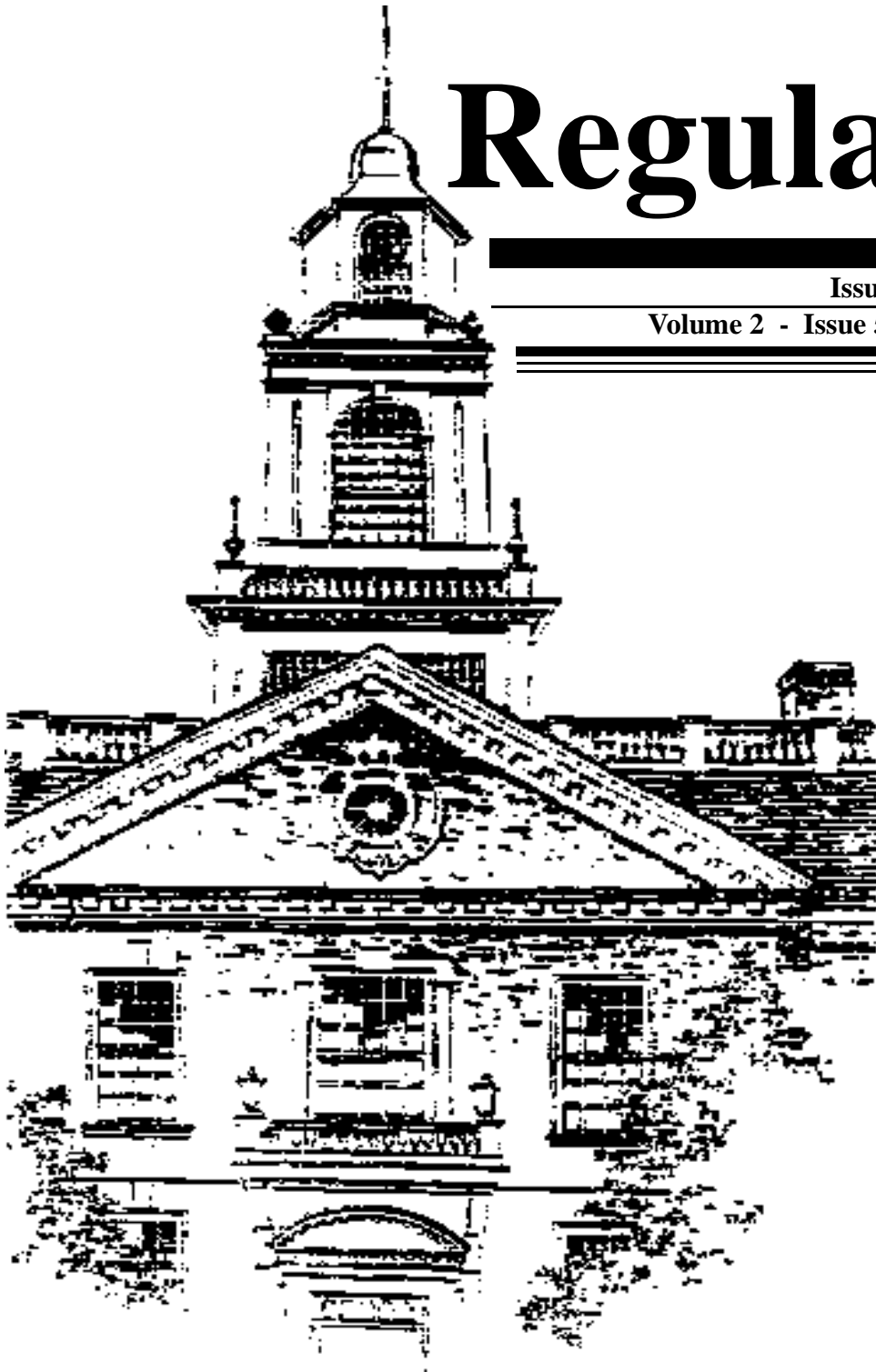


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# Delaware Register of Regulations



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Issue Date: November 1, 1998

Volume 2 - Issue 5

Pages 714 - 795

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## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Appointments

Calendar of Events &

Hearing Notices



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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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715

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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## CITATION TO THE DELAWARE REGISTER

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

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

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## 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 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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.

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.

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Cumulative Tables.....719

---

**PROPOSED REGULATIONS****DEPARTMENT OF AGRICULTURE**

Pesticide Rules and Regulations .....724

**DEPARTMENT OF EDUCATION**

Career Guidance & Placement Counselors .....740  
K-12 Guidance Programs .....741  
Promotion Regulation .....742

**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Temporary Assistance for Needy Families  
(TANF Program).....744  
Work for your Welfare (Workfare) Program .....745  
Medical Necessity, Definition of .....748

**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

Delaware Coastal Zone Regulations .....749

**DIVISION OF AIR & WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Regulation No. 38, Emission Standards for  
Hazardous Air Pollutants for Source  
Categories.....759  
Regulation No. 24, Control of Volatile Organic  
Compound Emissions .....761

**STATE FIRE PREVENTION COMMISSION  
STATE FIRE MARSHALL'S OFFICE**

Part V, Chapter 5, Standard For The Marking,  
Identification, And Accessibility Of Fire  
Lanes, Exits, Fire Hydrants, Sprinkler,  
and Standpipe Connections .....765

**VIOLENT CRIMES COMPENSATION BOARD**

Violent Crimes Compensation Board; Rules  
XXVI, XXVIII, XXIX, XXX ..... 773

---

**FINAL REGULATIONS****DEPARTMENT OF ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION**

Board of Clinical Social Work Examiners..... 775  
Board of Examiners of Psychologists ..... 776

**DEPARTMENT OF EDUCATION**

School Custodians..... 778  
Releasing Students to Persons Other than their  
Parents or Legal Guardians..... 778

**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
STATE LOTTERY OFFICE**

Video Lottery Regulations, 5.2(2) Maximum Bet  
Limit & 7.9 Redemption Period ..... 779

