERABILITY

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

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ACCOUNTANCY

24 DE Admin. Code 100

Statutory Authority: 24 Delaware Code, Section 105(1)(5), (24 **Del.C.** §105(1)(5))

Order Adopting Rules And Regulations

AND NOW, this 20th day of March, 2002, in accordance with 29 Del. C. § 10118 and for the reasons stated hereinafter, the Board of Accountancy of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 Del. C. §§ 105(1) and 105(5), the Board proposed to revise its existing Rules and Regulations in order to implement and clarify the requirements for firm permits to practice. The proposed amendments revise Section 9.0 in its entirety and include rules implementing 24 Del. C. § 112 regarding professional responsibility standards. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware Register of Regulations dated December 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 Del. C. § 10115. The public hearing was held on January 16, 2002 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received written comments dated October 17, 2001 from Michael C. Herndon, Director, Government Relations, Certified Financial Planner Board of Standards in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. Mr. Herndon stated in reference to Board Rule 3.5, that "CFP" and "Certified Financial Planner" are registered trademarks owned by the CFP Board and may be used by individuals following certification by that board. Mr. Herndon suggested that the Board clarify the designations identified in Rule 3.5 to reflect this information. At the January 16, 2002 hearing, the Board received no comment from the public regarding the proposed Rules and Regulations.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and

Regulations are necessary to implement and clarify the requirements for firm permits to practice. The proposed amendments will assist applicants and licensees in understanding the requirements for obtaining and maintaining firm permits to practice certified public accountancy and public accountancy.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 Del. C. § 105(1). The Board further concludes that it has statutory authority to designate the requirements for the issuance of certificates and permits to practice consistent with the provisions of Chapter 1, Title 24 of the Delaware Code. 24 Del. C. § 105(5).

4. The Board concludes that the suggested revisions made in written comments by Michael C. Herndon are cosmetic in nature and not substantive. The Board, therefore, finds that it should adopt the proposed non-substantive changes and does so pursuant to 29 Del. C. §§ 10118(c), 10113.

5. For the foregoing reasons, the Board concludes that it is necessary to adopt the proposed amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 Del. C. Chapter 1.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, IT IS ORDERED, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations pursuant to 29 Del. C. § 10118(g).

By Order Of The Board Of Accountancy
(As authenticated by a quorum of the Board)

B. Christopher Daney, President, Professional Member
John A. McManus, Professional Member
Sally S. Stokes, Professional Member
Paul C. Seitz, Professional Member
Rita M. Paige, Public Member
Brian Dolan, Esquire Attorney Member

Board of Accountancy
Statutory Authority: 24 Del.C. 105

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to "honorary state officials" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 **Del.C.** Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 Professional Conduct

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American

Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 Use of Designations

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A sole proprietorship, partnership, ~~professional association or professional corporation~~ corporation, or any other entity authorized under Delaware law or a ssimilar statute of another state ~~composed of certified public accountants~~ which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation"CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1 An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2 A sole proprietorship, partnership, ~~professional association or professional corporation~~ corporation, or any other entity authorized under Delaware law or a similar statute of another state ~~composed of certified public accountants~~ which is registered with the Board and holds a current firm permit to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, sole proprietorship, partnership, ~~or~~ corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any

other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

3.5 No person, sole proprietorship, partnership, ~~or~~ corporation, or any other entity authorized under Delaware law or a similar statute of another state shall use a title**[, certification]** or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title**[, certification]** or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such **[certifications and]** designations as **[Certified Financial Planner TM»]** "CFP", "CVA", "ABV", etc.

4.0 Applications

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

4.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 Requirements for Permit to Practice Certified Public Accountancy

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the

Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 **Del.C.** §108(c)(2) and Sections 6.3 , 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who hold a master's degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.3.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.

6.3.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.

6.3.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

6.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.4 Applicants who hold a baccalaureate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.4.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.4.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.4.2. Experience in internal audit may be used in lieu of or in addition to the experience described in 6.4.1.

6.4.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.5 Applicants who hold an associate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.5.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.5.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.6 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.6.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.7 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

See 3 DE Reg. 1668 (6/1/00)

7.0 Requirements for Permit to Practice Public Accountancy

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 Reciprocity

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109 (a) (3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 Firm Permits to Practice

9.1 Definitions

9.1.1 "Firm" means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state.

~~9.1 For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations,~~

9.1.2 The term "principal of a firm" is defined as any individual who has an equity interest in the firm.

9.2 Each firm which intends to be or is engaged in the practice of certified public accountancy or the practice of public accountancy in this State shall be required to obtain and maintain a valid permit to practice. Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such time as that person begins to perform certified public accounting or public accounting services in this State or for clients located in this State.

9.3 Each applicant for issuance or renewal of a firm permit to practice certified public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid individual permit to practice certified public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not as yet accumulated sufficient experience to qualify for a permit under 24 *Del. C.* § 108, holds a valid individual permit to practice certified public accountancy. For purposes of 24 *Del. C.* § 111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

9.4 Each applicant for issuance or renewal of a firm permit to practice public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid individual permit to practice public

accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not yet met the requirements to qualify for a permit under 24 *Del. C.* § 110, holds a valid individual permit to practice public accountancy. For purposes of 24 *Del. C.* § 111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

9.5 An applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to register each office of the firm within this State with the Board, and to show that each such office is under the charge of a person holding a valid permit to practice.

9.6 Each holder of or applicant for a firm permit to practice certified public accountancy or public accountancy shall notify the Board in writing within thirty (30) days after its occurrence of: 1) any change in the identities of principals who work regularly within this State; 2) any change in the number or location of offices within this State; 3) any change in the identity of the persons supervising such offices; and 4) any issuance, denial, revocation or suspension of a permit issued by any other State to the firm or to any principal or employee regulated by the Board.

9.~~2~~7 Certified public accounting and public accounting firms practicing as corporations organized pursuant to Delaware law must be organized ~~as professional corporations ("P.C.") or professional associations ("P.A.")~~ in compliance with The Professional Service Corporation Act, 8 **Del.C.** § ~~671~~ 601, *et. seq*.

9.8 All firms and accountants practicing in firms shall be bound by professional responsibility standards no less stringent than those stated in 8 *Del. C.* § 608. Each applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to cause a duly authorized individual to verify under oath that upon issuance by the Board of a firm permit to practice, the firm will be bound by professional standards no less stringent than those stated in 8 *Del. C.* § 608.

~~9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.~~

9.~~4~~9 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 Continuing Education

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs

of national, state and local accounting organizations;

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

10.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, *et. seq.*

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting
Administrative Practice
Auditing
Business Law
Communication Arts

Computer Science
Economics
Finance, Production and Marketing
Management Services Mathematics, Statistics, Probability, and Quantitative
Applications in Business
Personnel Relations, Business Management and Organization
Social Environment of Business
Specialized Areas of Industry
Taxation

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 **Del.C.** Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0 Excepted Practices; Working Papers

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 **Del.C.** §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 **Del.C.** Chapter 1.

12.2 Working Papers: For purposes of 24 **Del.C.** §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 Hearings

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

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

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

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

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** §§10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. ~~A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both.~~ The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

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

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

13.2. General procedure

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

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

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

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement

allowed to each party to any hearing.

14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

14.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

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

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

14.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

14.7 The regulated professional's records of

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

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

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION
EXAMINING BOARD OF PHYSICAL THERAPISTS

24 DE Admin. Code 2600

Statutory Authority: 24 Delaware Code, Section 2604 (24 **Del.C.** §2604)

Summary of the Evidence and Information Submitted

Written Comments

There were no written comments received addressing the proposed rules and regulations.

Sworn Testimony

There was no sworn testimony taken addressing the proposed rules and regulations.

Findings of Fact

1. Pursuant to 24 *Del. C.* § 2604(1), the Delaware State Examining Board of Physical Therapists (the "Board") proposed to revise to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on March 19, 2002, at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed changes.

4. A hearing was held on March 19, 2002, at which a quorum of the State Examining Board of Physical Therapists was present.

5. The Board finds that the revisions to Sections 1.1.1., 1.1.2, 1.5.21, 1.5.22, reflects the statutory changes that were made to the physical therapy practice act in Chapter 26 of Title 24 of the *Delaware Code*.

6. The Board finds that the revision Section 1.2.6 further clarifies the direct supervision of athletic trainers in a non-clinical setting.

7. The Board finds that the revision to Section 9.1 clarifies the definition of a temporary license and reflects the statutory changes that were made to the physical therapy practice act in Chapter 26 of Title 24 of the *Delaware Code*.

8. The Board finds that the revision Section 11.3 further clarifies the continuing education requirements for reinstatement and reactivation applicants.

9. The State Examining Board of Physical Therapists finds that all of the proposed revisions serve to implement or clarify specific sections of 24 *Del. C.* Chapter 26 .

Text and Citation

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 5, Issue 8 (February 1, 2002). The text is attached hereto in "Exhibit D" with the changes noted.

Decision

After consideration of the verbal and written comments received, the Board has decided to change Sections 1.1.1, 1.1.2, 1.2.6, 1.5.21, 1.5.22, 9.1, and 11.3 of the Rules and Regulations.

NOW, THEREFORE, based on the State Examining Board of Physical Therapists' authority to formulate rules and regulations pursuant to 24 *Del. C.* § 2604(1), it is the decision of the State Examining Board of Physical Therapists to adopt the proposed changes to Sections 1.1.1, 1.1.2, 1.2.6, 1.5.21, 1.5.22, 9.1, and 11.3. of its Rules and Regulations. A copy of the Rules and Regulations is attached hereto as Exhibit "D" and incorporated herein. Such proposed changes to the Rules and Regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this 16th day of April, 2002.

Delaware State Examining Board Of Physical Therapists

Phillip N. Barkins, President
Tara J. Manal, Vice-President
Kathy Watson, Secretary
Phyllis Collins
Jeff Fitz
Patrick McKenzie
Ruth Ann Messick

Attest:
Susan Miccio, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Examining Board of Physical Therapists in the Matter of Adoption of Regulations.

1.0 Definitions

1.1 Consultation (24 **Del.C.** § 2612)

1.1.1 Consultation in direct access. A ~~physician~~ licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal ~~physician~~ licensed health practitioner. If the patient does not have a personal licensed health practitioner ~~physician~~, the Physical Therapist is to offer the patient at least three ~~physicians~~ licensed health practitioners from which to choose. The referral to a ~~physician~~ licensed health practitioner after the initial thirty day period must not be in conflict with 24 *Del. C.* § 2616 (a)(8) which deals with referral for profit. If no ~~physician~~ licensed health practitioner consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a ~~physician~~ licensed health practitioner consult.

1.1.2 Consultation with written prescription from a ~~physician, dentist, podiatrist, or chiropractor~~ licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 **Del.C.** § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 Direct supervision in connection with an

athletic trainer in a non-clinical setting means that the supervising athletic trainer should be personally present and immediately available to the treatment area.

1.2.~~6~~ 7 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.~~7~~ 8 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 **Del.C.** § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 **Del.C.** § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 **Del.C.** § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 **Del.C.** § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.5.6 - Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a ~~physician~~ licensed health practitioner consult.

1.5.21 - Substantially modifying a treatment prescription without consulting the referring ~~physician~~ licensed health practitioner.

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 **Del.C.** § 2607 (a) and Section 7 of these rules and regulations.

See 4 DE Reg. 1114 (1/1/01)

2.0 Board

2.1 Specific duties of the officers:

2.1.1 The Chairperson:

2.1.1.1 Shall call meetings of the Board at least twice a year.

2.1.1.2 Shall represent the Board in all official functions and act as Board spokesperson.

2.1.2 The Vice-Chairperson:

2.1.2.1 Shall substitute for the Chairperson during the officer's absence.

2.1.3 The Secretary:

2.1.3.1 Shall preside when the Chairperson and Vice-Chairperson are absent.

3.0 Physical Therapist Assistants (24 **Del.C.** § 2602 (3))

The Physical Therapist Assistant may treat patients only under the direction of a Physical Therapist as defined in Sections 1.2.2 and 1.2.3. The Physical Therapist Assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising Physical Therapist. The Physical Therapist Assistant may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The Physical Therapist Assistant may make minor modifications to treatment plans within the predetermined plan of care, assist the Physical Therapist with evaluations, and document treatment progress. The ability of the Physical Therapist Assistant to perform the selected and delegated tasks shall be assessed by the supervising Physical Therapist. The Physical Therapist Assistant shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the Physical Therapist Assistant or without proper supervision.

4.0 Athletic Trainers (24 **Del.C.** § 2602)

The Athletic Trainer in a *clinical* setting - 24 **Del.C.** § 2602 (5)).

The Athletic Trainer in a *nonclinical* setting - 24 **Del.C.** § 2602(5)).

5.0 Support Personnel (24 **Del.C.** § 2615)

5.1 Treatments which may be performed by support personnel under direct supervision are:

5.1.1 ambulation
5.1.2 functional activities
5.1.3 transfers
5.1.4 routine follow-up of specific exercises
5.1.5 hot or cold packs
5.1.6 whirlpool/Hubbard tank
5.1.7 contrast bath
5.1.8 infrared
5.1.9 paraffin bath
5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

5.3 Prohibited Activities - support personnel may not perform:

5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section 5.1.

See 4 DE Reg. 1114 (1/1/01)

6.0 Qualifications of Applicant (24 **Del.C.** § 2606)

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 **Del.C.** § 2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, evidence of continuing education courses as provided by Section 7.

7.0 Mandatory Continuing Education Units (CEU's) (24 **Del.C.** §2607 (a))

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 30th of every even numbered year and shall be received every 2 years after such date.

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

7.2.3 license number of applicant

7.2.4 proof of attendance at CEU course

7.2.5 date of CEU course

7.2.6 instructor(s) of CEU course

7.2.7 sponsor of CEU course

7.2.8 title of CEU course

7.2.9 number of hours of CEU course

7.3 Continuing Education Regulations, (24 **Del.C.** § 2607 (a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.

7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30th of each even year. CEU's completed before November 30th of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:

Odd Numbered Year	Even Numbered Year
1/1- 6/30 2.5 CEUs	1/1- 6/30 1.5 CEUs
7/1-12/31 2.0 CEUs	7/1-12/31 .5 CEUs

7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.

7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30th of the even year. All questionable CEUAR's will be re-evaluated.

7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.

7.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30th of the end of the respective CEU term.

7.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

7.3.7 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2 seminars/workshops

7.3.7.3 staff/faculty in-services

7.3.7.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

7.3.7.5 approved self studies including:

- videotapes, if:

-there is a sponsoring agency

-there is a facilitator or program official present

-the program official is not the only attendee

- correspondence course, if a sponsoring agency provides a certificate of completion

7.3.8 The following are also examples of acceptable continuing education in
the amount of CEU's shown.

7.3.8.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2 passing of licensing examination (1.5 CEU's)

7.3.8.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

8.0 Admission to Practice, Licensure by Reciprocity (24 **Del.C.** § 2610)

Definition - The granting of a license to an applicant who meets all the requirements set forth in this section and 24 **Del.C.** § 2610.

8.1 The reciprocity applicant shall submit the documentation listed in rules 6.2 or 6.5.

8.2 An applicant shall be deemed to have satisfied this section upon evidence satisfactory to the Board that he/she has complied with the standards set forth below:

8.2.1 The Physical Therapist or Physical Therapist Assistant applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was originally licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those Physical Therapists and Physical Therapist Assistants having taken the examination prior to 1990.

8.2.2 All Physical Therapist/Physical Therapy Assistant reciprocity applicants shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was originally licensed/registered or from the FSBPT Score Transfer Service. From Physical Therapist applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

8.2.2.1 - Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

8.2.2.2 - other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

8.2.3 For the Athletic Trainer candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board.

9.0 Temporary Licensure (24 **Del.C.** § 2611)

9.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in Rule 6.2 and Rule 6.5, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from NATA stating the applicant's eligibility to take the NATA examination will be required. ~~All applicants may practice only under the direct supervision of a licensed Physical Therapist.~~ The license shall remain effective for 90 days from the date of approval. ~~It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written~~

~~application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.~~ Physical Therapist and Physical Therapist Assistant applicants may practice only under the direct supervision of a licensed Physical Therapist. Athletic Trainer applicants may practice only under the direct supervision of a licensed Athletic Trainer in a non-clinical setting. In a clinical setting, Athletic Trainer applicants may practice only under the direct supervision of a licensed Physical Therapist. A temporary license shall expire upon notice to the applicant of his/her failure to pass the license examination and may not be renewed. In all other cases, a temporary license may be renewed only once.