**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Medicaid Eligibility Manual, Renumber of..... 780

**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING COMMISSIONER**

Regulation No.: 5.2102(b)/2112.0001, Mortgage Loan  
Brokers Operating Regulations ..... 782  
Regulation No.: 5.2210(d).0001, Licensed Lenders  
Operating Regulations ..... 782  
Regulation No. 5.2218/2231.0003, Licensed Lenders  
Regulations Itemized Schedule of Charges ... ..... 784  
Regulation No.: 5.2741.0001, Licensed Cashier of

Checks, Drafts, or Money Orders Operating  
Regulations (5 Del. C. §2741) .....786  
Regulation No.: 5.2743.0002, Licensed Cashier of  
Checks, Drafts, or Money Orders Posting of  
the Fee Schedule and Minimum Requirements  
for Content of Books and Records  
(5 Del. C. §2743).....786  
Regulation No.: 5.2905(e)/122(b).0001, Motor  
Vehicle Sales Finance Companies Minimum  
Requirements for Content of Books and Records  
(5 Del. C. §§122(b) 2905(e)) .....787  
Regulation No.: 5.2905(e).0002, Motor Vehicle Sales  
Finance Companies Operating Regulations  
(5 Del. C. §2905(e)) .....788

---

**GOVERNOR**

Governor’s Appointments.....790

---

**CALENDAR OF EVENTS/HEARING  
NOTICES**

Dept. of Agriculture, Pesticide Rules & Regulations,  
Notice of Public Hearing.....793  
Department of Education, Notice of Monthly  
Public Hearing.....793  
Div. of Social Services, TANF Program, Notice  
of Public Comment .....793  
Div. of Social Services, Work for Your Welfare  
Program, Notice of Public Comment.....793  
Div. of Social Services, Definition of Medical  
Necessity, Notice of Public Comment .....793  
DNREC, Coastal Zone Regulations, Notice of  
Public Hearing.....793  
DNREC, Reg. No. 38, Emission Standards for  
Hazardous Air Pollutants for Source  
Categories, Notice of Public Hearing .....794  
DNREC, Reg. No. 24, Control of Volatile  
Organic Compound Emissions, Notice of  
Public Hearing.....794  
Fire Prevention Commission, Part V, Chapter 5,  
Notice of Public Hearing.....795

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.).

**Attorney General**

Opinion No. 98-IB03, Authority to Delegate Approval of Certain Personnel Transactions.....	2:2	<b>Del.R.</b>	324
Opinion No. 98-IB04, FOIA Complaint Against Appoquinimink School District.....	2:2	<b>Del.R.</b>	325
Opinion No. 98-IB05, FOIA Complaint Against Appoquinimink School District.....	2:4	<b>Del.R.</b>	699
Opinion No. 98-IB06, Candidacy of Richard L. Abbott.....	2:4	<b>Del.R.</b>	700
Opinion No. 98-IB07, Sworn Payroll Information, 29 Del.C. 10002.....	2:4	<b>Del.R.</b>	703
Opinion No. 98-IB08, Complaint Against the Town of Townsend.....	2:4	<b>Del.R.</b>	705

**Department of Administrative Services**

**Division of Professional Regulation**

Board of Clinical Social Work Examiners.....	2:2	<b>Del.R.</b>	164	(Prop.)
Board of Cosmetology and Barbering.....	2:4	<b>Del.R.</b>	440	(Prop.)
Board of Funeral Services.....	2:2	<b>Del.R.</b>	207	(Final)
Board of Examiners in Optometry.....	2:1	<b>Del.R.</b>	95	(Final)
Board of Examiners of Psychologists.....	2:1	<b>Del.R.</b>	103	(Final)
	2:3	<b>Del.R.</b>	341	(Prop.)
Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers .....	2:3	<b>Del.R.</b>	370	(Final)
Board of Nursing .....	2:4	<b>Del.R.</b>	682	(Final)
Board of Pharmacy .....	2:1	<b>Del.R.</b>	6	(Prop.)
	2:4	<b>Del.R.</b>	683	(Final)
Board of Professional Counselors of Mental Health.....	2:1	<b>Del.R.</b>	12	(Prop.)
	2:3	<b>Del.R.</b>	371	(Final)
Delaware Council on Real Estate Appraisers.....	2:3	<b>Del.R.</b>	372	(Final)
Delaware Gaming Board.....	2:4	<b>Del.R.</b>	444	(Prop.)

**Department of Agriculture**

Forest Service Regulations for State Forests.....	2:3	<b>Del.R.</b>	348	(Prop.)
---	-----	---------------	-----	---------

**Harness Racing Commission**

Administrator of Racing, Definition.....	2:4	<b>Del.R.</b>	457	(Prop.)
Inclusion in List of Commission Officials.....	2:4	<b>Del.R.</b>	457	(Prop.)
Calculation of Time Allowance Based on Weather Conditions.....	2:4	<b>Del.R.</b>	462	(Prop.)
Commission's Powers to Appoint Officials.....	2:4	<b>Del.R.</b>	456	(Prop.)
Commission's Powers to Regulate Drug Testing.....	2:4	<b>Del.R.</b>	457	(Prop.)
Conditions for Non-Winners and Winners of Over \$100.00.....	2:4	<b>Del.R.</b>	461	(Prop.)
Conditions for Number of Horses in Field.....	2:4	<b>Del.R.</b>	461	(Prop.)
Definition of Investigator.....	2:4	<b>Del.R.</b>	456	(Prop.)
Delaware Owned or Bred Races, Addition of.....	2:4	<b>Del.R.</b>	458	(Prop.)
Conditions for .....	2:4	<b>Del.R.</b>	458	(Prop.)
Definitions of.....	2:4	<b>Del.R.</b>	458	(Prop.)
Filing of Claiming Authorization at Time of Declaration, Requirement of.....	2:4	<b>Del.R.</b>	460	(Prop.)
Payment of Court Reporter Costs by Licensees Filing Appeals.....	2:4	<b>Del.R.</b>	461	(Prop.)
Procedure for Determination of Preference Dates.....	2:4	<b>Del.R.</b>	461	(Prop.)

Procedure for Horses Placed on Steward's List.....	2:4	<b>Del.R.</b>	461	(Prop.)
Prohibition of Racing Horses 15 Years or Older.....	2:4	<b>Del.R.</b>	460	(Prop.)
Revision of Procedures for Claiming Horse that Tests Positive for Illegal Substance..	2:4	<b>Del.R.</b>	460	(Prop.)
Selection of Races in Division, Procedure for.....	2:4	<b>Del.R.</b>	460	(Prop.)
Whipping .....	2:4	<b>Del.R.</b>	684	(Final)
Thoroughbred Racing Commission				
Prohibition on Racing Claimed Horses, Rule 13.18.....	2:1	<b>Del.R.</b>	93	(Final)
Racing Claimed Horses, Rule 13.19.....	2:1	<b>Del.R.</b>	6	(Prop.)
	2:3	<b>Del.R.</b>	373	(Final)
Department of Education				
Comprehensive School Discipline Program.....	2:3	<b>Del.R.</b>	374	(Final)
Constitution & Bylaws of DSSAA.....	2:1	<b>Del.R.</b>	113	(Final)
Cooperative Education Program.....	2:1	<b>Del.R.</b>	110	(Final)
Delaware Testing Requirements for Initial Licensure.....	2:1	<b>Del.R.</b>	32	(Prop.)
Diversified Occupations Programs.....	2:1	<b>Del.R.</b>	111	(Final)
Establishing a School District Planning Process, Repeal of Policy.....	2:2	<b>Del.R.</b>	166	(Prop.)
General Education Development (GED).....	2:1	<b>Del.R.</b>	16	(Prop.)
	2:3	<b>Del.R.</b>	376	(Final)
James H. Groves High School.....	2:1	<b>Del.R.</b>	17	(Prop.)
	2:3	<b>Del.R.</b>	378	(Final)
Middle Level Education Regulation.....	2:2	<b>Del.R.</b>	167	(Prop.)
Middle Level Education Section of Handbook for K-12 Education, Repeal of.....	2:1	<b>Del.R.</b>	23	(Prop.)
Middle Level Mathematics & Science Certification.....	2:1	<b>Del.R.</b>	21	(Prop.)
	2:3	<b>Del.R.</b>	377	(Final)
Multicultural Education Regulations.....	2:4	<b>Del.R.</b>	462	(Prop.)
Policy for Establishing a School District Planning Process.....	2:4	<b>Del.R.</b>	464	(Prop.)
Policy for School Districts on the Possession, Use & Distribution of Drugs & Alcohol.....	2:2	<b>Del.R.</b>	213	(Final)
Prohibition of Discrimination.....	2:4	<b>Del.R.</b>	465	(Prop.)
Promotion Policy .....	2:2	<b>Del.R.</b>	171	(Prop.)
Releasing Students to Persons other than their Parents or Legal Guardians.....	2:3	<b>Del.R.</b>	357	(Prop.)
Safety .....	2:2	<b>Del.R.</b>	215	(Final)
School Attendance .....	2:2	<b>Del.R.</b>	172	(Prop.)
	2:4	<b>Del.R.</b>	685	(Final)
School Custodians .....	2:3	<b>Del.R.</b>	353	(Prop.)
Student Progress, Grading & Reporting, Repeal of .....	2:2	<b>Del.R.</b>	171	(Prop.)
	2:4	<b>Del.R.</b>	686	(Final)
Student Rights & Responsibilities.....	2:1	<b>Del.R.</b>	112	(Final)
Summer School Programs, Repeal of.....	2:2	<b>Del.R.</b>	172	(Prop.)
	2:4	<b>Del.R.</b>	687	(Final)
Title I Complaint Process .....	2:2	<b>Del.R.</b>	217	(Final)
Unit Count .....	2:1	<b>Del.R.</b>	25	(Prop.)
	2:3	<b>Del.R.</b>	382	(Final)
Department of Finance				
Division of Revenue				
Proposed Tax Ruling 98- , Contractors License Tax.....	2:1	<b>Del.R.</b>	40	(Prop.)
Proposed Technical Information Memorandum 98-2, Effect of Federal				
Small Business Job Protection Act.....	2:1	<b>Del.R.</b>	41	(Prop.)
	2:3	<b>Del.R.</b>	384	(Final)
Office of the State Lottery				
Video Lottery Regulations, Operations Employees, License Renewal, etc.....	2:1	<b>Del.R.</b>	115	(Final)
Video Lottery Regulations, 5.2(2) Maximum Bet Limit & 7.9 Redemption Period.....	2:3	<b>Del.R.</b>	358	(Prop.)

---

---

# CUMULATIVE TABLES

721

Department of Health & Social Services

Division of Public Health

Office of Health Facilities Licensing & Certification

Managed Care Organizations.....2:1 **Del.R.** 42 (Prop.)  
Regulations Governing Lead-Based Paint Hazards.....2:2 **Del.R.** 234 (Final)