9.2 Applicants requesting reciprocity as a Physical Therapist, Physical Therapist Assistant, and Athletic Trainer. The Board may issue a temporary license to an applicant upon the applicant's submission of letters of good standing from all jurisdictions in which the applicant is or has ever been licensed. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

9.3 Applicants engaged in a special project, teaching assignment, or medical emergency as described in 24 **Del.C.** § 2611 (b) must submit letters of good standing from all jurisdictions in which the applicant is or has ever been licensed.

10.0 Foreign Trained Applicant for Licensure (24 **Del.C.** § 2606 (b))

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 - The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies:

International Educational Research Foundation, Inc.
P.O. Box 3665
Culver City, CA 90231
(Address change 2/1/01)

International Consultants of Delaware, Inc.
109 Barksdale Professional Center
Newark, DE 19711

Educational Credential Evaluators, Inc.
P.O. Box 92970
Milwaukee, WI 53202-0970

Foreign Credentialing Commission for Physical Therapists
P.O. Box 25827
Alexandria VA 22313-9998

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

11.0 Reactivation and Reinstatement (24 **Del.C.** § 2607)

11.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 - The Athletic Trainer working in a nonclinical setting shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 - At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the

Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application and provide proof of completion of 3.0 CEU's when reapplying under the provisions which govern reciprocity.

12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

12.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

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

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

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

as outlined in the agreement under the Voluntary Treatment Option.

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

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

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH

24 DE Admin. Code 3000

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

Order Adopting Rules And Regulations

AND NOW, this 12th day of April, 2002, in accordance with 29 Del. C. § 10118 and for the reasons stated hereinafter, the Board of Professional Counselors of Mental Health of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 Del. C. § 3006(a)(1), the Board proposed to revise its existing Rules and Regulations to delete the International Christian Institute Certification Board and the Commission on Rehabilitation Counselor Certification Board as national mental health specialty certifying organizations automatically acceptable to the Board for purposes of initial licensure and renewal of licenses. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware Register of Regulations dated January 1, 2002, and two Delaware newspapers of general circulation, in accordance with 29 Del. C. § 10115. The public hearing was held on February 1, 2002 at 3:30 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the February 1, 2002 hearing, the Board received no public comment.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to delete the International Christian Institute Certification Board and the Commission on Rehabilitation Counselor Certification Board as national mental health specialty certifying organizations that are automatically acceptable to the Board. The proposed amendments clarify that certifying organizations must meet certain criteria to be acceptable to the Board. Finally, the proposed amendments are necessary to clarify that those individuals that were licensed prior to the effective date of the proposed amendments may for purposes of renewal maintain certification or membership in the certifying organization that was acceptable to the Board at the time that they received their initial license.

3. The Board concludes that it has statutory authority to promulgate rules and regulations that implement and clarify

the Board's statutes pursuant to 24 Del. C. § 3006(a)(1).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 Del. C. Chapter 30.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, IT IS ORDERED, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations pursuant to 29 Del. C. § 10118(g).

By Order Of The Board Of Professional Counselors Of Mental Health

(As authenticated by a quorum of the Board)

James D. Wilson, Jr., President, Professional Member
Arnold J. Swygert, Vice President, Public Member
Joan T. McDonough, Secretary, Public Member
Dawn S. Brown, Public Member
Jean B. Gunnells, Professional Member
David M. Ciamaricone, Professional Member
Virginia Kurilla, Professional Member

1.0 Meetings and Elections

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

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

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

2.0 Licensure by Certification

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

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

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

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

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

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

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

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

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

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

2.4.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be

acceptable as a designated objective agent.

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

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

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

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

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

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

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

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

2.5.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

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

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

3.0 Licensure by Reciprocity

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

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

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

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

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

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

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

4.0 Licensure of Associate Counselors of Mental Health

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

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

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

5.0 Application and Fee, Affidavit and Time Limit

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

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

5.2 Affidavit - The applicant shall submit a signed,

notarized "Affidavit," affirming the following:

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

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

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

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

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

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

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

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

6.0 Renewal of Licensure

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

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

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

6.2.2 Continuing Education

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

6.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

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

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

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

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

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

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

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

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

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

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

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

7.0 Ethics

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

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

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

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

8.0 Return to Active Status

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

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

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

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

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

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

9.0 Disciplinary Proceedings and Hearings

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

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

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

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

9.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del. C*. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

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

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

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

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

9.2. Hearing procedures

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

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

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

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

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

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

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

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

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

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

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

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

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

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public

records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

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

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

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

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

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

DEPARTMENT OF EDUCATION

14 DE Admin. Code 101

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

Regulatory Implementing Order

101 Delaware Student Testing Program

I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 101 Delaware Student Testing Program. The amendment is necessary in order to add section 9.0 Invalidations and Special Exemptions to the Regulation. This section describes the conditions that must exist and procedures that must be followed to establish that a student score can be declared invalid or that a student can receive a special exemption from taking the test. Adjustments have been made to the language in sections 9.1, 9.1.1.1, 9.1.2.1, 9.1.2.1.1, 9.2, 9.2.1 and 9.2.3.1 to clarify the intent as suggested by the State Board of Education and by the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on February 26, 2002, 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 in order to add section 9.0 Invalidations and Special Exceptions to the regulation.

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., §151, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions of 14 Del. C., §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in SectionV. below.

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the Regulations of the Department of Education.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., §151, in open session at the said Board's regularly scheduled meeting on April 18, 2002. 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 18th day of April 2002.

Department Of Education
Valerie A. Woodruff, Secretary of Education
Approved this 18th day of April 2002.

State Board Of Education
Dr. Joseph A. Pika, President

Jean W. Allen, Vice President
Robert J. Gilsdorf
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

101 Delaware Student Testing Program

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

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

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

2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. Said levels are defined and shall be determined as follows:

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

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

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

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

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 Del. C. § 153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. The only other indicators of student performance that

may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 Del. C. 153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 Del. C. 153(a).

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

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

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

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

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

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

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

4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

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

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

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

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

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

5.0 Summer school programs for students in grades 3,5, and 8 as required pursuant to 14 *Del. C.* § 153.

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

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

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

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school

instruction. unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10th Grade Assessments Pursuant to 14 Del.C. § 152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent or Guardian Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent or legal guardian.

7.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the

findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/ guardian(s) shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the parent/guardian(s) may go to the local school district or charter school to view the test responses.

See 4 DE Reg. 464 9/1/00

See 5 DE Reg. 620 (9/1/01)

9.0 Invalidations and Special Exemptions

9.1 **[Invalidations for students in grades 3,5,8 and 10 for reading, writing and mathematics and grades 4,6,8 and 11 for science and social studies:]** Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for ~~**[one or more students**~~ **a student]**. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school buildingprincipal or designee shall notify the District Test Coordinator **[in writing]** within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score **[and such decision shall be final]**.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

~~**[9.1.2.1 If the Director of Assessment for the Department of Education determines that a student's test score is invalid for the entire DSTP or content area(s), whether as a result of intentional conduct or uncontrollable events, the student will be assigned a performance Level 1 (Well Below Standard) for the invalidated portions of the assessment and be subject to consequences pursuant to 14 *Del. Code* 153.**~~

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessement test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such

consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessement test score is invalid as a result of an event which is unforseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

~~**9.1.2.1.1 Students whose test scores are invalidated in whole or part shall retest at the next official testing opportunity.**~~

~~**9.2 Special Exemptions.**~~

~~**9.2.1 A special exemption may be available when a student's short term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.**~~

9.2 Special Exemptions for students in grades 3,5,8, and 10 for reading, writing and mathematics and grades 4,6,8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accomodations, or when an emergency arising before the start of the test prevents the student's participation.]

[~~9.2.2~~ 9.2.1] Special exemptions for students who are tested according to the Department of Education's *Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency* are also available as provided in the Guidelines.

[~~9.2.3~~ 9.2.2] Requests for special exemptions based on physical or mental condition.

[~~9.2.3.1~~ 9.2.2.1] Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

[~~9.2.3.2~~ 9.2.2.2] The District Test Coordinator shall submit a completed Request for Special Exemption Form to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

[~~9.2.3.2.1~~ 9.2.2.2.1] The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

[~~9.2.3.2.2~~ 9.2.2.2.2] The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

[~~9.2.4~~ 9.2.3] Request for special exemptions based on emergency.

[~~9.2.4.1~~ 9.2.3.1] Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

[~~9.2.4.2~~ 9.2.3.2] Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

[~~9.2.4.3~~ 9.2.3.3] The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

[~~9.2.4.3.1~~ 9.2.3.3.1] The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

[~~9.2.4.3.2~~ 9.2.3.3.2] The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

[~~9.2.4.3.3~~ 9.2.3.3.3] The Associate Secretary shall decide whether a request for a special

exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

~~[9.2.5~~ 9.2.4] Consequences of Special Exemptions.

~~[9.2.5.1~~ 9.2.4.1] Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

~~[9.2.5.2~~ 9.2.4.2] Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.

~~[9.2.5.3~~ 9.2.4.3] Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(c) (16 **Del.C.** §122(3)(c))

Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122 (3) c.

On December 1, 2001 (Volume 5, Issue 6), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code, Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 11, 2002, or be presented at a public hearing on January 8, 2002, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings Of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the December 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing Public Drinking Water Systems are adopted and shall become effective May 10, 2002, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
4.12.02

Summary Of Evidence

State Of Delaware Rules And Regulations Governing Public Drinking Water Systems

A public hearing were held on January 8, 2002, in the Department of Natural Resources and Environmental Control (DNREC) Auditorium, located on 89 Kings Highway, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed amendments to the Delaware Rules and Regulations Governing Public Drinking Water Systems. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Edward Hallock, Administrator of the Office of Drinking Water, Division of Public Health, made the agency's presentation. Attendees were encouraged to discuss and ask questions regarding the proposed amendments. The following agencies were represented during the public hearing and/or provided comments during the comment period:

- **U.S. Environmental Protection Agency (EPA) Region III**
- **DNREC's Division of Air and Waste Management**
- **DNREC's Division of Water Resources**
- **Artesian Water Company, Inc.**
- **DELEASI of Delaware**
- **Green Delaware, Inc.**
- **Inter Group Council of Sussex County**
- **Environmental Alliance**
- **DuPont**
- **Sen. Tom Carper's Office**
- **Davis, Bowen and Friedel**
- **Delaware Petroleum Council**
- **Sierra Club**
- **Equiva Services**
- **Wiesner Packaging Company**
- **Municipal Services Commission**

Comments and the DHSS (Agency) responses were as

follows:

- **Section 22.426On Consumer Confidence Reports it would be less confusing if DHSS used one unit of measure for contaminants (e.g. micrograms per liter)**

Agency Response: The U.S. Environmental Protection Agency requires the agency to adopt this table as is and will not approve the regulations without the conversion table as listed.

- **Section 22.426 The arsenic line on this table should be footnoted to reflect the standard will change to 0.01 mg/L on January 23, 2006. This is similar to what was done to section 22.601 and may prevent a future regulatory change.**

Agency Response: This table will be footnoted during the next round of regulatory changes slated for June 2002.

- **Section 22.427 The correct name for MTBE is "Methyl tert-butyl ether."**

***Agency Response*:** The regulation was amended to reflect the correct spelling.

- **Section 22.427 It would be good to see State of Delaware Maximum Contaminant Levels (MCLs) created for: Diedrin, DDE, DDT, and DDD, which are found in groundwater and are contained in the Division of Air and Waste Management's (DAWM), Hazardous Substance Cleanup Act (HSCA) program.**

***Agency Response*:** While the Department acknowledges the potential for additional contaminants (MCLs) to be listed, suggested contaminants will be further evaluated by the Environmental Health Evaluation Branch of the Division of Public Health for inclusion in the next round of regulatory changes. In this way, the public and industry will have appropriate time to provide input to proposed additions to the regulated contaminant list.

- **Methodologies used in the regulations are consistent with drinking water methods. However, they are limited in scope and some compounds on DAWM's HSCA TCL cannot be tested or detected by these methods.**

Agency Response: As required by the U.S. EPA, the Department follows drinking water analytical methods and recognizes the differences between DNREC and drinking water analytical methods.

- **The Regulation proposes an average concentration be taken to determine if an MCL exceedance exists. This is not consistent with the approach taken by DNREC under HSCA and could lead to inconsistent application by the Departments.**

Agency Response: The Department acknowledges the potential for application inconsistency, however, there is also an obligation for us to comply with the Federal Safe Drinking Water Act.

- **This document does not take into consideration cumulative risk. For example, if you have 9.8 ppm nitrates, and 4.9 ppb of PCE, the MCL's are not exceeded and the well system is in compliance. This is not consistent with HSCA.**

Agency Response: The Department will evaluate the HSCA cumulative risk method during the next regulatory amendment. This will allow for public and industry comment pursuant to Delaware's Administrative Procedures Act on such a proposal.

- **Section 22.602M.3. It would be good to understand the discretion referenced in this section better and define "sampling error" as it will be applied.**

Agency Response: The Department added an example of a typical sampling error to further clarify and simplify this subsection.

- **Section 22.602P. Why are the constituents limited to these compounds listed? DNREC knows of several well systems containing Volatile Organic Compounds (VOC's) that are not listed.**

Agency Response: VOC's are actually listed in Section 22.61 and are set by U.S. EPA. However, the Department may and does add non-EPA regulated VOC's (MTBE) to this list after appropriate research and evaluation of non-EPA regulated compounds before proposing to add them to this list/regulation.

- **Section 22.606D. Many laboratories have certification from another state agency. For example, New Jersey certification gives you Delaware certification-should this language be included in this section if this is the case?**

Agency Response: The language in this section of the regulation has been updated to reflect certification of laboratories from other approved organizations.

• **Section 22.606D. Describes laboratory approval for provisional status until January 1996. Is this still appropriate?**

Agency Response: The Department deleted outdated language used in this section of the regulation.

• **Section 22.601 BCEE (bis(2-chloroethyl)ether) is not listed. Is it DHSS's intention to make the interim standard for BCEE of 0.1 ug/L, a State MCL?**

Agency Response: No. The Department fully intends to further evaluate BCEE in drinking water to determine the best way to regulate this compound.

• **Section 22.10 The definition of "Uncovered Finished Water Storage Facility" is defined as any storage of finished water that is "open to the atmosphere." This definition should be modified to specifically exempt finished water storage facilities that are properly screened and vented.**

Agency Response: The Department acknowledges this oversite, thus modifications were made to the definition of "Uncovered Finished Water Storage Facility" that will exempt water towers and ground level storage tanks that are properly covered, screened and vented.

• **Section 22.206 The definition of "Right of Entry" should reflect that reasonable notice be given to the Public Water supplier prior to any sampling within its system, so that split samples can be taken. The opportunity to split samples with the regulatory agency will better ensure quality control of the analytical results. Additionally, it is imperative that a public water supplier that is subject to administrative penalties be able to take split samples in this instance.**

Agency Response: The Department has always encouraged and accommodated water suppliers who wish to split sample. Nothing in this definition or any other part of this regulation would prevent public water suppliers from split sampling.

• **Section 22.607 EPA has promulgated a number of minor revisions to the Lead and Copper rule. These revisions should be reflected in the proposed regulations.**

Agency Response: The Department acknowledges said revisions and agrees with this statement. To avoid going back to public hearing on these proposed regulations, the Department Lead and Copper rule will be appropriately amended and offered for public comment during the next round of regulatory updates.

• **Section 22.61 The Department is proposing a 0.01 mg/L Maximum Contaminant Level for the synthetic organic contaminant MTBE. Because there is no EPA MCL for this contaminant, we request that the scientific basis for this standard be made part of this record.**

Agency Response: The Department established this standard based on the experience and research conducted by the State Toxicologist. It is also in line with drinking water health guidance (standards) in numerous other states, including California. MTBE has been known to damage ground water supplies to the point where water sources are not usable for human consumption. A summary of research conducted is attached to the hearing officer record.

• **Section 22.805.C.2.a. & b.Does not provide for reports to the state if the system is in violation.**

Agency Response: The Department modified both subsections to provide for reporting system violations to the state.