Division of Social Services

A Better Chance/Food Stamp Program.....2:1 **Del.R.** 118 (Final)  
DMAP, 270.10, DMAP 301.25 & DMAP 307.60.....2:3 **Del.R.** 385 (Final)  
DMAP, 301.25 Composition of Budget Unit.....2:2 **Del.R.** 219 (Final)  
DMAP, 301.25C, Adult Expansion Population.....2:3 **Del.R.** 387 (Final)  
DMAP, Ambulatory Surgical Center Manual.....2:4 **Del.R.** 495 (Prop.)  
DMAP Durable Medical Equipment, EPSDT & Practitioner Provider Manuals.....2:2 **Del.R.** 221 (Final)  
DMAP, General Policy Manual.....2:4 **Del.R.** 497 (Prop.)  
DMAP, Inpatient Hospital Manual.....2:4 **Del.R.** 496 (Prop.)  
DMAP, Outpatient Hospital Manual.....2:4 **Del.R.** 497 (Prop.)  
DMAP, Practitioner Manual.....2:4 **Del.R.** 496 (Prop.)  
DMAP, Provider Manual, Reimbursement for Services.....2:1 **Del.R.** 66 (Prop.)  
2:3 **Del.R.** 389 (Final)  
DSSM Section 3005, TANF Program.....2:4 **Del.R.** 494 (Prop.)  
DSSM Section 3008, Children Born to Teenage Parent.....2:1 **Del.R.** 65 (Prop.)  
DSSM Section 9007.1, Citizenship & Alien Status.....2:3 **Del.R.** 359 (Prop.)  
DSSM Section 9068, Food Stamp Program.....2:2 **Del.R.** 174 (Prop.)  
DSSM Section 9092, Simplified Food Stamp Program.....2:2 **Del.R.** 174 (Prop.)  
DSSM Section 11000 & 12000, Child Care & First Step Program.....2:4 **Del.R.** 466 (Prop.)  
DSSM Section 14900, Eligibility Manual.....2:4 **Del.R.** 493 (Prop.)  
DSSM Section 16000, Eligibility Manual.....2:4 **Del.R.** 492 (Prop.)  
DSSM, Title XXI, Delaware Healthy Children Program, General Policy Manual and  
Eligibility Manual.....2:4 **Del.R.** 485 (Prop.)  
General Policy, Aliens.....2:1 **Del.R.** 67 (Prop.)  
2:3 **Del.R.** 389 (Final)  
Long Term Care, Home Health, Ground Ambulance & Hospice Provider Manuals.....2:3 **Del.R.** 389 (Final)  
Long Term Care Provider Manual, Durable Medical Equipment.....2:1 **Del.R.** 68 (Prop.)  
2:3 **Del.R.** 389 (Final)  
Medicaid Eligibility Manual, Renumbering of.....2:3 **Del.R.** 359 (Prop.)  
Non-Emergency Transportation Provider Manual, Unloaded Mileage.....2:3 **Del.R.** 389 (Final)  
Pharmacy Provider Manual, Reimbursement for Services.....2:1 **Del.R.** 67 (Prop.)  
2:3 **Del.R.** 389 (Final)  
Simplified Food Stamp Program, ABC Benefits.....2:1 **Del.R.** 120 (Final)  
Temporary Assistance for Needy Families (TANF).....2:1 **Del.R.** 60 (Prop.)  
2:4 **Del.R.** 688 (Final)

Department of Insurance

Regulation No. 37, Defensive Driving Course Discount (Automobiles & Motorcycles.....2:1 **Del.R.** 68 (Prop.)  
Regulation No. 47, Education for Insurance Adjusters, Agents, Brokers, Surplus  
Lines Brokers & Consultants.....2:1 **Del.R.** 122 (Final)  
Regulation No. 63, Long-Term Care Insurance.....2:2 **Del.R.** 187 (Prop.)  
Regulation No. 65, Workplace Safety.....2:1 **Del.R.** 71 (Prop.)  
2:4 **Del.R.** 688 (Final)  
Regulation No. 80, Standards for Prompt, Fair and Equitable Settlements of Claims for  
Health Care Services.....2:2 **Del.R.** 277 (Final)

Department of Natural Resources & Environmental Control

Delaware Coastal Management Program, Federal Consistency Policies.....2:4 **Del.R.** 500 (Prop.)



Division of Air & Waste Management			
Air Quality Management Section			
Accidental Release Prevention Regulation.....	2:4	<b>Del.R.</b> 629	(Prop.)
Delaware Low Enhanced Inspection & Maintenance (LEIM) Program.....	2:2	<b>Del.R.</b> 234	(Final)
Regulation 20, New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators.....	2:1	<b>Del.R.</b> 75	(Prop.)
	2:3	<b>Del.R.</b> 390	(Final)
Regulation 1 & 24, Definition of Volatile Organic Compounds (VOC).....	2:1	<b>Del.R.</b> 74	(Prop.)
	2:4	<b>Del.R.</b> 690	(Final)
Waste Management Section			
Regulations Governing Solid Waste.....	2:4	<b>Del.R.</b> 545	(Prop.)
Division of Water Resources			
NPDES General Permit Program Regulations Governing Storm Water Discharges			
Associated with Industrial Activity.....	2:3	<b>Del.R.</b> 393	(Final)
Water Supply Section			
Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers & Pump Installers.....			
	2:2	<b>Del.R.</b> 176	(Prop.)
Watershed Assessment Section			
Total Maximum Daily Loads (TMDLs) for Indian River, Indian River Bay, and Rehoboth Bay, Delaware.....	2:2	<b>Del.R.</b> 183	(Prop.)
Total Maximum Daily Loads (TMDLs) for Nanticoke River & Broad Creek,.....	2:2	<b>Del.R.</b> 185	(Prop.)
Department of Services for Children, Youth & Their Families			
Office of Child Care Licensing			
Child Abuse Registry .....	2:1	<b>Del.R.</b> 129	(Final)
Department of State			
Office of the State Banking Commissioner			
Regulation No. 5.121.0002, Procedures Governing the Creation & Existence of an Interim Bank.....	2:4	<b>Del.R.</b> 669	(Prop.)
Regulation No. 5.1403.0001, Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch or Foreign Bank Agency....	2:2	<b>Del.R.</b> 299	(Final)
Regulation No. 5.1403.0002, Application by a Foreign Bank for a Certificate or Authority to Establish a Foreign Bank Limited Purpose Branch or Foreign Bank Agency Pursuant to 5 Delaware Code §1403.....	2:2	<b>Del.R.</b> 299	(Final)
Regulation No. 5.1403/1101.0003, Regulations Governing the Organization, Chartering Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office.....	2:2	<b>Del.R.</b> 312	(Final)
Regulation No. 5.1422.0004, Application by a Foreign Bank for a License to Establish a Foreign Bank Representative Office Pursuant to Subchapter II, Chapter 14, Title 5, Delaware Code.....	2:2	<b>Del.R.</b> 315	(Final)
Regulation No. 5.2102(b)/2112.0001, Mortgage Loan Brokers Operating Regulations.....	2:3	<b>Del.R.</b> 361	(Prop.)
Regulation No. 5.2210(d).0001, Licensed Lenders Operating Regulations.....	2:3	<b>Del.R.</b> 362	(Prop.)
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Changes .....	2:3	<b>Del.R.</b> 364	(Prop.)
Regulation No. 5.2741.0001, Licensed Cashier of Checks, Drafts or Money Orders Operating Regulations.....	2:3	<b>Del.R.</b> 365	(Prop.)
Regulation No. 5.2743.0002, Licensed Cashier of Checks, Drafts or Money Orders Posting of the Fee Schedule & Minimum Requirements for Content of Books and Records .....	2:3	<b>Del.R.</b> 366	(Prop.)
Regulation No. 5.2905(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records.....	2:3	<b>Del.R.</b> 366	(Prop.)

Regulation No. 5.2905(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations .....	2:3 <b>Del.R.</b> 367 (Prop.)
Regulation No. 5.3404.0001, Preneed Funeral Contracts Regulations Governing Irrevocable Trust Agreements.....	2:2 <b>Del.R.</b> 319 (Final)
Regulation No. 5.701/774.0001, Procedures for Applications to Form a Bank, Bank & Trust Company or Limited Purpose Trust Company, Pursuant to Chapter 7 of Title 5 of the Delaware Code.....	2:4 <b>Del.R.</b> 671 (Prop.)
Regulation No. 5.751.0013, Procedures Governing the Dissolution of a State Chartered Bank or Trust Company.....	2:2 <b>Del.R.</b> 296 (Final)
Regulation No. 5.833.0004, Application by an Out-of-State Savings Institution, Out-of-State Savings & Loan Holding Company or Out-of-State Bank Holding Company to Acquire a Delaware Savings Bank or Delaware Savings and Loan Holding Company.....	2:4 <b>Del.R.</b> 673 (Prop.)
Regulation No. 5.844.0009, Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company, 5 Del.C. 844.....	2:4 <b>Del.R.</b> 676 (Prop.)
Regulation No. 5.853.0001P, Procedures Governing the Registration of Delaware Bank Holding Companies with the Bank Commissioner Pursuant to the Provision of Section 853 of Title 5, Delaware Code, Repeal of.....	2:2 <b>Del.R.</b> 320 (Final)
Regulation No. 5.852.0002, Application to Become a Delaware Bank Holding Company..	2:2 <b>Del.R.</b> 297 (Final)
<b>Department of Transportation</b>	
Aeronautical Regulations .....	2:1 <b>Del.R.</b> 130 (Final)
Subdivision Plan Review Fee Procedures.....	2:4 <b>Del.R.</b> 693 (Final)
<b>Governor's Office</b>	
Appointments & Nominations.....	2:1 <b>Del.R.</b> 145
	2:2 <b>Del.R.</b> 322
	2:3 <b>Del.R.</b> 425
	2:4 <b>Del.R.</b> 696
Executive Order No. 54 .....	2:1 <b>Del.R.</b> 143
<b>Public Service Commission</b>	
PSC Regulation Docket No. 4, Minimum Filing Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	2:1 <b>Del.R.</b> 81 (Prop.)
PSC Regulation Docket No. 12 (Track III), Rules to Govern Payphone Services.....	2:4 <b>Del.R.</b> 695 (Final)
PSC Regulation Docket No. 41, Implementation of the Telecommunications Technology Investment Act .....	2:2 <b>Del.R.</b> 280 (Final)
PSC Regulation Docket No. 44, Information Required to be Filed by a Manufacturer to Establish an Additional Dealer or to Relocate an Existing Dealership Pursuant to 6 Del.C. 4915(a) .....	2:4 <b>Del.R.</b> 679 (Prop.)

**Symbol Key**

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

**Proposed Regulations**

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

**DEPARTMENT OF AGRICULTURE**

Statutory Authority: 3 Delaware Code,  
Section 1237 (3 Del.C. 1237)

A public hearing will be held on November 23, 1998, at 6:00 pm at the Delaware Department of Agriculture in Conference Room 1.

**Delaware Pesticide Rules and Regulations****SECTION 1 GENERAL****1.01 Scope**

These regulations establish general operating rules and procedures for the enforcement of the Delaware Pesticide Law, including but not limited to the certification of users of restricted and general use pesticides.

**1.02 Authority**

These regulations are issued under the authority of TITLE 3 PART II CHAPTER 12 of the Annotated Code of Delaware.

**1.03 Effective Date**

These regulations were amended on November 1, 1996, in accordance with Title 29, Chapter 101, Annotated Code of Delaware

**1.04 Filing Date**

These regulations were filed in the Office of the Secretary of State on November 1, 1996.

**SECTION 2 DECLARATION OF POLICY**

3 Del. C. Part II, Chapter 12, Section 1237, places the enforcement of the Delaware Pesticide Law with the Department of Agriculture and empowers the Department to establish regulations.

By virtue of the authority vested in me as Secretary of Agriculture by 3 DEL. C., Part II, Chapter 12, I, John F. Tarburton, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing the sale, use and application of pesticides in Delaware.

**SECTION 3 DEFINITIONS**

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (**3 DEL.C.**, Part II, Chapter 12) are hereby incorporated by reference in this regulation.

“Accident” means an unexpected, undesirable event resulting in the presence of a pesticide that adversely affects man or the environment.

“Brand” means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

“Certification” means the recognition by the Department that a person has met the qualification standards established under Section 8 or Section 9 of these regulations and has

been issued a written certificate from the Department authorizing them to use pesticides for the specified type(s) of pest control.

“Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

“Fumigant” means a gaseous or readily volatilizable chemical (such as hydrogen cyanide or methyl bromide) used as a pesticide.

“Fumigation” means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside a structure, such as a box car, aircraft, truck, ship or any object sealed or covered. Excluded is the use of a fumigant in or on the soil.

“Grade” means a formulation of a pesticide, except that the addition of pigments solely for coloration shall not constitute a change in formulation such as to constitute a new grade requiring registration.

“Handle pesticides” means to mix, load, apply, or dispose of pesticides.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations.

“LAW” means the Delaware Pesticide Law, 3 DEL. C., Part II, Chapter 12.