• **In several places in the regulation the agency uses the term "primacy agency." Because the term is undefined it is suggested that "Division" or "State" be used instead (22.423.B.2; 22.423.H.3; 22.424.B.2 & 424.C.2; 22.425.C; 22.425.D).**

Agency Response: The Department changed "primacy agency" citations to "Division" to clarify our authority.

• **In several instances the agency refers to the Safe Drinking Water Act as authority for action. There should probably be a reference to the State Drinking Water Act (22.51 & 22.423G)**

Agency Response: The Department made a modification to section 22.423G to reflect State authority. It was determined that section 22.51 had appropriate wording and was not changed.

• **Section 22.601.A The Arsenic MCL is 0.01 mg/L, however the agency may want to consider an MCL of 0.010 mg/L.**

Agency Response: Because this would impact public water systems in Delaware, and would also be considered a substantive change requiring public input, the Department will consider the advantages of this sort of adjustment for the next proposed round of regulatory updates.

- **Section 22.411 Under this section it is the responsibility of the water supply owner to give public notice; however, under several other public notice provisions it is the owner or operator's responsibility (22.413 (B) & (C); 22.414 (A) & (D)).**

Agency Response: The Department deleted the terms "or operator" from these sections ultimately making the owner the responsible party.

- **The language at section 22.413C is not consistent with the language in 22.411. Additionally, the language is too open ended for water suppliers to know what requirement is placed upon them.**

Agency Response: After a review of Section 22.413C it was decided that this section was confusing and not necessary and was deleted. Section 22.411 was modified to clarify requirements for water suppliers.

- **Sections 22.431 and 22.432Contain incomplete lists of the records which must be maintained by the water supplier. Division record keeping requirements in section 22.432 are not required and can be deleted.**

Agency Response: In section 22.431, language was added to reflect complete all records water suppliers must maintain. The Division elects to maintain as records as setforth in section 22.432.

- **Section 22.417 Provisions in this section will not allow a public notice to occur within the 24-hour period.**

Agency Response: Added language to this section clarifying that water suppliers must issue a Tier 1 water notice within 24 hours.

- **Section 22.413E Health Effects Language used for Public Notices (PN) and Consumer Confidence Reports (CCR) is missing language for: Giardia, viruses, HPC, Legionella, and Cryptosporidium combined nitrate and nitrite.**

Agency Response: Added health effects language to this section as recommended.

- **Sections 22.413A Violations and PN tiering table is missing: MTBE, Aldicarb, Aldicarb sulfone and Aldifone sulfoxide.**

Agency Response: Added compounds to Section 22.431A as recommended.

- **Sections 22.426 and 22.427Tables are missing: Aldicarb, Aldicarb sulfone, Aldicarb sulfoxide.**

Agency Response: Added compounds to sections 22.426 and 22.427 as recommended.

- **Federal rules (40 CFR 141.31(d)) now require water systems to provide certification that the public notification provisions have been complied with, in addition to copies of all notices.**

Agency Response: Added language mandating that water suppliers provide PN certification as required by Federal rules.

- **Section 22.413B The notice to new billing units at this section mentions outstanding MCL, treatment technique and V & E violations but fails to include monitoring violations. Federal rule requires notice for <u>any</u> outstanding violation.**

Agency Response: Added monitoring violations to section 22.413B, as information that water suppliers must give to new billing units.

- **Section 22.424B.1 Includes language from original CCR rule which has been amended by the Arsenic rule. Recommend that the revised CCR language of 40 CRF 141.154(b) be included in this section.**

Agency Response: As recommended, CCR Language was revised to account for Arsenic rule in accordance with 40 CFR 141.154(b).

- **There is new additional health information required in the CCR when a water system has Disinfectant By-products (DBP) levels above 80 ppb but below the current MCL of 100 ppb (appeared in the M/DBP rule 141.154e).**

Agency Response: Incorporated new health effects language for the CCR regarding TTHMs and revised the MCL accordingly.

- **Section 22.426 TTHM revised MCL is missing from this section's table. Also, the MCLG is N/A, not 0.**

Agency Response: Added TTHM revised MCL and corrected MCLG as noted.

- **Section 22.426 Fluoride MCL needs to be revised in this table.**

Agency Response: Revised Fluoride MCL as recommended in table at section 22.426.

- **Section 22.423C Needs definitions of MRDL and MRDLG included.**

Agency Response: As recommended, added definition for MRDL and MRDLG to key for table section 22.426.

- **There was a general question about how to get the MTBE down in drinking water.**

Agency Response: The generally accepted method is to use granular activated carbon.

- **Will these regulations apply to private wells when you sell your home?**

Agency Response: These regulations only cover public drinking water systems which are defined under the Safe Drinking Water Act as those systems that serve 25 or more people at least 60 days or more a year.

- **How many public and private wells are impacted by MTBE?**

Agency Response: That type of information is not available at this point.

- **Where might information be found on private wells as far as MTBE contamination?**

Agency Response: Some information is available through testing that we have done and some information may be available through DNREC's under ground storage tank branch.

-
- **Are there any regulations that will be established as far as MTBE contamination of private wells?**

Agency Response: There are no regulations that specifically cover MTBE contamination of private wells. There is a legislative task force currently reviewing drinking water standards for public and private water systems.

- **How did you come up with the MTBE standard (MCL) of 10 ppb?**

Agency Response: The toxicology group within the Division of Public Health looked at information from other states. California, in particular did a lot of work on this and set their standard at 13 ppb. We also spoke with other states considering an MTBE standard and most are looking at the 10 ppb standard. We also reviewed the environmental impact of this compound to better understand how and at what rate MTBE seeps through the ground. Finally, after this research, our Toxicologist recommended a 10 ppb standard.

- **Toxicology versus potable water, MTBE supposedly makes your water taste very bad, so it's difficult. You wouldn't want to drink it if it got to 10 ppb. Is that being considered?**

Agency Response: This is a secondary standard (aesthetic) and EPA is looking at a secondary standard for MTBE. EPA is currently considering setting a secondary standard of 20-40 ppb for MTBE.

- **A lot of informational material, health effects language is being deleted from the regulation.**

Agency Response: EPA has amended the mandatory health effects language for public notification and consumer confidence reports. EPA is very strict on language that must be included in these reports. Some of the deleted language is incorporated by the Department in different sections of the regulations and will be located in different sections of those reports.

- **In the regulation it states the primary source of MTBE is discharge from petroleum refineries. This may an error, because it my understanding that the primary source for MTBE is leaking under ground storage tanks?**

Agency Response: The Department amended the appropriate sections of the regulation to reflect leaking under ground storage tanks.

- **It is my understanding that the Department did not consult the drinking water task force established by the House of Representatives before amending these regulations.**

Agency Response: The water quality task force was made aware of these proposed regulations.

- **I understand there is a proposal in here from EPA that allows point of entry or point of use treatment systems for correction of water quality contamination problems. It will be very difficult to assure the continued efficiency of a large number of systems if this is allowed.**

Agency Response: Although this type of treatment may not be very efficient for larger water systems with many service

connections, there are advantages to this type of treatment, especially for very small water systems.

- **I know Delaware has a site which is admitting over 60 pounds of Dioxin a year, which is a sizeable portion of the entire Dioxin inventory in the United States. Dioxin has primarily been contained in material which has been in landfills, used as a road base and otherwise spread around the state. I would like to know the likelihood of Dioxin contaminating drinking water and want to know how it is being addressed?**

Agency Response: The Department is concerned with contamination (Dioxin) of drinking water, this type of question requires the joint expertise of DNREC's Division of Air and Waste Management and DHSS's Division of Public Health, Environmental Health Evaluation branch. The Division of Public Health will look into this concern and report their findings. As always, DHSS will continue to work closely with DNREC to identify potential sources of drinking water contaminants.

- **General questions were asked about changing EPA lab testing standards for MTBE and how this may impact the Clean Air Act.**

Agency Response: The public health lab screens drinking water for volatile organic compounds (VOC). VOC scanning is done using a gas chromatography mass-spectrometer. The Clean Air Act falls under the Department of Natural Resources and Environmental Control and would be the appropriate agency to comment on these questions.

- **Is your organization capable of actually doing what California is doing, saying no more MTBE can be used in Delaware? Can you make a regulation to accomplish that?**

Agency Response: While the Department acknowledges MTBE as a regulated contaminant in public drinking water systems in Delaware, it has no authority to ban MTBE as a gasoline additive in Delaware.

There were numerous grammatical, formatting and citation corrections as a result of comments from industry, DNREC and the U.S. EPA. None of these corrections or the recommended changes herein are considered substantive in nature.

The public comment period was open from December 1, 2001 to February 8, 2002. The public comment period was extended till February 8, 2002, to accommodate an EPA request.

Verifying documents are attached to the Hearing Officer's record. The Delaware Attorney General's office and the Cabinet Secretary of DHSS have approved this regulation.

*** PLEASE NOTE THAT DUE TO THE LENGTH OF THE REGULATIONS GOVERNING PUBLIC DRINKING WATER SYSTEMS, THE FINAL FULL-TEXT VERSION IS NOT BEING RE-PRINTED HERE. THE FULL TEXT OF THE REGULATION IS AVAILABLE BY CONTACTING THE REGISTRAR OF REGULATIONS OR ON-LINE, AT THE GENERAL ASSEMBLY WEBSITE.**

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DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)

Regulations for Nursing Homes Admitting Pediatric Residents

Nature of the Proceedings:

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Nursing Homes Admitting Pediatric Residents. On February 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and received written comments in conjunction with public hearings held on March 4 and March 6, 2002.

Upon review of the comments received, DLTCRP has revised seven regulations which will be the subject of a further public hearing. The seven regulations withheld from publication as final regulations are Regulations 79.307, 79.403, 79.503, 79.507, 79.608, 79.701 and 79.1203.

The remaining proposed regulations are attached and are being promulgated as final regulations. A discussion of the comments received regarding those proposed regulations which are not included in the revised regulations is in the accompanying Summary of Evidence.

Findings of Fact:

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Nursing Homes Admitting Pediatric Residents are promulgated effective June 10, 2002.

Vincent P. Meconi, Secretary, DHSS, 4/12/02

Summary of Evidence:

Comments on the regulations to be promulgated as final regulations have been received and evaluated as follows:

One written comment stated that the regulations are underinclusive by defining the scope of facilities covered in Regulation 79.201 as "nursing facilities." While the commenter is correct that the statute is broader and refers to "nursing facilities and similar facilities," these regulations are only intended to cover nursing facilities inasmuch as no other type of facility can provide the level of services required by these regulations.

A comment suggested that specific reference to parents be added to several regulations. That suggestion has been incorporated into two of the regulations, 79.403 and 79.507, to be the subject of a further public hearing. However, in the other regulations, the reference to parents or family is either implicit or covered by the pertinent federal regulations.

A comment recommended different severability language in Regulation 79.1500. However, the language in the regulation is the language approved by the Justice Department and is being retained in its original form.

Finally, a comment noted the misspelling of the word "judgment" in Regulation 79.303. The correction of that misspelling is a non-substantive change which does not require a further public hearing, and the correct spelling appears in the final regulations attached.

Section 79.100 - Purpose

79.101 - As set forth in 16 Del. C., Chapter 11, Section 1101:

"…the primary purpose of the licensing and regulation of nursing facilities and similar facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents."

79.102 - Given that most nursing facilities and similar facilities provide services to adults who are elderly and/or physically disabled, children with special needs housed in these facilities require unique and carefully coordinated plans of pediatric care as well as developmentally appropriate, family-friendly environments.

79.103 - These regulations outline minimum acceptable levels of care and treatment for this population.

79.104 - A facility must be in compliance with all state and local laws and regulations applicable to facility personnel, provision of services and physical plant.

Section 79.200 - Authority and Applicability

79.201 - These regulations are adopted in implementation of 16 Del. C., Chapter 11 and are applicable to any licensed nursing facility which provides care or services to one or more persons under 18 years of age.

79.202 These regulations are intended to supplement, and not supplant, general regulations promulgated in conformity with 16 Del. C., Chapter 11 and other applicable laws.

Section 79.300 - Definitions

79.301 - "Adult Resident" - any person residing in the facility 18 years of age and older.

79.302 - "Care Plan" - a specific document that includes, but is not limited to, identified resident-based goals and defined action steps for providing appropriate care and treatment.

79.303 - "Certified Nursing Assistant " - an individual certified in accordance with 16 Del. C., Chapter 30A, under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the persons(s) to whom they are providing care.

79.304 "Department" - Department of Health and Social Services.

79.305 "Division" - Division of Long Term Care Residents Protection.

79.306 "Licensee" - the person or organization to whom a license is granted and who has full legal authority and responsibility for the governance and operation of a nursing home and/or similar facility.

79.307 **~~["Pediatric Resident" - any person residing in a long term care facility under 18 years of age and for whom there is a care plan including medical care, treatment and other related services.]~~**

79.308 "Primary Care Nurse (PCN)" - a Registered Nurse with at least a Bachelor's Degree in nursing with expertise in the care of children with special needs. The PCN is responsible for the day to day delivery of all services specified in the care plan.

79.309 "Primary Care Provider (PCP)" - a physician licensed to practice in the State of Delaware with expertise in the care of children with special needs designated to coordinate medical care on a day to day basis.

79.310 - "Social Worker" - an individual with a bachelor's degree in social work or in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology. An individual with a bachelor's degree in any other related field may qualify if the individual can demonstrate competency in coordinating care for medically fragile populations either through course work or experience. A minimum of one year of supervised experience is required in a long term care setting working directly with individuals and their families.

Section 79.400 - General Requirements

79.401 - Prior to admission, an interdisciplinary team of healthcare professionals shall evaluate the potential

pediatric resident to determine whether the licensee can meet the pediatric resident's needs. The care plan must contain documentation of the pre-admission assessment with approval by the primary care provider and parents/guardian with notification to the responsible state agencies.

79.402 The licensee shall admit and retain only children with special needs whose specific medical, nursing, and psychosocial needs the licensee can meet.

79.403 **[The licensee through licensed healthcare professionals shall ensure that an interdisciplinary team is formulated for each pediatric resident. The interdisciplinary team shall include, but not be limited to, the Primary Care Nurse, a representative from each pediatric service received by the pediatric resident, a nutritionist, a representative from the educational program, social worker and Primary Care Provider. The team shall meet quarterly or more frequently as needed and review and document the care plan and Individual Education Plan (IEP) formulated for the pediatric resident.]**

Section 79.500 - Facility Requirements

79.501- Pediatric residents shall only share rooms with other residents of the same sex.

79.502 The licensee must provide a tobacco-free environment for pediatric residents.

79.503 **[The licensee must provide and maintain all clinically indicated pediatric resuscitation equipment for children with special needs. Oxygen, suction equipment, and electrical outlets must be at each bedside with access to an emergency power system. A pediatric resuscitation cart shall be provided on each pediatric unit/wing and shall include: dosage appropriate emergency drugs, resuscitation equipment including a pediatric backboard for cardiopulmonary resuscitation (CPR), an easily readable list of drug dosages. A defibrillator designed for pediatric use with paddle sizes appropriate for pediatric residents and an easily readable chart indicating jolt dosages must be provided on each pediatric unit/wing. Equipment must be in good working order and must be checked daily by a registered nurse for proper functioning and must be documented as such.]**

79.504 - A nursing staff member certified in Pediatric Advanced Life Support (PALS) shall be present in the unit where pediatric residents reside and when pediatric residents are present.

79.505 - All nurses caring for pediatric residents must be certified in infant and pediatric cardiopulmonary resuscitation (CPR).

79.506 - An audio monitoring system shall be utilized whenever a pediatric resident is left unattended. The monitoring system must include heart rate and respiratory rate alarms audible to the nursing station. Any pediatric resident with a tracheotomy and/or ventilator must also be monitored by a pulse oximetry with alarms audible to the nursing station. The monitors must be used when pediatric residents are unsupervised and/or in their rooms for quiet time and nap/bed time. A plan to answer and respond to alarms must be in place and reviewed by all facility staff members.

79.507 **[The licensee through licensed healthcare professionals shall ensure that each pediatric resident is assessed by appropriate professionals for the need for assistive technology. The licensee shall ensure provision of appropriate assistive technology as prescribed as well as training in its use for staff members.]**

Section 79.600 - Medical Services

79.601 - The licensee through licensed healthcare professionals shall ensure the delivery of individualized, comprehensive services to each pediatric resident in conformity with a care plan.

79.602 - The PCN shall be the liaison among treating physicians.

79.603 - Pediatric services must be multidisciplinary and individualized. The services provided to each pediatric resident must be developmentally specific and appropriate to the age group being served.

79.604 - The licensee shall provide access to emergency medical care 24 hours a day, 7 days a week, as outlined in a written policy which is updated annually. The policy shall be reviewed with all staff members and mock situations performed and documented at least twice a year.

79.605 The licensee through licensed healthcare professionals shall ensure complete physical assessments are performed on pediatric residents by the PCP or a Primary Care Nurse on admission/readmission and monthly thereafter. Documentation of complete physical assessment must be included in the pediatric resident's chart for review by all medical and nursing staff.

79.606 The licensee through licensed healthcare professionals shall ensure that each pediatric resident receives immunizations in accordance with current national pediatric standards.

79.607 - The licensee through licensed healthcare professionals shall ensure timely medically necessary referrals to pediatric medical sub-specialists and pediatric surgical specialists as needed.

79.608 **[The licensee through licensed healthcare professionals shall ensure that each pediatric resident over the age of 3 years receives an annual dental exam and necessary treatment.]**

79.609 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an age-appropriate eye, hearing and vision exam according to current national pediatric standards.

Section 79.700 - Therapy Services

79.701 ~~[The licensee shall ensure that qualified individuals specializing in the healthcare of children with special needs (e.g., physical therapist, occupational therapist, speech therapist, nutritionist) plan and administer the treatments for each pediatric resident.]~~

79.702 - The licensee through licensed healthcare professionals shall ensure that the plan for therapy and progress toward goals is reviewed and revised at least quarterly and is incorporated into the care plan. The nature, duration, frequency, and provider of therapy services shall be specified in the care plan.

Section 79.800 - Nutritional Services

79.801 The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an individually appropriate care plan that addresses the nutritional needs of that resident including the recommended daily allowance (RDA) of vitamins and minerals according to current national pediatric standards.

79.802 The licensee through licensed healthcare professionals shall ensure that infants and children are held during oral feeding as needed.

79.803 The licensee through licensed healthcare professionals shall consult with the PCP regarding the introduction of solid foods and the pediatric resident's progress in advancing to table foods.

79.804 The licensee through licensed healthcare professionals shall ensure each pediatric resident is meeting his/her optimal developmental potential regarding eating habits/eating techniques.

79.805 The licensee through licensed healthcare professionals and support staff shall assist pediatric residents to convene in a common dining area and partake in social gatherings around meal times, including children who are fed by tube.

79.806 The licensee shall ensure proper documentation of meal intake every shift.

Section 79.900 - Nursing Services

79.901 - The licensee shall ensure that at least one registered nurse is present on every shift. That nurse must have at least one year of previous employment in a pediatric setting. This nurse may be the Primary Care Nurse (PCN).

79.902 The licensee through licensed healthcare professionals shall ensure that a sufficient number of nursing staff are assigned to the pediatric care unit to provide care in accordance with each pediatric resident's care plan and to meet each pediatric resident's needs. The licensee shall provide sufficient nursing and support staff so that each pediatric resident receives daily interaction from a variety of staff members. Interaction includes, but is not limited to, frequent conversation, play and holding/cuddling of pediatric residents to provide daily stimulation.

79.903 The licensee shall ensure that all pediatric nursing procedures are written in a policy and procedure manual. The manual must be accessible to all staff members caring for pediatric residents. Each individual policy must be reviewed and updated at least annually.

79.904 - In addition to the facility standard orientation, the licensee shall ensure that upon hiring, all pediatric nursing and support staff complete an orientation to the pediatric unit/wing which is documented in the staff members' personnel files.

79.905 - The licensee shall ensure that each nursing and support staff member providing care to pediatric residents receives training and demonstrates competence prior to performing any specialized skill or procedure on a pediatric resident. Written evidence of training and demonstration of competence must be included in each nursing and support staff member's personnel file.

79.906 - The licensee through licensed healthcare professionals and support staff shall ensure that mouth care, skin care, passive range of motion, hygiene and other dependent care activities are performed as specified in the care plan.

Section 79.1000 - Educational Services

79.1001 - The licensee in coordination with appropriate educational professionals shall ensure that each pediatric resident eligible for services under the Individuals with Disabilities Education Act (IDEA) is offered such services in conformity with 14 Del.C., Chapter 31 and 16 Del. C., Chapter 2, Subchapter II, and any regulations implemented under those laws.

79.1002 The licensee shall maximize the coordination of each pediatric resident's care plan with any Individual Education Plan (IEP) or Individual Family Service Plan (IFSP) to ensure consistency and promotion of the pediatric resident's optimal benefit. In implementation of this duty, the PCN and Social Worker shall collaborate with responsible schools or school districts in development and revision of care plans, IEPs, and IFSPs.

Section 79.1100 - Family Services

79.1101 - The Social Worker and other involved staff members shall promote positive family interaction and provide comprehensive instruction in providing care, as needed. The licensee shall have written guidelines for:

- family visits to the facility and flexibility in accommodating such visits,
- the pediatric resident's visits to the home setting,
- telephone contacts between the pediatric resident and the family,
- the provision of privacy between the pediatric resident and the family,
- the inclusion of the family in planning of care.

79.1102 The Social Worker and other involved staff members shall ensure that family support services are provided which include, but are not limited to,

transportation, health education, counseling/support groups, home visiting, and coordination of care. The provision of quality services shall be family-based, community-based and culturally appropriate.

79.1103 The Social Worker shall provide assistance to families to obtain services including Social Security, Medicaid, and other public/private assistance programs.

79.1104 The licensee through licensed healthcare professionals shall facilitate discharge planning and coordination of outside resources. The licensee shall encourage the option of discharging the pediatric resident to the home if resources are available and the family is willing.

Section 79.1200 - Miscellaneous Services

79.1201 - The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.

79.1202 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.

79.1203 ~~[The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:~~

~~o neurosensory,~~
~~o fine motor development,~~
~~o gross motor development,~~
~~o social/emotional,~~
~~o speech/language/communication.]~~

79.1204 - The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.

79.1205 - The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.

79.1206 - The licensee though the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to participate in group activities.

79.1207 - The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.

79.1208 - The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.

79.1209 - A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

Section 79.1300 - Resuscitation Orders

79.1301 - Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.

79.1302 - The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

Section 79.1400 - Waiver

79.1401 - Waivers may be granted by the Division for good cause.

Section 79.1500 - Severability

79.1501 - Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANGEMENT

AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapter 60
(7 **Del.C.** Ch. 60)

Secretary's Order No.: 2002-A-0027

Proposed Amendment to Subpart "B" of the State of Delaware Regulation No. 38: Emission Standards for Hazardous Air Pollutants For Source Categories

Date of Issuance: April 12, 2002
Effective Date of the Amendment: May 11, 2002

I. Background

On Thursday, March 21, 2002, the Department of Natural Resources and Environmental Control, Air Quality Management Section held a public hearing in the Air Quality Management Office in the Priscilla Building, 156 S. State Street, in Dover, Delaware, in order to receive comment on

the Department's proposed amendment to Subpart B of Regulation 38, "Emission Standards for Hazardous Air Pollutants for Source Categories". The proposed amendment will affect certain owners of major hazardous air pollutants (HAPs) sources. Affected HAP sources are those in source categories for which the EPA Administrator failed to promulgate the scheduled maximum achievable control technology (MACT) standards by May 15, 2002.

This proposed amendment would expand Subpart B of Regulation 38 by incorporating requirements addressing Section 112(j) of the Clean Air Act. Furthermore, this amendment to Subpart B "Requirements for Control Technology Determinations for Major Sources" provides the necessary actions that affected owners or operators must follow to obtain a final and legally effective case-by-case MACT determination through their Regulation 30 operating permit. The proposed amendment also provides the basis by which the Department shall review and issue these case-by-case MACT determinations.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated April 11, 2002, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated April 11, 2002 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that Subpart "B" of the State of Delaware's Regulation No. 38 be amended in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to Subpart "B" of Delaware's Regulation No. 38 will further the policies and purposes of 7 Del. C. Chapter 60, and will also permit the State of Delaware to be in compliance with the EPA's Federal Regulations with respect to Section 112(j) of the Clean Air Act, which requires States to develop and issue equivalent MACT emission limitations whenever the EPA Administrator fails to promulgate a MACT emission standard for a source category within 18 months of its scheduled promulgation date, which, in this instance, is May 15, 2002.

Nicholas A. DiPasquale, Secretary

Regulation No. 38
Emission Standards For Hazardous
Air Pollutants For Source Categories

~~4/22/98~~ 5/11/02

Subpart B Requirements for Case-By-Case Control Technology Determinations for Major Sources

5/11/02

Overview Of Subpart B

Subpart B of Regulation No. 38 consists of two separate sets of requirements. One set of requirements, which are included in Sections 63.40 through 44, implement the section 112(g)(2)(B) provisions of the Clean Air Act. These requirements apply to owners or operators who construct or reconstruct a major source of hazardous air pollutants after June 29, 1998. The Department adopted these requirements into Regulation No. 38 in April 1998.

The other set of requirements, which are included Sections 63.50 through 56, implement the section 112(j) provisions of the Clean Air Act. These requirements apply to owners or operators of any collection of equipment defined in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline and the collection of equipment is located at a source that is subject to Regulation 30.

Sections 63.45 through 49 of this subpart have been reserved.

4/22/98

Section 112(g)(2)(B) Requirements

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 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.

(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.

(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) 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".

(f) "Administrator" in the definition of Available information found in Section 63.41 shall be replaced with "Administrator or Department."

(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".

(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);".

(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;".

(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 ".

(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 Regulation 30 permit for the affected facility or will be incorporated into such permit upon issuance or revision."

(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."

(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 --".

(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 deleted.

(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."

(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)."

(q) The definition of Notice of MACT Approval found in Section 63.41 shall be deleted.

(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."

(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]."

(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: ".

(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) "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".

(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."

(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."

(y) Paragraph 63.43(c)(1) shall be replaced with the following language: "[Reserved]."

(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 --".

(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".

(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 and the permitting authority may grant an extension which shall not exceed an additional 12 months."

(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."

(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."

(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:".

(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."

(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:".

(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."

(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:".

(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]."

(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]."

(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]."

(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."

(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."

(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."

(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."

(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."

(rr) The phrase "under any of the review options available" in paragraph 63.44(a) shall be deleted.

(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."

Secs. 63.45 through 49 [Reserved].

5/11/02

Section 112(j) Provisions

Sec. 63.50 Applicability.

(a) General applicability.

(1) The requirements of Secs. 63.50 through 56 of this subpart implement section 112(j) of the Act.

(2) The requirements of Secs. 63.50 through 56 of this subpart apply to owners or operators of affected 112(j) sources that are located at a major source that is subject to Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(3) The requirements of Secs. 63.50 through 56 of this subpart do not apply to research or laboratory activities as defined in Sec. 63.51 of this subpart.

(b) Relationship to other State and Federal requirements.

The requirements of Secs. 63.50 through 56 of this subpart are additional to all other applicable State and Federal requirements.

Sec. 63.51 Definitions.

Terms used in Secs. 63.50 through 56 of this subpart that are not defined in this section have the meaning given to them in the Act or in subpart A of this regulation.

Affected 112(j) source means the collection of equipment, activities or both within a single contiguous area and under common control that is in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under Secs. 63.50 through 56 of this subpart, any information contained in the following information sources as of issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart:

(1) A relevant proposed regulation, including all supporting information.

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed according to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS) including information in the MACT database.

(6) Any additional information that can be expeditiously provided by the Administrator or Department.

(7) Any information provided by applicants in an application for a permit, permit modification or administrative amendment according to the requirements of Secs. 63.50 through 56 of this subpart.

(8) Any additional relevant information provided by the applicant or others prior to or during the public comment period for a final and legally effective case-by-case MACT determination for an affected or a new affected 112(j) source.

Control technology means measures, processes, methods, systems or techniques to limit the emission of hazardous air pollutants which:

(1) Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice or operational standards; or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Equivalent emission limitation means an emission limitation, established under this subpart, which is equivalent to the MACT standard that the EPA would have promulgated under section 112(d) or (h) of the Act, had they done so by the section 112(j) deadline.

Existing source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, reflecting the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reductions and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies. These requirements shall be based upon available information and shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Department and/or Administrator has emissions information), excluding those sources that have, within 18 months before the Department issues a final and legally effective MACT determination under this subpart, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category, for categories of stationary sources with 30 or more sources, or

(ii) The average emission limitation achieved by the best performing five sources (for which the Department and/or Administrator has emissions information) in the category, for categories with fewer than 30 sources.

(2) For new sources, the emission limitation achieved in practice by the best controlled source in the section 112(c) source category, where such sources is equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected 112(j) source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected 112(j) source.

New affected 112(j) source means the collection of equipment, activities or both, that if constructed after the issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart, is subject to the applicable new source MACT requirements. According to paragraph 63.52(f)(3)(i) of this subpart, each permit shall define the term "new affected 112(j) source," which will be the same as the "affected 112(j) source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

New source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, which shall be based upon available information and shall not be less stringent than the MACT floor and which reflects the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies.

Research or laboratory activities means activities whose primary purpose is to conduct research and

development into new processes and products; where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed according to section 112(c)(7) of the Act.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under 40 CFR part 63, except that for all major sources listed in those source categories scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996 and for all major sources listed in those source categories scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Sec. 63.52 Approval process for new and existing affected 112(j) sources.

(a) Sources that are major affected 112(j) sources on the section 112(j) deadline.

(1) Except as provided for in 63.52(a)(2), the owner or operator of any source that is a major affected 112(j) source on the section 112(j) deadline shall comply with the following.

(i) Submit to the Department by the section 112(j) deadline:

(A) A Part 1 MACT application according to paragraph 63.53(a) of this subpart or

(B) If desired, a request for an applicability determination by the Department of whether a source is a major affected 112(j) source.

(ii) Submit to the Department a Part 2 MACT application according to paragraph 63.53(b) of this subpart not later than 6 months following:

(A) The submittal of the Part 1 MACT application or

(B) The receipt of the Department's positive applicability determination according to paragraph (d)(1) of this section.

(iii) If desired, include with the Part 2 MACT application submitted according to paragraph (a)(1)(ii) of this section, a Part 3 MACT application according to paragraph 63.53(c) of this subpart.

(2) The owner or operator of any source that has received a final and legally effective case-by-case MACT determination under Section 112(g) according to Sec. 63.43 of this subpart on or before the section 112(j) deadline shall submit a Part 1 MACT application to the Department by the section 112(j) deadline.

(b) Sources that become major affected 112(j) sources after the section 112(j) deadline and that do not have a permit addressing the section 112(j) requirements.

(1) The owner or operator of any source shall comply with the paragraphs (b)(2) and (3) of this section, when section 112(g) requirements are not invoked and when that source would become a major affected 112(j) source due to:

(i) Construction, reconstruction or modification;

(ii) Relaxation of any state or federally enforceable permit limitation; or

(iii) The Department, under subpart A of this regulation, or the Administrator, under section 112(a)(1) of the Act, establishes a lesser quantity emission threshold that results in an area affected 112(j) source becoming a major affected 112(j) source.

(2) The owner or operator of any source identified in paragraph (b)(1) or (c)(2)(i) of this section shall submit the following to the Department:

(i) Part 1, Part 2 and Part 3 MACT applications according to paragraphs 63.53(a) through (c) of this subpart.

(ii) One of the following requests, as appropriate.

(A) A request that any associated Regulation 2 construction permit be processed according to paragraph 11.2(j) of Regulation 2.

(B) A request that the relaxation of any existing permit limitation specified in a Regulation 30 permit be processed as a significant permit modification.

(C) A request that the relaxation of any existing permit limitation specified in a Regulation 2 operating permit, where there is an associated pending initial Regulation 30 permit, be processed according to paragraph 11.2(j) of Regulation 2.