“Regulated pest” means a specific organism considered by the State or by a Federal Agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect man or the environment.

“Service vehicle” means any vehicle used by a licensee to transport pesticides for the purpose of their application.

## SECTION 4 REGISTRATION

### 4.01 PRODUCT REGISTRATION

(a) Every pesticide which is distributed within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Secretary subject to the provisions of this law. Such registration shall be renewed annually prior to July 1; provided, that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provision of an experimental use permit issued by the Federal U.S. Environmental Protection Agency.

(b) The applicant for registration for a pesticide which is federally registered shall file a statement with the Secretary which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.

(2) The name of the pesticide.

(3) Other necessary information required for completion of the Department's application for registration form.

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

(5) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.

(6) The EPA product registration number.

(c) The applicant desiring to register a pesticide shall pay an annual registration fee of twenty five dollars (\$25.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for such applicant. All such registrations shall expire on June 30 of any one year.

(d) Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of this law. Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

(e) If it appears to the Secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this law, he shall register the pesticide.

(f) Pesticide products that are discontinued by a registrant shall be registered for a period of two years. Said two year limit covers the year in which the item is declared to be discontinued by the registrant and an additional year to

permit time to dispose of shelf stock. Should the registrant provide the Department with written notification that shelf stocks of the product are depleted, the products shall be exempt from the two year continued registration period.

#### 4.02 EMPLOYEE REGISTRATION

(a) Every licensee shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 30 days after employment. The fee for registering each employee shall be \$25.00. However, the fee shall be waived for any employee registration if that employee is certified under the LAW.

(b) Each licensee shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. Such training shall be completed within 30 days of employment and before the employee is registered with the Department.

1. The Department will not approve any training program that does not include the following subjects:

- (i) Pesticide Law and Regulations;
- (ii) Label comprehension;
- (iii) Safety and emergency procedures;
- (iv) Proper pesticide handling, storage and disposal;
- (v) Pest identification and control procedures;
- (vi) Pesticide application techniques;
- (vii) Environmental and health concerns; and
- (viii) Integrated pest management principles

2. Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

(c) The name and address of each such employee shall be provided to the Department by the licensee. The Department shall issue a registration card to those registered. This registration card shall bear the name and license number of the employee and shall become null and void upon termination of employment with the licensee. This card is to be carried by the employee during working hours and is to be displayed upon request.

(d) Written notification of employment termination of this registered employee with the licensee shall be made to the Department within 30 days subsequent to termination.

(e) The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.

(f) The Department, after due notice and opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the LAW.

#### SECTION 5 LICENSING

5.01 All business licensee applicants shall pay an annual fee of \$50.00.

5.02 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license excluding: 7.01 (a) Agriculture Plant Pest Control; 7.01 (b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

#### SECTION 6 RESTRICTED USE PESTICIDES CLASSIFICATION

Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally registered restricted use products.

6.01 Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally registered use products.

#### SECTION 7 CATEGORIZATION OF COMMERCIAL APPLICATORS

Categories and subcategories of applicators (other than private applicators) who use or supervise the use of pesticides are identified below.

##### 7.01 AGRICULTURAL PEST CONTROL CATEGORY

(a) AGRICULTURAL PLANT - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of agricultural crops, including without limiting the following: feed grains, soybeans, forage, vegetables, small fruits and tree fruits; as well as on grasslands and non-crop agricultural lands.

(b) AGRICULTURAL ANIMAL - This subcategory includes commercial applicators using or supervising the use of pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators or engaged in large scale use are included in this category.

[(c) FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS - This subcategory includes commercial applicators using or supervising the use of pesticides for soil fumigation in the production of an agricultural commodity

and/or for fumigation of agricultural products in storage or transit.]

#### 7.02 FOREST PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

#### 7.03 ORNAMENTAL AND TURF PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

#### 7.04 SEED TREATMENT CATEGORY

This category includes commercial applicators using or supervising use of pesticides on seeds.

#### 7.05 AQUATIC PEST CONTROL CATEGORY

(a) AQUATIC WEED - This subcategory includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities.

(b) ANTIFOULING PAINT - This subcategory includes commercial applicators using or supervising the use of any anti-fouling paints for the protection of boat hulls. This subcategory also includes applicators using or supervising the use of anti-fouling paints on containers which they sell, lease, or use for the purpose of harvesting shellfish.

(c) MOSQUITO CONTROL - This subcategory includes applicators using or supervising the use of pesticides for the management and control of mosquitoes.

#### 7.06 RIGHT-OF-WAY PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in the maintenance of roads, electric power lines, pipelines, railway rights-of-way or similar areas.

#### 7.07 INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in, on, or around food handling establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; human dwellings, institutions, such as schools and hospitals, industrial establishments; and for the protection of stored, processed or manufactured products. This category contains the following subcategories:

(a) ~~FUMIGATION PEST CONTROL~~ - This subcategory includes commercial applicators using or

~~supervising the use of pesticides to fumigate human dwellings, schools, hospitals, stores, warehouses, grain elevators or any other structure including box cars, trucks, automobiles, shipping containers, boats, barges, or ships or other similar objects as well as commodities such as lumber, hay or straw, food products, bags or other objects whether they are in structure or fumigated out of doors.~~

GENERAL PEST CONTROL - This subcategory includes commercial applicators who use or supervise the use of pesticides to control household pests, including pests that infest structures, stored products, and residential food preparation areas, and pests that infest or contaminate food and any stage of processing in food processing facilities. This includes treatment of food processing areas and control of vertebrate structural invaders. This category does not include control of wood-destroying pests, or the use of fumigants.]

(b) ~~WOOD PRESERVATIVES~~ - This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an incidental basis may apply these products under their current certification. Private applicators using wood preservative products for purposes related to agricultural production may also apply wood preservatives under their current certification.

WOOD DESTROYING PEST CONTROL - This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.]

(e) ~~MISCELLANEOUS PEST CONTROL~~ - This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

FUMIGATION PEST CONTROL (non-agricultural) - This subcategory includes commercial applicators using or supervising the use of fumigant pesticides to control pests in structures other than soils and agricultural products/commodities.