(3) Where the relaxation of any existing permit limitation specified in a Regulation 2 operating permit is requested, and there is not an associated Regulation 30 or pending initial Regulation 30 permit, operation as a major affected 112(j) source shall not commence until a Regulation 30 permit that addresses the section 112(j) requirements is issued by the Department.

(4) The owner or operator of any source that would become a major affected 112(j) source due to construction or reconstruction and section 112(g) requirements are invoked shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(c) Sources that have a permit addressing the section 112(j) requirements.

The requirements of paragraphs (c)(1) and (2) of this section apply to major affected 112(j) sources that have a permit addressing the section 112(j) requirements according to Secs. 63.50 through 56 of this subpart, but where changes to equipment, activities or both, subsequently, occur at the source.

(1) If the existing permit already provides the

appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, then that source shall comply with the applicable new source MACT requirements, and the section 112(j) requirements are thus satisfied.

(2) If the existing permit does not provide the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, the owner or operator shall comply with paragraph (c)(2)(i) or (ii) of this section, whichever appropriate.

(i) If section 112(g) requirements are not invoked, the owner or operator of that source shall comply with the provisions of paragraph (b)(2) of this section.

(ii) If section 112(g) requirements are invoked, the owner or operator of that source shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(d) Applicability and equivalency determinations.

(1) The Department shall review any request for an applicability determination when requested to do so according to paragraph (a)(1)(i)(B) of this section. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(ii) and (iii) of this section. If the Department's applicability determination is negative, no further action by the owner or operator is necessary.

(2) For any Part 1 application received pursuant to paragraph (a)(2) of this section, the Department shall review the final and legally effective case-by-case MACT determination approved according to Sec. 63.43 of this subpart. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable . If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are not substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall impose the requirements specified in paragraph (f)(3) of this section by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable.

(3) In issuing any final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart after the section 112(j) deadline (i.e., according to paragraph (b)(4) or (c)(2)(ii) of this section), the Department shall specify in that determination that the associated emission limitations effectuate both section 112(g) and section 112(j) requirements.

(e) Completion determination and application shield.

(1) Within 60 days of the receipt of the Part 2 and/or Part 3 MACT application(s), the Department shall notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 and/or Part 3 MACT application(s) shall be deemed complete unless the Department notifies the owner or operator in writing within 60 days of the submittal that the application is incomplete.

(2) Following submittal of any application, the Department may request additional information from the owner or operator. The owner or operator shall respond to such requests in a timely manner.

(3) If the owner or operator has submitted **[a]** timely and complete application**[(s)]** as required by this section, any failure to have a Regulation 30 permit addressing the section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once **[a]** complete application**[(s) are ~~is~~]** submitted, the owner or operator shall not be in violation of the requirement to have a Regulation 30 permit addressing the section 112(j) requirements.

(f) Permit issuance and content.

(1) For each Part 2 application received according to paragraph (a) of this section, the Department shall reopen the source's Regulation 30 permit for cause according to the requirements of Regulation 30 and shall impose the requirements in paragraph (f)(3) of this section, as appropriate, through the Regulation 30 permit. If the Department has not yet issued a Regulation 30 permit, the Department shall revise the applicable Regulation 2 operating permit(s) using the procedures in paragraphs 12.4 through 12.6 of Regulation 2.

(2) For each Part 2 application received according to paragraph (b) or (c) of this section, the Department shall issue a Regulation 2 construction or operating permit using the procedures of paragraph 11.2(j) of Regulation 2, shall reopen the source's Regulation 30 permit for cause, shall revise the source's Regulation 30 permit as a significant permit revision or shall issue a Regulation 30 permit, as applicable, to impose the requirements in paragraph (f)(3) of this section, as appropriate**[~~:~~ .]**

(3) Permit requirements for affected 112(j) sources.

(i) Identification of the affected 112(j) source and the new affected 112(j) source.

(ii) An equivalent emission limitation established by the Department that reflects existing source MACT requirements, for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or

work practices are installed, maintained and operated properly.

(iii) An equivalent emission limitation established by the Department that reflects new source MACT requirements for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iv) In lieu of paragraphs (f)(ii) and (f)(iii) of this section, any specific design, equipment, work practice or operational standard or combination thereof, when the Administrator or Department determines that hazardous air pollutant cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(v) The appropriate provisions of subpart A of this regulation and the information specified in paragraphs (f)(3)(v)(A) through (C) of this section.

(A) Any additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(B) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established according to Regulation 30.

(C) Compliance dates by which the owner or operator shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(I) The owner or operator of a major affected 112(j) source subject to paragraphs (a), (b) or (c)(2) of this section shall comply with existing source MACT requirements by the date established in the source's Regulation 30 or Regulation 2 permit, as applicable. The compliance date shall not be later than 3 years after the issuance of the permit for that source, except where the Department issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act or unless otherwise specified in section 112(i).

(II) The owner or operator of a new affected 112(j) source subject to paragraph (c)(1) of this section shall comply with new source MACT requirements immediately upon startup of the new affected 112(j) source.

(g) Permit issuance dates.

[The Department shall issue all permits that address the requirements of this subpart in acordance with the requirements of Regulation 2,25, and/or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution", as is applicable.]

(1) Except as specified in paragraph (g)(2) of this section, the Department shall issue a Regulation 30 or Regulation 2 permit, as applicable, addressing the requirements of this subpart within 24 months of the submittal of the Part 1 MACT application.

(2) The Department shall issue a Regulation 30 or Regulation 2 permit, as applicable, addressing the requirements of this subpart within 18 months of receipt of the complete Part 2 and/or Part 3 MACT application(s) from the owner or operator of an affected 112(j) source receiving a positive applicability determination or a negative equivalency determination under paragraph (d)(2) of this section.

(h) MACT emission limitations.

(1) Owners or operators of affected 112(j) sources subject to paragraph (a), (b) or (c)(2) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to affected 112(j) sources, including the compliance date for affected 112(j) sources established in paragraph (f)(3)(v)(C)(I) of this section.

(2) Owners or operators of new affected 112(j) sources subject to paragraph (c)(1) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to new affected 112(j) sources, including the compliance date for new affected 112(j) sources established in paragraph (f)(3)(v)(C)(II) of this section.

Sec. 63.53 Application content for case-by-case MACT determinations.

(a) Part 1 MACT Application.

The Part 1 application for a MACT determination shall contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of sources belonging to the relevant source category.

(4) An identification of any affected 112(j) sources for which an application has been made for a final and legally effective case-by-case MACT determination under section 112(g) according to Secs. 63.40 through 44 of this subpart.

(b) Part 2 MACT Application.

The Part 2 application for a MACT determination shall contain the information in paragraphs (b)(1) through (5) of this section.

(1) For an affected 112(j) source subject to construction, reconstruction or modification, the expected commencement date of installation, the expected completion date of installation and the anticipated date of startup of the

affected 112(j) source.

(2) The hazardous air pollutants emitted by each affected 112(j) source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected 112(j) source.

(3) Any existing Federal, State or local limitations or requirements applicable to the affected 112(j) source.

(4) For each piece of equipment, activity or source, an identification of control technology in place.

(5) Information relevant to establishing the MACT floors.

(c) Part 3 MACT Application.

The Part 3 application for a MACT determination shall contain the information in paragraphs (c)(1) through (3) of this section.

(1) Recommended MACT floors, an emission standard or emission limitation that is equivalent to existing source MACT requirements and an emission standard or emission limitation that is equivalent to new source MACT requirements for the affected 112(j) source, and supporting information consistent with paragraph 63.52(f) of this subpart. The owner or operator may recommend a specific design, equipment, work practice, operational standard or combination thereof, as an emission limitation.

(2) Proposed control technology that, if properly operated and maintained, will meet, at minimum, the existing source and new source MACT requirements, including identification of the affected 112(j) sources to which the control technology shall be applied.

(3) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

Sec. 63.54 Pre-construction review procedures for affected 112(j) sources.

The owner or operator who constructs, reconstructs or modifies an affected 112(j) source after the section 112(j) deadline shall follow the procedures established under Regulations 2, 25 and/or 30 before commencing construction, reconstruction, or modification of the affected 112(j) source.

Sec. 63.55 Maximum achievable control technology (MACT) determinations for affected 112(j) sources subject to case-by-case determination of equivalent emission limitations.

(a) Determination of case-by-case MACT requirements.

The Department shall issue final and legally effective case-by-case MACT determinations for affected 112(j) and new affected 112(j) sources that are consistent with the existing source MACT and the new source MACT requirements, as defined in Sec. 63.51 of this subpart.

(b) Reporting to the Administrator.

The owner or operator shall submit copies of the Part 1, Part 2 and Part 3 MACT applications to the Administrator at the same time these applications are submitted to the Department.

Sec. 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source before the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Regulation 30 permit shall contain the promulgated standard rather than the emission limitation determined under Sec. 63.52 of this subpart, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source on or after the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Department shall incorporate requirements of that standard in the Regulation 30 permit upon its next renewal. The Department shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the issuance of the final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart, the Department is not required to change the emission limitation in the permit to reflect the promulgated standard if the Department determines that the level of control required in that prior case-by-case MACT determinations is substantially as effective as that required by the promulgated standard according to Sec. 63.1(e) of subpart A **[of this regulation]**.

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is

applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determinations is issued according to paragraph 63.55(a) of this subpart and the level of control required by the promulgated emission standard is less stringent than the level of control required by that prior case-by-case MACT determination, the Department **~~[shall not]~~** **[may, but is not required to]** incorporate any less stringent emission limitation of the promulgated standard in the Regulation 30 permit applicable to such source(s) and shall consider any more stringent provisions of that prior case-by-case MACT determination to be applicable legal requirements when issuing or revising such a Regulation 30 permit.

DIVISION OF FISH & WILDLIFE

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

Order No. 2002-f-0026
Order

Summary Of Evidence And Information

Pursuant to due notice 5 DE REG, 1679-1680 (March 1, 2002), the Department of Natural Resources and Environmental Control proposed amendments to oyster harvesting regulations to cover the harvest season, the harvestable amount of oysters and areas where oysters may be landed in 2002. It also proposed to make it illegal to take crabs from fish pots because of recreational crabbers using fish pots to take crabs in addition to their allowable two crab pots.

A public workshop was held on February 11, 2002 and a public hearing was held on March 27, 2002 on proposed shellfish regulations.

Findings Of Fact

- § 2106, 7 Del. C. authorizes the Department to adopt shellfish regulations pertaining to the harvest of oysters from the State's natural oyster beds.
- The oyster harvest season needs to be expanded from the current two month season that was implemented in 2001.
- Increasing the authorized oyster landings sites from four to five will enable at least one fisherman to access a private dock at Flemings Landing. This increase will not inhibit or negatively impact the ability of enforcement agents to monitor landings.
- Requiring individuals to notify the Department 30 days in advance of the opening date for the oyster season will provide adequate time for determining annual individual allocations for each fishery.
- Requiring the harvest fee to be paid ten days in advance of the opening date of the oyster season will insure that adequate time exists to distribute harvest tags and collect harvest fees.
- Prohibiting the harvest of blue crabs in fish pots will address a loop hole in the current legislation that is allowing individuals to exceed the two pot limit currently imposed on crab harvesters in Delaware's Inland Bays.

Conclusions

- The oyster harvest season should be extended to allow harvesting in the spring, fall and early winter of 2002. By expanding the season into the spring, harvesters will have the opportunity to collect oysters early in the season before losses associated with high levels of disease could significantly diminish stock levels. A fall and early winter season will enable harvesters to take advantage of generally better market conditions and also provide access to the resource during a time of the year when many commercial fish and shellfish species are not available for harvesting.
- Increasing the number of authorized landing sites for oysters from four to five will not inhibit the ability of enforcement agents to monitor the harvest and insure that tags are attached to each bushel of oysters landed. By adding Flemings Landing to the current list of authorized landing sites, at least one harvester will benefit from being able to land his harvest at his own dock.
- In order for Division of Fish and Wildlife staff to be able to determine the number of participants in the oyster fishery and subsequently divide the number of participants into the quota for allocation purposes a thirty day lead time is necessary prior to the start of the season. The administrative burden associated with allocating the oyster quota to all qualified individuals who wish to participate requires a thirty day advanced sign up period, prior to the start of the season, to insure that the process can be completed accurately and effectively.
- Advanced payment of harvest fees are an integral part of the oyster management program and are designed to discourage individuals from tying up quota for speculative purposes. Under the advanced payment program it is anticipated that only those individuals that are serious about participating in the fishery will purchase allocation prior to the start of the harvest season. A ten-day deadline prior to the start of the season will help alleviate the administrative burden of distributing tags and collecting fees by essentially eliminating any last minute rush by harvesters just prior to the start of the season.

• By prohibiting the harvest of blue crabs in fish pots Departmental enforcement agents will be better able to enforce the pot limit that is currently imposed on recreational crabbers in Delaware's inland bays. If an individual is observed removing and keeping crabs from more than two crab pots then enforcement action can be taken without concern for any complicating arguments relative to what type of pot is being fished.

Recommendations

• The Department should amend Shellfish Regulation S-63 OYSTER HARVESTING SEASON to reflect an open harvesting season that begins on May 10, 2002 and runs through June 29, 2002 and reopens again on September 2, 2002 and runs through December 31, 2002.

• The Department should amend Shellfish Regulation S-65 OYSTER LANDING AREAS in order to add Flemings Landing to the list of authorized sites where oysters can be landed.

• The Department should amend Shellfish Regulation S-71 (2) to require that any qualified individual that plans on participating in the oyster fishery must notify the Department in writing at least 30 days prior to the start of the season.

• The Department should amend Shellfish Regulation S-71 (3) to require that individuals must pay the oyster harvest fee at least 10 days prior to the opening date of the oyster season. By requiring advanced payment on quota allocation the Department is minimizing the chance that individuals will obtain allocation for speculative purposes thus denying allocation to those individuals who do depend on oyster harvesting as part of their livelihood.

• The Department should promulgate Shellfish Regulation S-32 ILLEGAL HARVEST OF CRABS to address a current loop hole in the statute that allows individuals to circumvent the crab pot limit of 2 pots imposed on all individuals that crab in Delaware's inland bays. Adoption of this regulation will prevent individuals from setting fish pots, which are not limited in number, for the purpose of harvesting blue crabs.

Order

It is hereby ordered, this 11th day of April, in the year 2002, that a new Shellfish Regulation No. S-32 and amendments to Shellfish Regulation Nos. S-63, S-65, S-71 and S-75, copies of which are attached hereto, are adopted pursuant to § 1902, 7 Del. C. and § 2106, 7 Del. C. and are supported by the Department's findings of fact from evidence and testimony received. This Order shall be effective May 10, 2002.

Nicholas A. DiPasquale, Department of Natural Resources and Environmental Control

Final Shellfish Regulation Pertaining To The Unlawful Harvest Of Crabs With Fish Pots

S-32 Fish Pots – Illegal Harvest Of Crabs

It shall be unlawful to harvest crabs ~~**[in]**~~**[with]** a fish pot, fish trap or minnow trap as defined in §906(26), 7 Del.C.

Final Amendments To Shellfish Regulations Pertaining To Oysters

S-63 Oyster Harvesting Seasons

It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during the ~~period~~ season**[s]** beginning at sunrise on ~~November 1, 2001 and ending at sunset on December 31, 2001~~ **~~[Note: One of the following; September 1 and ending at sunrise on April 30 or July 1 and ending at sunset on December 31 or July 1 and ending at sunset on June 30.~~ May 10, 2002 and ending at sunset on June 29, 2002 and beginning at sunrise on September 2, 2002 and ending at sunset on December 31, 2002.]**

S-65 Oyster Landing Areas

(a) It shall be unlawful for any person to land oysters taken for direct sale from the State's natural oyster beds at any site other than in the town of Leipsic, Flemings Landing, Port Mahon, Bowers Beach or the Cedar Creek areas.

(b) 'To Land' shall mean to bring to shore.

S-67 Oyster Harvesting Gear

(a) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any gear other than an oyster dredge that measures no more than 52 inches in length along the tooth bar.

(b) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with an oyster dredge with teeth measuring more than four (4) inches in length.

(c) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with more than two oyster dredges overboard at the same time.

(d) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any dredge that is attached to another dredge.

S-69 Oyster Minimum Size Limit

(a) It shall be unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 inches between the

two most distant points on the edges of said oyster's shell.

S-71 Oyster Harvesting Control Dates

(a) ~~The Department shall consider a~~ A person ~~eligible~~ is authorized to participate in the ~~2001~~ seasonal harvest of oysters for direct sale from the State's natural oyster beds provided said person complies with the following criteria:

1. He/she has ~~obtained~~ a valid oyster harvesting license and meets the eligibility requirements in §2103, 7 Del. C.

2. He/she has indicated in writing to the Department no later than 4:30 PM on ~~October 22, 2001~~ a date at least 30 days prior to the opening date of the oyster harvesting season that he/she will participate. ~~in the 2001 harvest of oysters~~.

3. He/she pays the ~~annual~~ harvest fee of $1.25 per bushel for his/her individual allotment of oysters no later than 4:30 PM on ~~November 1, 2001.~~ a date at least 10 days prior to the opening date of the oyster harvesting season.-

(b) In the event a person who indicates in writing to the Department that he/she will participate in the ~~2001~~ next seasonal harvest of oysters from the State's natural oyster beds and then fails to pay his or her oyster harvest fee ~~no later than 4:30 PM on November 1, 2001,~~ on time said person's share of oysters shall be pooled and made available for subsequent allocations to individuals who have paid their oyster harvest fees ~~prior to 4:30 PM on November 1, 2001~~. on time. The quantity of the subsequent allocation of oysters shall be determined by dividing the pooled allotments by the number of paid participants. Interested participants may obtain no more than one subsequent allocation by paying the oyster harvest feel of $1.25 per bushel prior to harvesting same.

S-73 Oyster Harvesting Licensee Requirements

(a) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel.

(b) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters.

S-75 Oyster Harvest Quota

The oyster harvest quota for ~~2001~~ the 2002~~[2003]~~ season is ~~24,795~~ 24,445 bushels.

DIVISION OF FISH & WILDLIFE

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

Order No. 2002-f-0025

Summary Of Evidence And Information

Pursuant to due notice 5, issue 9 DE REG 1680-1683 (3/1/2002), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation Nos. 23,10, and 4 pertaining to black sea bass, weakfish and summer flounder respectively. For black sea bass the proposed regulation would increase the minimum size limit from 11 to 11.5 inches and retain the daily harvest limit of 25 fish per day. The closed season of March 1 through May 9 in effect in 2001 would be repealed and there would be no closed season for the recreational harvest of black sea bass in 2002. The proposed regulation for weakfish would adjust the dates when it is unlawful to fish a gill net in Delaware Bay or the Delaware portion of the Atlantic Ocean to match the same time closures in effect in 2001. The 2002 closures would be May 1-12, May 17-19, May 24-26, May 31-June 2, June 7-9, June 14-16, and June 24-30. For summer flounder eight options were proposed to reduce recreational harvest 3.5% relative to 2001. These options entailed various combinations of season opening and closing, daily bag limits, and minimum sizes. These changes are necessary for Delaware to remain in compliance with Atlantic States Marine Fisheries Commission fishery management plan provisions for these three species and all of the options presented have been pre-judged to be in compliance with the mandatory provisions of these fishery management plans (FMPs).

A public hearing was held on the proposed amendments to Regulations 23, 10, and 4 on March 21. Comments were taken on the eight options for summer flounder and written testimony was received both before and after the hearing.

Findings Of Fact

- There was no opposition to the proposed regulation changes for black sea bass and weakfish. One letter of support was received concerning the proposed changes to black sea bass.
- Among the 15 people who spoke at the public hearing and the 66 individuals who provided correspondence or e-mail and the two petitions containing 107 signatures, Option 7, calling for an open season from May 16 to December 31 with a daily bag limit of four flounder and a minimum size of 17.5 inches, received the most support by a clear majority. There were three letters and a petition containing 198 signatures that did

not support any of the eight options and instead expressed support for a more liberal minimum size and season than would be allowed under the summer flounder FMP.

• Delaware and the surrounding states are required to reduce their flounder recreational landings by differing amounts relative to the 1998 base year. Delaware was required to reduce its recreational flounder landings 48% in 2001. The target reduction for 2002 in order for Delaware to remain in compliance with the ASMFC summer flounder plan requires an additional reduction of 3.5%.

• Since there was prevailing public sentiment for Option 7 among the eight options proposed for summer flounder, it was desirable to issue an emergency order (Order No. 2001-F-0021, effective April 2, 2002) to close the summer flounder fishery until May 16 because Option 7 calls for a flounder season opening on May 16. If flounder harvest is allowed in the spring of 2002 prior to the May 16 opening, Delaware might not achieve the required 3.5% reduction in anticipated harvest in 2002.

Conclusions

I have reached the following conclusions:

• Delaware's minimum size limit for black sea bass should be raised from 11 inches to 11.5 inches and the daily bag limit should remain at 25 fish per day. No closed season is needed for black sea bass recreational fishing in 2002.

• Delaware's weakfish closure dates should be adjusted in keeping with the 2002 calendar to May 1-12, May 17-19, May 24-26, May 31-June 2, June 7-9, June 14-16, and June 24-30. These closure dates would apply to gill nets fished in Delaware Bay or the Atlantic Ocean and also to any fishing equipment other than hook and line.

• No flounder may be harvested recreationally until 1201 AM May 16 at which time the summer flounder season will open and remain open until midnight December 31, 2002. Up to four flounder per person per day may be retained during the open season and the minimum size shall be 17.5 inches.

Order

It is hereby ordered this 8rh day of April in the year 2002 that amendments to Tidal Finfish Regulations 23, 10, and 4, copies of which are attached hereto, are adopted pursuant to 7 Del. C. §903(e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on May 16, 2002.

Nicholas A. DiPasquale, Secretary,
Department of Natural Resources and Environmental Control

[Proposed Final] Amendments To Tidal Finfish Regulations

No. 4, Summer Flounder Size Limits; Possession Limits; Seasons.

a) It shall be lawful unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land summer flounder **[beginning at 12:01 AM January 1, 2002 and ending midnight May 15, 2002]** at any time. Effective 12:01 AM on May 5, 2001. **[(Note closed season to be determined in combination with creel and minimum size limit.)]**

b) It shall be unlawful for any recreational fisherman to have in possession more than four (4) **[four (4) (Note: Creel limit to be determined in combination with seasonal closure and size limit.)]** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than seventeen and one half (17.5) **[seventeen and one half (17.5) (Note: minimum size limit to be determined in combination with seasonal closure and creel limit.)]** inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than seventeen and one-half (17.5) **[seventeen and one half (17.5) (Note: minimum size limit to be determined in combination with seasonal closure and creel limit.)]** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder.

2) A receipt from a licenses or permitted fish dealer

who obtained said summer flounder; or

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

4) A valid commercial food fishing license and a foodfishing equipment permit for gill nets.

g) Is omitted intentionally.

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

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

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ **[four (4) ~~(Note: Creel limit to be determined in combination with seasonal closure and size limit.)~~]** summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

~~**[Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to reduce recreational summer flounder harvest in Delaware in 2002 by 3.5 percent.]**~~

~~[Option~~	~~Opening Day~~	~~Final Day~~	~~Number of Open Days~~	~~Bag Limit~~	~~Minimum Size~~
~~1~~	~~01 Jan~~	~~31 Jul~~	~~212~~	~~7~~	~~16"~~
~~2~~	~~01 Jan~~	~~06 Aug~~	~~218~~	~~5~~	~~16.5"~~
~~3~~	~~01 Jan~~	~~23 Aug~~	~~235~~	~~5~~	~~17"~~
~~4~~	~~25 May~~	~~02 Aug~~	~~70~~	~~7~~	~~16"~~
~~5~~	~~25 May~~	~~09 Aug~~	~~77~~	~~5~~	~~16.5"~~
~~6~~	~~25 May~~	~~27 Aug~~	~~95~~	~~5~~	~~17"~~
~~7~~	~~16 May~~	~~31 Dec~~	~~230~~	~~4~~	~~17.5"~~
~~8~~	~~01 Jan~~	~~23 Sep~~	~~266~~	~~4~~	~~17.5"]~~

No. 10, Weakfish Size Limits; Possession Limits; Seasons

a) It shall be unlawful for any person to possess weakfish **Cynoscion regalis** taken with a hook and line, that measure less than fourteen (14) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial foodfishing license and a food fishing equipment permit for hook and line to have more than fourteen (14) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measures less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than fourteen (14) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of fourteen (14) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than hook and line during the following periods of time:

Beginning at 12:01 AM on ~~May 1, 2001~~ May 1, 2002 and ending at midnight on ~~May 9, 2001~~ May 12, 2002;

~~beginning at 12:01 AM on May 11, 2001 and ending at midnight on May 13, 2001 ;~~

beginning at 12:01 AM on ~~May 18, 2001~~ May 17, 2002 and ending at midnight on ~~May 20, 2001~~ May 19, 2002;

beginning at 12:01 AM on ~~May 25, 2001~~ May 24, 2002 and ending at midnight on ~~May 27, 2001~~ May 26, 2002;

beginning at 12:01 AM on ~~June 1, 2001~~ May 31, 2002 and ending at midnight on ~~June 3, 2001~~ June 2, 2002;

beginning at 12:01 AM on ~~June 8, 2001~~ June 7, 2002 and ending at midnight on ~~June 10, 2001~~ June 9, 2002;

beginning at 12:01 AM on ~~June 15, 200~~1 June 14, 2002 and ending at midnight on ~~June 17, 2001~~ June 16, 2002;

and beginning 12:01 AM on June 24, ~~2001~~ 2002 and ending at midnight on June 20, ~~2001~~ 2002.

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of fourteen (14) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week for taking in excess of fourteen (14) weakfish.

No. 23, Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ten (10) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~eleven (11~~) eleven and one-half (11.5) inches total length.

c) It shall be unlawful for any person to posses on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.

> One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled." The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.

e) ~~It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass during the period beginning at 12:01 AM on March 1 and ending at midnight on May 9, next ensuing.~~ **[Is omitted intentioanlly]**

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 62(i)(C)

Order Adopting And Promulgating Information Technology Training Grant Program Regulation

AND NOW, this 11th day of April, 2002, John D. Wik, as Director of the Delaware Economic Development Office ("DEDO"), in accordance with 29 Del. C. §5005(11) and 73 Del. Laws, Ch. 74, §62(i)(C), for the reasons stated below enters the ORDER adopting and promulgating the "Information Technology Training Grant Program Regulation" (the "Regulation").

Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 Del. C., Ch. 11, Subch. III and 29 Del. C., Ch. 101, the Director of the Delaware Economic Development Office ("DEDO") has proposed to adopt a regulation for the administration and operation of the Information Technology Training Grant Program established in 73 Del. Laws, c. 74, § 62(i)(C) (June 28, 2001) and administered by the Workforce Development Section of DEDO. The proposed regulation sets forth the rules governing eligibility for grants under the Program and for the administration of the Program.

Notice of the proposed regulation and the text thereof appeared in the March 1, 2002 issue of the *Delaware Register of Regulations*, 5 Del. R. 1683-84 (March 1, 2002). The public comment period was from March 1, 2002 through April 2, 2002, and members of the public could submit written comments on the Regulation by sending them to DEDO at its offices at 99 Kings Highway, Dover, DE, 19901.

Summary Of Evidence And Information Submitted

DEDO received no comments from the public on the proposed Regulation.

Findings Of Fact And Conclusions

The Director of DEDO is empowered to promulgate the Regulation pursuant to 29 Delaware Code, § 5005(11); 73 Del. Laws, Ch. 74, § 62(i)(C) (June 28, 2001).

The Director of DEDO finds that the change set forth below in the definition of "Blue Collar Program" does not constitute a substantive change within the meaning of 29 Del. C. §10118(c).

Decision And Order Concerning Amendments To The Regulation

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO ORDERS that the Regulation be, and that it hereby is, adopted and promulgated in the form set forth below. The effective date of this ORDER is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del. C. §10118(g).

John D. Wik, Director
Delaware Economic Development Office
4/11/02

Information Technology Training Grant Program Regulation

1.0 Introduction.

This regulation is promulgated under the authority granted to the Director of the Delaware Economic Development Office ("DEDO") by 29 Del. C., § 5005(11) to make regulations for the administration and operation of DEDO. One of the programs administered by DEDO through its Workforce Development Section is the Information Technology Training Grant Program established in 73 Del. Laws, Ch. 74, § 62(i)(C) (June 28, 2001) (the "Program"). The Program is designed to provide customized information technology training to small- and medium-sized businesses through grants made by the Workforce Development Section of DEDO. This regulation sets forth the definition of certain terms used in the Program and describes (i) the eligibility requirements for persons desiring to participate in the program, and (ii) other administrative features of the Program.

2.0 Definitions

The terms defined in Section 1 hereof shall have the meanings set forth therein.

"Blue Collar Program" means the employment and pre-employment training grant program operated by DEDO under the Delaware Economic Development Training Act, 29 Del. C., **[~~Subchapters~~] [Sections]** 5070 – 7073.

"Information technology training" means pre-employment or employment training that provides meaningful computer-related job skills to trainees.

"Small- or medium-sized business" means a corporation, limited liability company, general or limited partnership, business trust, common law trust, proprietorship, unincorporated association or other form of organization conducting a for-profit or not-for-profit enterprise in the State of Delaware and having five hundred (500) or fewer employees.

"Training grant" means a grant of up to One Hundred Thousand Dollars ($100,000) for the purpose of providing information technology training to employees of a small- or medium-sized business.

3.0 Persons Eligible for Training Grants under the Program

Only a small or medium-sized business may apply for a training grant under the Program.

4.0 Program Administration.

4.1 General Principles. DEDO intends to operate the Program as part of its employment and pre-employment training programs operated by its Workforce Development Section under the Blue Collar Program. Accordingly, DEDO intends that the statutory and regulatory provisions of the Blue Collar Program will apply to the Program, with the modifications set forth in this regulation. Persons seeking training grants under the Program should contact the Director of the Workforce Development Section of DEDO regarding possible grants and application material at 99 Kings Highway, Dover, DE 19901, phone (302) 672-6807, facsimile (302) 739-2028. Training grants will be available only if sufficient funds are available for the purpose of making such grants.

4.2 Program Variance from Blue Collar Program.

4.2.1 For purposes of the Program, an "eligible applicant," as defined in 29 Del. C. §5070(g) shall be a small- or medium-sized business, as defined in Section 1.0 of this regulation.

4.2.2 Employees receiving training under the Program are not limited to entry-level through first-line supervisory positions.

4.2.3 Small or medium-sized businesses are not required to pay Delaware Unemployment Insurance Tax in order to qualify for a training grant, unless other provisions of Delaware law require them to do so.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER THIRTY

RE: STATEWIDE LABOR-MANAGEMENT COMMITTEE

WHEREAS, the policy of the State is to promote harmonious and cooperative relations among the State, its employees, and the labor organizations that represent many State employees for collective bargaining and other related purposes; and

WHEREAS, labor-management cooperation contributes to improvements in public services and promotes cost and operational efficiencies in a manner beneficial to both the public and State employees; and

WHEREAS, a broad, Statewide approach to issues of mutual interests that transcend individual State agencies and labor organizations and traditional labor and management institutions and structures, is necessary to successfully meet the changing workplace and challenges of the twenty-first century; and

WHEREAS, forums designed to promote shared commitments, the quality of work life, service-oriented partnerships and means of accommodating internal differences of interests between labor and management must, of necessity, include the participation and voice of non-unionized employees;

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authorit vested in me as Governor of the State of Delaware do hereby declare and order, this 28th day of March, 2002, as follows:

1. The Statewide Labor-Management Committee ("LMC") is hereby reestablished and reconstituted.

2. The LMC shall consist of up to thirty-two (32) members. Membership of the LMC shall be fixed so as to ensure representation of labor organizations, non-union employees, and management. Up to fourteen (14) members shall represent labor organizations that have been elected by State employees as their exclusive representative for collective bargaining and related purposes pursuant to The Public Employment Relations Act (19 **Del.C.** Chapter 13). Such members shall be recommended by labor organizations, and appointed by the Governor to serve at the pleasure of the Governor. Up to fourteen (14) members shall represent the State as the employer and its agencies. Such members shall be appointed by the Governor and shall serve at the pleasure of the Governor. Up to four (4) members shall be non-unionized State employees. Such members shall be jointly recommended to the Governor by the Co-Chairs of the LMC, and appointed by the Governor to serve at the pleasure of the Governor.