(d) WOOD PRESERVATIVES - This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an incidental basis may apply these products under their current certification. Private applicators using wood preservative

products for purposes related to agricultural production may also apply wood preservatives under their current certification.

(e) INSTITUTIONAL AND MAINTENANCE PEST CONTROL - Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

(f) COOLING TOWER PEST CONTROL - This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

(g) MISCELLANEOUS PEST CONTROL - This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

#### 7.08 PUBLIC HEALTH PEST CONTROL CATEGORY

This category includes, but is not limited to, State, Federal and other governmental employees who use or supervise the use of pesticides in public health programs for the management and control of pests having medical or public health importance.

#### 7.09 REGULATORY PEST CONTROL CATEGORY

This category includes State, Federal and other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

#### 7.10 DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY

This category includes:

(a) Individuals who demonstrate to the public the proper use and technique of application of a restricted use pesticide or supervises such demonstrations, and/or

(b) Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

### SECTION 8 STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS

#### 8.01 DETERMINATION OF COMPETENCY

(a) Competence in the use and handling of pesticides shall be determined on the basis of written examinations, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Secretary. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All examinations shall be administered as closed book examinations.

(b) Applicants for examination shall register at least one (1) week before the scheduled examination date.

(c) Exams shall be scheduled quarterly during the calendar year and shall be given at such times and places as the Secretary may direct.

(d) Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(e) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicant may apply for one (1) reexamination scheduled at least thirty (30) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

#### 8.02 GENERAL STANDARDS FOR ALL CATEGORIES OF CERTIFIED COMMERCIAL APPLICATORS

All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency:

##### (a) LABEL & LABELING COMPREHENSION

(1) The general format and terminology of pesticide labels and labeling;

(2) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) Classification of the product, general or restricted; and (d) Necessity for use consistent with the label.

##### (b) SAFETY

(1) Pesticides toxicity and hazard to man and common exposure routes;

(2) Common types and causes of pesticides accidents;

(3) Precautions necessary to guard against injury to applicators and other individuals in or near treated area;

(4) Need for and use of protective clothing and equipment;

(5) Symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(c) ENVIRONMENT

The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil or other substrate;

(3) Presence of fish, wildlife and other non-target organisms; and

(4) Drainage patterns.

(d) PESTS

Factors such as:

(1) Common features of pest organism and characteristics of damage needed for pest recognition;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to problem identification and control.

(e) PESTICIDES

Factors such as:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(4) Hazards and residues associated with use;

(5) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and,

(6) Dilution procedures.

(f) EQUIPMENT

Factors including:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance and calibration.

(g) APPLICATION TECHNIQUES

Factors including:

(1) Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment.

(h) LAWS AND REGULATIONS

Factors including:

Applicable State and Federal laws and regulations.

8.03 SPECIFIC STANDARDS FOR COMPETENCY FOR EACH CATEGORY OF COMMERCIAL APPLICATORS

Some of the factors referenced in this section are of particular importance because of the different types of activities carried out by the applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.

(a) AGRICULTURAL PEST CONTROL CATEGORY

(1) AGRICULTURAL PLANT PEST CONTROL SUBCATEGORY

Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

(2) AGRICULTURAL ANIMAL PEST CONTROL SUBCATEGORY

Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

[(3) FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS SUBCATEGORY]

Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.]

(b) FOREST PEST CONTROL CATEGORY

Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in Delaware and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and



harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(c) **ORNAMENTAL AND TURF PEST CONTROL CATEGORY**

Applicators shall demonstrate knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(d) **SEED TREATMENT CATEGORY**

Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(e) **AQUATIC PEST CONTROL CATEGORY**

(1) **AQUATIC WEED** - Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this subcategory. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall also demonstrate practical knowledge of the principles of limited area application.

(2) **ANTIFOULING PAINT** - Applicators in this subcategory shall demonstrate practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of marine anti-fouling paints. They shall demonstrate practical knowledge of the term "acceptable release rate" as it applies to organotin paints; knowledge of the types of paints approved for specific hull types; knowledge of the types of anti-fouling paints approved for use on equipment or containers used for the harvesting of shellfish; knowledge of potential environmental consequences from the use/misuse or improper disposal of pesticides; safety precautions necessary to avoid exposure of workers to anti-fouling paints; proper storage, handling, and disposal methods of paint chips and

dusts suspected of containing organotin compounds; marine pests and relevant life cycles which are controlled through the application of anti-fouling paints; methods, procedures, and equipment used in applying organotin and anti-fouling paints; applicable State and Federal laws and regulations; and recordkeeping requirements under the Delaware Pesticide Law.

(3) **Mosquito Control** - Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

(f) **RIGHT-OF-WAY PEST CONTROL CATEGORY**

Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

(g) **INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY**

Applicators in this category must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulation appropriate for their control, and methods of application that avoid contamination of food, contamination of habitat, and the exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

(1) **FUMIGATION — PEST — CONTROL SUBCATEGORY**

~~In addition to those standards listed for this category in the preceding paragraph, the applicator will be required to demonstrate specific knowledge appropriate to fumigants and fumigation.~~

GENERAL PEST CONTROL SUBCATEGORY

Applicators must demonstrate knowledge of household pests including but not limited to: pests that invade or infest structures, stored products, and residential food preparation areas; pests that infest or contaminate foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operation including

but not limited to: flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and hazards associated with pesticides in food manufacturing and processing.

**(2) WOOD DESTROYING PEST CONTROL SUBCATEGORY**

Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

**(3) MISCELLANEOUS SUBCATEGORY**

Applicators must demonstrate knowledge appropriate to their specific field of pest control.

**FUMIGATION (NON-AGRICULTURAL) SUBCATEGORY**

Applicators must demonstrate a practical knowledge of the conditions requiring the application of fumigants, and the selection of the most appropriate fumigation methods to use; equipment used in fumigation including but not limited to application, monitoring, testing, calculating, and personal protective devices; release, distribution, and maintenance of the correct fumigant concentrations for the product being used and the structure being fumigated under differing conditions; and hazards involved in the use of fumigants.