3. There shall be two Co-Chairs of the LMC, one a Labor Member and the other a Management Member. The Labor Co-Chair shall be selected by the Labor Members. The State Personnel Director shall serve as the Management Co-Chair.

4. The LMC shall review all proposed changes to the Merit Rules, and shall consider such other aspects of public employment within the State of Delaware with the goal of producing and promoting service-oriented partnerships in the public interest, the quality of work life, and other ventures designed to benefit the public, the State and its employees.

5. The LMC shall develop written Operational Guidelines that specifically address its mission, structure, responsibilities, procedures and obligations. Such Guidelines shall be approved by a consensus of the LMC members.

Ruth Ann Minner
Governor

Attest:
Harriet Smith Windsor
Secretary of State

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Developmental Disabilities	Dr. Timothy F. Brooks	02/25/05
Bicycle Council	Mr. Timothy M. Plemmons	02/25/05
Board of Accountancy	Ms. Cathel R. Tanner	02/25/05
Board of Cosmetology & Barbering	Mr. John P. Bonarigo	02/19/05
Board of Dental Examiners	Dr. Karen S. Carter	02/20/05
	Ms. Kimberly S. Vincent	02/20/05
Board of Geologists	Mr. Dana A. Long	02/20/05
Board of Massage and Bodywork	Ms. Vivian L. Cebrick	02/25/05
Board of Medical Practice	Ms. Jennifer Barber	03/07/05
Child Placement Review Board Executive Committee	Ms. Janice K. Baly	02/21/05
	Mr. William L. Murray	02/21/05
	Ms. Virginia Van Sciver	02/21/05
Child Placement Review Board - Kent	Mr. Charles B. Carter	02/21/05
	Ms. Jane J. Fox	02/21/05
Child Placement Review Board - New Castle	Mr. Michael M. Benefield, Sr.	02/21/05
	Ms. Nancy Czeiner	02/21/05
	Dr. Jeffrey Davidson	02/21/05
	Ms. Linda L. Hartzel	02/21/05
	Ms. M. Jane Holloway	02/21/05
	Ms. Catherine W. Kallal	02/21/05
	Mr. James Kostelnik	02/21/05
	Mr. William C. Miller	02/21/05
Child Placement Review Board - Sussex	Ms. Cora P. Norwood-Selby	02/21/05
	Mr. Donald F. Schneck	02/21/05
Committee of Dietetics/Nutritionists	Ms. Marianne B. Carter	02/25/05
	Ms. Tracey K. Sinibaldi	02/25/05
Committee on Employment of People with Disabilities	Ms. Nancy A. Barnes	02/19/05
	Ms. Chrys A. DiRienzo	02/19/05
	Mr. James Kristof	02/19/05
	Mr. Scott R. Ward	02/19/05
Council for Services for Aging and Adults with Physical Disabilities	Reverend Grace Ruth Batten	02/19/05
	Ms. Katherine S. Cowperthwait	02/20/05
	Ms. Susan M. Harman	02/20/05

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council for Services for Aging and Adults with Physical Disabilities	Mr. Edward C. Larrivee	02/20/05
	Ms. Karen R. Lloyd	02/20/05
	Mr. Dennis L. McIlvain	02/20/05
	Ms. Edna G. Mitchell	02/20/05
Council on Banking	Mr. Joseph E. Chippie	02/25/05
	Mr. Robert E. Dickerson	02/25/05
	Mr. Robert V. A. Harra, Jr.	02/25/05
	Mr. Walter E. Kee, Jr.	02/25/05
	Mr. John F. Porter, III	02/25/05
	Ms. Kathleen M. Roberts	02/25/05
Council on Correction	Ms. Judy Cherry	02/27/05
	Ms. Dian C. Taylor	02/27/05
Council on Hispanic Affairs	Mr. Fernando N. Guajardo	02/27/05
	Mr. Alexander J. Krantz	02/27/05
Council on Housing	Ms. Connie H. Louder	02/25/05
	Mr. Darrin R. Simpson	02/25/05
Council on Shell Fisheries	Mr. Virgilio Pacelli	02/27/05
Council on Volunteer Services	Mr. Christopher A. Coons	02/21/04
	Ms. Marilyn J. Doto	02/21/04
	Dr. Edward Goate	02/21/04
	Mr. Robert P. Hall	02/21/04
	Mr. John Hollis	02/21/04
	Mr. Vincent F. Jacono, Jr.	02/21/04
	Mr. Richard L. Kapolka	02/21/04
	Ms. Nancy O. Landskroener	02/21/04
	Ms. Pearl J. Maull	02/21/04
	Mr. Timothy S. McLaughlin	02/21/04
	Mr. George B. Meldrum, Jr.	02/21/04
	Ms. Jane P. Scott	02/21/04
	Ms. Peggy Strine	02/21/04
	Mr. Robert D. Ulrich	02/21/04
	Mr. Joseph V. Williams, Jr.	02/21/04
	Mr. Carol Zeigler	02/21/04
Delaware Commission for Women	Ms. Claire DeMatteis	Pleasure of the Governor
Developmental Disabilities Planning Council	Mr. James A Tapert	02/27/05
Emergency Response Commission	Mr. James Lee	03/06/04
Human Relations Commission	Ms. Frann S. Anderson	02/25/06
Newark Housing Authority	Mr. Alexis V. Nichols	02/27/05

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
New Castle County Court of Common Pleas	The Honorable William C. Bradley	04/03/14
New Castle County Superior Court	The Honorable Charles H. Toliver, IV	04/03/14
Parks and Recreation Council	Mr. Lloyd H. Hickman	02/25/05
Unemployment Compensation Advisory Council	Mr. Robert L. Byrd	02/27/05
	Mr. Edward F. Peterson	02/27/05
	Mr. Daniel W. Wolfensberger	02/27/05
Violence Against Women Act Implementation Committee	Ms. Diane Glenn	Pleasure of the Governor

The following Attorney General Opinions have recently been published. The Opinions are available in full text by visiting the Attorney General website at:

http://www.state.de.us/attgen/opinion.htm

OPINION	SUBJECT
NO. 01-IB01	FOIA Complaint Against Indian River School District
NO. 01-IB02	FOIA Complaint Against Town of Odessa
NO. 01-IB03	FOIA Complaint Against Polytech School District
NO. 01-IB04	Freedom of Information Act Complaints Against New Castle County and the City of New Castle
NO. 01-IB05	Treatment of Involuntarily Committed Patients Prior to Judicial Review
NO. 01-IB06	Collection of Speeding Violation Fines
NO. 01-IB07	Workforce Investment Board
NO. 01-IB08	House Bill 99
NO. 01-IB09	Use of Compensatory Time to Offset Time Spent in Dual Employment
NO. 01-IB10	FOIA Complaints Against Sussex County Council
NO. 01-IB11	House Bill 99
NO. 01-IB12	Applicability of Delaware's Motor Vehicle Code to Golf Carts
NO. 01-IB13	FOIA Complaint Dover Safety Advisory Committee
NO. 01-IB14	Delaware CarePlan
NO. 01-IB15	FOIA Complaint Against Sussex County
NO. 01-IB16	Use of State Emergency ResponseCommission Funds to Buy Capital Items
NO. 01-IB17	FOIA Complaint Against City of Dover
NO. 01-IB18	Use of Interest Earned From the Account for Reporting Fees and the Use of Penalty Funds Collected By the Department of Natural Resources and Environmental Control
NO. 02-IB01	Senate Bill No. 246
NO. 02-IB02	FOIA Complaint Against Sussex County Council
NO. 02-IB03	FOIA Complaint Against Cape Henlopen School District
NO. 02-IB04	Neighborhood Schools Act of 2000
NO. 02-IB05	Creation of Nominating Districts for School Board Elections
NO. 02-IB06	The obligation of nurses to honor orders issued by Physician's Assistants

DELAWARE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 9806(b)(7) (16 **Del.C.** §9806(b)(7))

NOTICE OF SFPC POLICY

The Delaware State Fire Prevention Commission has adopted the policy of "Procedures to Implement 16 **Del. C.** §9806(b)(7)" which gives the 3 county EMS medical directors authority to suspend EMS providers immediately from patient treatment for a period not to exceed 30 days, if they determine that it is necessary in order to prevent a clear and immediate danger to the public health. The policy was adopted and effective on February 15, 2002 at the regularly scheduled Commission meeting held at the Delaware State Fire Prevention Commission 1463 Chestnut Grove Rd., Dover, DE 19904.

PROCEDURES TO IMPLEMENT
16 Del.C. § 9806 (b)(7)

1. Title 16 Del. C. § 9806(b)(7) states:

(b) As part of their responsibilities, the 3 county EMS medical directors shall:
(7) Have authority to suspend EMS providers immediately from patient treatment for a period not to exceed 30 days, if they determine that it is necessary in order to prevent a clear and immediate danger to the public health.

2. Prior to suspending an EMS provider, the county EMS medical director shall investigate the incident, and in this investigation the county EMS medical director will comply with the procedures for the Incident Review Committee authorized by 16 Del. C. § 6712(b).

3. If as a result of the investigation by the Incident Review Committee, the county EMS medical director suspends an EMS provider, the county EMS medical director will inform the EMS provider of his opportunity to appeal the suspension decision to the State Fire Prevention Commission and forward a copy of the suspension letter to the Commission.

4. When the Commission receives a copy of a letter suspending an EMS provider, the letter should be forwarded to the Commission member who participated in The Incident Review Committee investigation of the EMS provider, and the Commission member, based on his knowledge of the incident, will recommend to the Commission whether further action is needed.

5. If the Commission member who reviews the suspension letter indicates that further action is needed, the matter will be placed on the Commission's next monthly agenda for review by the Commission. If the Commission agrees that further action is needed, the matter will be scheduled for a Commission hearing and notice given to the EMS provider.

6. If the Commission member who reviews the suspension letter indicates that no further action is needed, the letter is filed with the Commission.

7. If the EMS provider appeals the County EMS medical director's decision to suspend the provider to the Commission, the Commission will schedule a hearing for the next monthly Commission meeting giving notice to both the EMS provider and the County medical director.

DEPARTMENT OF INSURANCE

Agents Bulletin No. 9
Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot) Act Of 2001

Issued: April 11, 2002

TO: **ALL LICENSEES**
FROM: **DONNA LEE H. WILLIAMS, COMMISSIONER**

On October 26, 2001, President Bush signed into law the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001"[1] (the Act). This law, enacted in response to the terrorist attacks of September 11, 2001 strengthens our Nation's ability to combat terrorism and prevent and detect money-laundering activities.

The purpose of this Bulletin is to advise persons or entities regulated by the Delaware Insurance Department of important new responsibilities under the Act. In particular, Section 352 of the Act amends the Bank Secrecy Act ("BSA")[2] to require that all financial institutions establish an

1. The full text of the law can be obtained at www.access.gpo.gov/congress. Scroll to public and private laws, select 107th Congress, and select Public Law 107-56.
2. Codified in subchapter II of chapter 53 of title 31, U.S. Code.

anti-money laundering program, and Section 326 amends the BSA to require the Secretary of the Treasury (Treasury) to adopt minimum standards for financial institutions regarding the identity of customers that open accounts.

Section 352 – Establishing Anti-Money Laundering Programs

Section 352 of the Act requires the establishment of an **anti-money laundering program**, including, at a minimum:

- The development of internal policies, procedures, and controls; these should be appropriate for the level of risk of money laundering identified.
- The designation of a compliance officer; the officer should have appropriate training and background to execute their responsibilities. In addition, the compliance officer should have access to senior management.
- An ongoing employee training program; a training program should match training to the employees' roles in the organization and their job functions. The training program should be provided as often as necessary to address gaps created by movement of employees within the organization and turnover.
- An independent audit function to test the programs. The independent audit function does not require engaging outside consultants. Internal staff that is independent of those developing and executing the anti-money laundering program may conduct the audit.

Treasury is currently drafting a regulation describing the anti-money laundering compliance program for insurers. The regulation may borrow from the anti-money laundering compliance program rule recently proposed by the NASD for broker-dealers,[1] and is expected to be promulgated in late spring or early summer.

Insurance companies are included in the BSA's definition of financial institution, and should be prepared to comply with the new law and the regulations promulgated thereunder. **Section 352 of the Act becomes effective on April 24, 2002; all insurance companies are required to be in compliance with the law by that date.**

As part of its rulemaking process, Treasury is determining the extent to which other insurance entities will be considered financial institutions for purposes of the regulation. It is anticipated that the regulation could cover all other persons and entities engaged in the business of insurance, including brokers, agents, and managing general agents, and may also include other regulated entities. These insurance entities will be required to comply with the regulation by the regulation's effective date.

Anti-money laundering programs are not anticipated to be "one size fits all." Rather, it is expected that they will be developed using a risk-based approach. Development of an anti-money laundering program should begin with identification of those areas, processes and programs that are susceptible to money laundering activities. The practices and procedures implemented under the program should reflect the risks of money laundering given the entity's products, methods of distribution, contact with customers and forms of customer payment and deposits.

Section 326 – Customer Identification

Section 326 of the Act amends the BSA to require that Treasury issue regulations setting forth **minimum standards for financial institutions regarding the identity of their customers** in connection with the purchase of a policy or contract of insurance. This program must set forth customer identity verification and documentation procedures, as well as procedures the insurer will employ to notify its customers about this requirement and determine whether the customer appears on government lists of known or suspected terrorists or terrorist organizations

Final regulations regarding this requirement are to be issued by the Department of the Treasury by October 26, 2002. Proposed regulations will be published in the Federal Register[2] later in the year. Through the rulemaking process, Treasury will determine which insurance entities will be subject to the regulations. Insurance entities subject to the rules will be required to comply when the final Treasury regulations become effective.

Requests for additional information or questions regarding:

- this bulletin may be directed to Ronald J. Poplos of the Delaware Insurance Department at 842 Silver Lake Blvd., Dover, DE 19904-2465, (302)0739-4251 or rpoplos@deins.state.de.us.
- state requirements in the reporting of suspected money-laundering activities should be directed to The Honorable M. Jane Brady, Attorney General of the State of Delaware at 820 N. French Street, Wilmington, DE 19801, (302) 577-8400 or Attorney.General@State.DE.US.
- the Act may be directed to Linda L. Duzick, Office of Thrift Supervision, serving as insurance

1. 67CFR 8565 (February 25, 2002)

2. The Federal Register website address is www.access.gpo.gov/nara.

industry liaison for the Department of the Treasury, at (202) 906-6565 or linda.duzick@ots.treas.gov.

Donna Lee H. Williams, Commissioner

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGES CONTROL AND TOBACCO ENFORCEMENT.

Statutory Authority: 11 Delaware Code, Section 1125(d) (11 **Del.C.** § 1125(d))

Title 11 Delaware Code, § 1125(d) requires the Department of Public Safety to adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to § 1125 of places where tobacco products are sold or distributed. The Department of Public Safety has adopted and hereby publishes such guidelines.

Section Number 7
Conducting The Compliance Check

1. Selecting Locations for Unannounced Inspections

A. Selection and Preparation of Compliance Check Locations:

B. Conducting an Unannounced Inspection (Compliance Check):

1. The preferred method of conducting an unannounced tobacco compliance check shall involve one (1) DABC Agent and one (1) CUW (Cooperating Underage Witness).

2. The agent and the CUW will proceed to the pre-selected location for the unannounced inspection. Upon arrival the agent and the CUW shall enter the establishment, unless the agent for good cause concludes that more than one agent or CUW should be involved, to help ensure the safety of the minor and to verify the investigation.

3. The agent shall insure that all divisional procedures are adhered to.

4. The agent will make every effort to be in the establishment when the minor attempts the purchase, and if possible, observe the transaction. If the officer is known to the store, or has other reason to believe entering the premises will affect the outcome of the investigation, the officer will remain outside the store and note the reasons for doing so in the comment box of the investigation form.

5. The agent shall take a position so that they can observe the CUW's attempt to purchase a tobacco product.

6. The minors should attempt to purchase a brand of cigarettes or smokeless tobacco that minors normally purchase in the area where the compliance check is conducted.

a. If no sale is made, the agent(s) will immediately notify the clerks that they have been the subject of a compliance check and congratulate them on their actions. (If the clerk appreciation items are available, the clerk shall be presented with one at this time).

b. The agent shall then ask the clerk to summon the owner or on duty manager. If present, the owner or on duty manager shall be presented with the compliance certificate at this time. If they are not present, the certificate shall be left with the clerk with instructions to present the certificate to the owner or manager.

c. The person in charge shall be offered the "Kid's Can't Buy'em Here" buttons.

d. The agent shall then check to insure that all information contained on the inspection form is correct and up to date.

e. The CUW and agent shall exit the establishment and move to the next pre-selected location.

7. If a sale is made to the CUW, the agent and the CUW shall exit the location, and the CUW shall be secured in the agent's vehicle.

a. The agent shall then return to the establishment and identify themselves to the person who made the sale of the tobacco product to the CUW. The agent shall then advise the clerk that there was an illegal sale of tobacco to a minor, and issue that person a criminal summons for the appropriate charge.

DIVISION OF MOTOR VEHICLES

Interim Identification Procedure for the Division of Motor Vehicles

Whereas, the American Association of Motor Vehicle Administrators (hereinafter referred to as "AAMVA") published a Model Uniform Identification Practices Program, and

Whereas, most jurisdictions either have adopted the AAMVA Model Uniform Identification Practices Program or will adopt it in the coming year, and

Whereas, the states of Florida and Washington no longer accept Delaware's driver's license or identification cards as primary proof of identification because they deviate from the standards set forth in the AAMVA Model Uniform Identification Practices Program, and

Whereas, some driver's license and identification card applicants are prohibited from obtaining a social security card due to their immigration status and this precludes the Division of Motor Vehicles from using the social security database to verify a person's identity, and

Whereas, the Division of Motor Vehicles driver's license offices are experiencing numerous fraudulent documents provided as proof of Delaware address and proof of social security number, and

Whereas, pending legislation, SB287, will require all driver's license and identification card applicants to be legally residing in the United States, and

Whereas, the Department of Public Safety believes an interim identification procedure is needed until such time as the Delaware General Assembly has considered SB 287,

Therefore, effective March 4, 2002, the Department of Public Safety hereby adopts the attached interim identification procedure, similar to the AAMVA Model Uniform Identification Practices Program, for individuals applying for a driver's license or identification card until such time as the Delaware General Assembly has considered SB287. The interim procedure will be conformed to the procedure dictated by statute following consideration of SB 287.

James L. Ford, Jr.
Secretary, Department of Public Safety

Division Of Motor Vehicles
Interim Identification Procedure
Acceptable Identification Document List

Any person applying for a new driver's license (DL) or identification (ID) card is required to submit one primary document and one secondary document from the following list. A primary document must contain the full name and date of birth and must be verifiable, i.e., we must be able to contact the issuing agency to determine the authenticity of the document. Each applicant must provide their social security number, if eligible, and two proofs of the applicant's Delaware residency.

Primary Documents

- Photo driver's license.
- State/province/territory issued photo ID card.
- Certified microfilm/copy of driver's license or ID card.
- Certificate of birth (U.S. issued). Must be original or certified copy, have a raised seal and be issued by the Bureau of Vital Statistics or State Board of Health.
- INS documents, as follows:
  - Certificate of Naturalization (N-550, N-570, or N-578)
  - Certificate of Citizenship (N-560, N-561, or N-645)
  - Northern Marina Card (I-551)
  - American Indian Card (I-551)
  - U.S. Citizen Identification Card (I-179 or I-197)
  - Resident Alien Card (I-151, I551, AR-3, or AR-103)
  - Temporary Resident Identification Card (K-688)
  - Non-resident Alien Canadian Border Crossing Card (I-185 or I-586)
  - Record of Arrival and Departure (in a valid Foreign Passport) (I-94 or I-94W visa waiver program)
  - Record of Arrival and Departure w/attached photo stamped "Temporary Proof of Lawful Permanent Resident" (I-94)
  - Processed for I-551 stamp (in a valid Foreign Passport)
  - Permanent Resident Re-entry Permit (I-327)
  - Refugee Travel Document (I-571)
  - Employment Authorization Card (I-688A, I688B, I-766)
- Canadian Immigration Record and Visa or Record of Landing (IMM 1000)
- Court order. Must contain full name, date of birth and court seal. Examples include: adoption document, name change document, gender document, etc. Does not include abstract of criminal or civil conviction.
- United States Military ID.
- Valid passport, U.S. If foreign, appropriate INS document also is required.

Secondary Documents

- All Primary Documents may be used as a secondary document.
- Driver's license/ID card, expired more than one year.
- Court order that does not contain the applicant's date of birth.
- Employer ID card.
- Health insurance card, i.e., Blue Cross/Blue Shield, Kaiser, HMO.
- IRS/State tax forms. W-2 **NOT** acceptable.
- Marriage certificate/license.
- Medical records from doctor/hospital.
- Military dependent ID.
- Military discharge/separation papers.
- Gun permit.
- Pilot's license.
- School record/transcript. Must be certified.
- Social security card. Metal card is **NOT** acceptable.
- Social insurance card (for Canadian residents only).
- Student ID Card. Must contain photo.
- Vehicle title. Vehicle registration **NOT** acceptable.
- Welfare card.
- Prison release document.

Plus:

- Social Security Card, if eligible.
- Two proofs of Delaware residency.

DELAWARE FIRE PREVENTION COMMISSION

NOTICE OF PUBLIC HEARING

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** Ch. 101, to receive public comment regarding a proposed change to the State Fire Prevention Regulations. The Commission is proposing to amend Chapter III, Forms, of the Ambulance Service Regulations as follows:

Add Section XVII - Ambulance Company's Intent to Discontinue Service

Add Section XVIII - Basic Life Support Data Assessment Committees

DATE, TIME AND PLACE OF PUBLIC HEARING

DATE: Tuesday, May 28, 2002
TIME: 9:00 AM and 7:00 PM
PLACE: Commission Chamber
Delaware State Fire School
Delaware Fire Service Center
1463 Chestnut Grove Road
Dover, Delaware 19904

Persons may view the proposed addition to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission Office, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

Ambulance Company's Intent To Discontinue Service

STEP 1

Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

STEP 2

Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

STEP 3

Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee as he and/or she may deem necessary.

1. To communicate and offer assistance to the terminating company in an effort to help them continue service.
2. In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.
3. In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.
4. The committee, through the County President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

BASIC LIFE SUPPORT DATA ASSESSMENT COMMITTEES

MEMBERS: The State Fire Prevention Commission, hereinafter referred to as the Commission, hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.

There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.

The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.

The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.

GOAL: Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and

EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include numbers of dispatched calls, scratches, and special circumstances.

If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Commission through the normal Grievance Procedures, previously adopted by the Commission.

Each Committee shall submit an annual written report to the Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or Committee procedures.

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF CHIROPRACTIC

Please take notice, pursuant to 29 Del.C. Ch. 101 and 24 Del.C. Ch. 7, the Delaware Board of Chiropractic proposes the following amendment to Rule 5.3 and Rule 6.2.4 of the Delaware Board of Chiropractic's Rules and Regulations as follows:

A public hearing will be held on the proposed amendment to Rule 5.3 on June 20, 2002 at 8:30 a.m. in Conference Room B of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 5.3 in order that the Board of Chiropractic may vote to adopt, amend or reject said amendment at its June 20, 2002 meeting. The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 5.3. Written comments should be submitted to the Board up through and including the date and time of the hearing on June 20, 2002 at 8:30 a.m., to Judy Letterman, Administrative Assistant, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 5.3, please contact Ms. Letterman at the above address or by calling (302) 744-4500.

BOARD OF VETERINARY MEDICINE

24 DE Admin. Code 3300

PLEASE TAKE NOTICE, that pursuant to 29 ***Del.C.*** Chapter 101 and 24 ***Del.C.*** Section 3306(a)(1), the Delaware State Board of Veterinary Medicine proposes to add to its rules and regulations. The proposed addition concerns prescribing medicine. The proposed addition seeks to define unprofessional conduct for a veterinarian as prescribing medication without examining the animal(s) within a period of a year. The proposed regulation serves to implement or clarify Section 3313(a)(1) of 24 ***Del.C.*** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, June 11, 2002 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

BOARD OF PHARMACY

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0, 3.0, 5.0, 9.0, 10.0, 11.0, 15.0 (formerly I, III, V, IX, X, XI., and XV)

There are clerical changes to Regulation 1.0.

The proposed changes in Regulation 5.0 substitute the term "technician" for "supportive personnel" and will provide for two levels of technician, both supervised, with duties permitted based on training. The term "supportive personnel" is replaced with "technician" as it appears in other regulations. (For example Regulations 3.0, 9.0, and 10.0) The definition of "dispense or dispensing" is changed to conform to the statute. A new section 5.12 is added to cover centralized prescription processing.

The proposed changes in Regulation 11.0 update the language to include assisted living facilities. Regulation 11.0 is modified as it relates to stock medication, labeling, consultant pharmacist duties, and drug disposal.

The proposed change to Regulation 15.0 makes it conform to Regulation 5.0.

A public hearing will be held on June 5, 2002 at 10:00

a.m. in the Jesse Cooper Building, Room309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, May 16, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

PUBLIC NOTICE

Regulations Governing Group Homes for Persons with Mental Illness

Delaware Health & Social Services (DHSS) has prepared draft regulations governing Group Homes for Persons with Mental Illness as authorized by 16 **Del.C.** Chapter 11.

These regulations are designed specifically for Group Homes for between three (3) and ten (10) adults with psychiatric disabilities to provide mental health treatment, rehabilitation and housing, staffed substantially full-time when residents are present.

The proposed regulations replace in their entirety the current regulations for Group Homes for Persons with Mental Illness.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Monday, June 3, 2002, 10:00 AM
Department of Natural Resources & Environmental Control Auditorium
89 Kings Highway
Dover

Wednesday, June 5, 2002, 9:00 AM
Main Building, Conference Room 301
Herman Holloway Campus
Delaware Health and Social Services
1901 N. DuPont Highway
New Castle

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

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

Robert Smith
Division of LongTerm Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

THE LAST TIME TO SUBMIT WRITTEN COMMENTS WILL BE AT THE PUBLIC HEARING, JUNE 5, 2002.

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Regulations for Nursing Homes Admitting Pediatric Residents

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared seven (7) revised draft regulations governing Nursing Homes Admitting Pediatric Residents as required in 16 Del. C., Section 1119C. The remainder of the regulations addressing general and facility requirements and medical, therapy, nutritional, nursing, educational and family services in nursing homes admitting pediatric residents appear as final regulations in the May 1, 2002 Register of Regulations. The following seven (7) draft regulations, revised after the March 4 and March 6 public hearings, will be the subject of a further public hearing: Regulations 79.307, 79.403, 79.503, 79.507, 79.608, 79.701 and 79.1203.

INVITATION FOR PUBLIC COMMENT

A public hearing will be held as follows:

Wednesday, June 12, 2002, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

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

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

Robert Smith
Division of LongTerm Care Residents Protection

3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing June 12, 2002.

DIVISION OF PUBLIC HEALTH

Delaware Radiation Control Regulations

These regulations, "Delaware Radiation Control Regulations," replace by recision the current "Delaware Radiation Control Regulations" previously adopted on July 22, 1969 and most recently amended September 1, 1995.

The Regulations are modeled after the Conference of Radiation Control Program Directors, Inc. Suggested State Regulations. Due to the large size of these regulations, a summary of major changes from the rescinded regulation to this (proposed) regulation is published below. The (proposed) regulation can be viewed in its entirety by contacting the Office of Radiation Protection as indicated in the notice of public hearing.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Delaware Radiation Control Regulations. This public hearing will be held on Monday, June 3, 2002 at 5:30 p.m., in the first floor conference room, Bayhealth Medical Center, 640 S. State Street, Dover, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control, Jesse Cooper Building
P.O. Box 637
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 739-3787

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 739-4700 by close of business Wednesday, May 29, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business June 7, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

DIVISION OF PUBLIC HEALTH

Regulation for the Certification of Radiation Technologists/Technicians

These regulations, "Regulation for the Certification of Radiation Technologists/Technicians," replace by recision the current "Regulation for the Certification of Radiation Technologists/Technicians" previously adopted on February 27, 1989 and most recently amended July 24, 1995.

The Regulations establishes criteria and methods of certifying Radiation Technologists/Technicians.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Regulation for the Certification of Radiation Technologists/ Technicians. This public hearing will be held on Monday, June 3, 2002 at 5:30 p.m. in the first floor conference room, Bayhealth Medical Center, 640 S. State Street, Dover, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control
Jesse Cooper Building
P.O. Box 637
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 739-3787

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 739-4700 by close of business Wednesday, May 29, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business Friday, June 7, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

DIVISION OF SOCIAL SERVICES

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/ Medical Assistance Program is proposing to implement new

policy in the Division of Social Services Manual (DSSM): DSSM 50000 - 50930, the Chronic Renal Disease Program. This regulatory action provides written policy for procedures already in place.

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

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

TITLE OF THE REGULATIONS:

"REPORTING OF A DISCHARGE OF A POLLUTANT OR AN AIR CONTAMINANT"

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend the Reporting of a Discharge of a Pollutant or an Air Contaminant regulation to replace the current regulation that describe the requirements for reporting the environmental release or discharge of a pollutant or air contaminant with new requirements. Senate Bill 33 modified the definition of an environmental release to mean substances and their reportable quantities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or regulations enacted under Title 7 §6028. The amendment to the regulation include wording changes required by Senate Bill 33, updates and changes to the Delaware list of substances and their reportable quantities, and the inclusion of a mandatory follow-up written report.

NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed amendment will extend through June 7, 2002. Interested parties may submit comments in writing during this time frame to: Jay Brabson, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, May 30, 2002 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE POLICE

PUBLIC NOTICE

Notice is hereby given that the Department of Public Safety, Division of State Police, in accordance with 21 **Del.C.** Section 6901(c) proposes to adopt Regulations. These Regulations will regulate nonconsensual towing of abandoned or disabled vehicles, or vehicles from the scene of an accident or arrest. These regulations do not apply if a vehicle owner or driver requests a specific towing service, unless, in the opinion of the Division of the State Police there may an unreasonable time delay or traffic safety hazard. A public hearing will be held on Tuesday, June 25, 2002 at 10:00 a.m., in the second floor main conference room (rm. 205) of the Public Safety Building, 303 Transportation Circle, Dover, DE. The Department of Public Safety will receive and consider input in writing from any person on the proposed towing regulations. Any written comments should be submitted to the Department of Public Safety, in care of William G. Bush, IV, at P.O Box 818, Dover, DE 19903-0818 on or before June 25, 2002. Anyone wishing to obtain a copy of the proposed Regulations may do so by sending a written request to the Department of Public Safety, P.O. Box 818, Dover, DE 19903-0818. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Title:

Regulations Governing the Historic Preservation Tax Credit.

Brief Synopsis:

Chapter 18 Subchapter II of Title 30 was enacted by the General Assembly in 2001. It contained the Historic Preservation Tax Credit Act. Regulations were proposed and published in the August 2001 Register of Regulations. After receiving and reviewing comments, the agency determined that statutory changes were necessary. Amendments to Chapter 18 Subchapter II of Title 30 were enacted in 2002. The Historic Preservation Tax Credit Act is designed to

promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property. The proposed regulations will provide requirements that will govern certification of historic rehabilitation projects under application for this tax credit.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101, the Division of Historical and Cultural Affairs proposes to adopt rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 604 Otis Drive, Dover, DE 19901. The final date to submit written comments is May 31, 2002. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Daniel R. Griffith at the above address or call 302-739-5313. This notice will be published in two newspapers of general circulation.

DEPARTMENT OF TRANSPORTATION

Regulations for Outdoor Advertising
Nature of the Proceedings

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

The Department received and evaluated nine letters that set out a wide range of comments. The results of the evaluation are summarized below. The Department then revised the draft regulations as a result of the comments received and published the new draft in the January, 2002 Register of Regulations, along with the original 1975 regulations for comparison. The Department invited written comments on the new draft until February 1, 2002. A limited number of comments were received at that time, and the Department is hereby re-publishing the Draft Regulations as published in the January Register of Regulations, along with the 1975 regulations, and re-opening the comment period for sixty (60) days, closing on June 30, 2002. Comments from both comment periods will be evaluated at the close of this comment period. Comments should be sent to:

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