**(4) WOOD PRESERVATIVE SUBCATEGORY**

Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain woodtreating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer

information covering use, site, and handling precautions which are found in the Consumer Information Sheets of products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

**(5) GENERAL INSTITUTIONAL AND MAINTENANCE SUBCATEGORY -**

Applicators in this subcategory must demonstrate a practical knowledge of a wide variety of pests for the purpose of providing structural pest control or lawn pest control in and around schools, hospitals, nursing homes, child day-care centers, and apartment buildings. Since children and elderly people have a potentially higher sensitivity to pesticides, applicators in this subcategory should be particularly knowledgeable in avoiding applications which may lead to a hazardous condition, including continuous exposure.

**(6) COOLING TOWER SUBCATEGORY -**

Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of pesticides to treat the waters of cooling towers. They must demonstrate an understanding of the following: the effects of tower operation upon cooling water composition; the importance and potential harm of discharge of exhaust water into environment waters, the steps that can be taken to minimize water-caused problems, the importance of diligence and control in the execution of cooling water treatment programs.

**(7) MISCELLANEOUS SUBCATEGORY -**

Applicator must demonstrate knowledge appropriate to their specific field of pest control.

**(h) PUBLIC HEALTH PEST CONTROL CATEGORY**

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

**(i) REGULATORY PEST CONTROL CATEGORY**

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs.

They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by

their immediate duties, since their services are frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(j) **DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY**

Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide - organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in section 8.02 above. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity. Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.02 above. In addition, they shall be expected to know the specific standards required for paragraph 8.03 (1) through (9) of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

**8.04 CERTIFICATION FEES AND RENEWAL**

(a) **CERTIFICATION FEES**

(1) Commercial applicators shall pay an annual certification fee of ~~\$15.00~~ \$20.00. All certifications shall continue in full force until December 31st of each year whereupon they shall become invalid unless renewed, except that a certification for which a renewal application has been submitted to the Department by November 30th, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Applications for renewal shall be mailed to all certified applicators by the Department before October 1st of each year.

(2) Federal, State or Local government employees who are certified under this law are exempt from this fee. This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

(b) **CERTIFICATION RENEWAL**

(1) **Commercial Applicators**

(i) Commercial applicators shall be required to be reexamined through a written test prior to their annual certification renewal.

(ii) The reexamination requirement may be satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.04 (b)(1)(iv) below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.04 (b)(3) below.

(iii) A commercial applicator shall be exempt from the reexamination requirement for the first two certification renewals following his original certification in Delaware.

(iv) The number of hours of training required to fulfill paragraph 8.04 (b)(1)(ii) are specified as follows:

<u>Category of Pest Control</u>	<u>Hours</u>
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
<u>Fumigation of Soils and</u>	
<u>Agricultural Commodities (1C)</u>	<u>4</u>
Forest (02)	4
Ornamental & Turf (03)	8
Seed Treatment (04)	2
Aquatic (5A)	4
Antifouling Paint (5B)	2
Mosquito (5C)	4
Right-of-Way (06)	4
Industrial, Institutional, Structural & Health Related (07)	
<u>General Pest Control (7A)</u>	<u>18</u>
<u>Wood Destroying Pest Control</u>	
<u>(7B)</u>	<u>18</u>
<u>Fumigation Pest Control</u>	
<u>(non-agricultural) (7C)</u>	<u>4</u>
Wood Preservatives (7D)	4
<u>Institutional and Maintenance (7E)</u>	<u>18</u>
Cooling Towers (7F)	4
Miscellaneous (7G)	4
Public Health (08)	4
Regulatory (09)	4
Demonstration & Research (10)	8

(2) **Private Applicators**

(i) A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.

(ii) A private applicator shall be required to be reexamined prior to certification renewal.

(iii) The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years

preceding certification renewal.

(3) Expiration

(i) A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

(ii) A person holding a lapsed certificate must be examined as described by paragraph 8.01, in order to receive a new certificate.

(iii) An applicator is not imparted the right to purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.

#### 8.05 EXEMPTIONS

The above standards do not apply to the following persons for the purposes of these regulations:

(a) Persons conducting laboratory type research involving restricted use pesticides; and

(b) Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

(c) Owners and employees of any child day-care center which is operated within a private home.

#### SECTION 9 STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS

9.01 As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problem and pest control practices associated with his agricultural operations and his related legal responsibility. This practical knowledge includes ability to:

(a) Recognize common pests to be controlled and damage caused by them.

(b) Read and understand the label and labeling information, including the common name of pesticides he applies; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and specific disposal procedures.

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

(d) Recognize local environmental situations that must be considered during application to avoid contamination.

(e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

9.02 Such competence of each private applicator shall be

verified through the administration of a private applicator certification system here described which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. One or more of the following options will be employed to certify private applicators:

(a) GENERAL CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards and shall be broad enough to test the private applicator's ability to apply general principles to specific problems associated with the restricted use pesticides required for the production and protection of his crops.

(b) PESTICIDE CLASS CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide products and all different formulations of a pesticide used for the same purpose, use, or application. Examples include, but are not limited to, preemergence herbicides for vegetable crops, foliar insecticides on corn, rodenticides in fruit orchards, nematicides in fields prior to planting, ground application of fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

(c) COMMODITY/CROP/SITE CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide needed for specific crops or sites which the applicator would be expected to deal with in his agricultural operations. This would include any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop such as corn, apples, or wheat; single site class such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop classes such as forage crops or small fruits, site class such as barns or greenhouses; and livestock class such as poultry.

Competency determination shall reflect the full range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class concerned and the pests involved.

A private applicator may wish to be certified for a specific crop or site (such as corn or beef cattle) or for a crop or site class (such as forage crops, livestock, small grain crops).

(d) SINGLE PRODUCT CERTIFICATION

This option certifies as competent the private applicator

for one or more uses of a single product or related products with the same active ingredient and with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to make pesticide application.

(e) **SINGLE PRODUCTS/SINGLE USE AUTHORIZATION (EMERGENCY PROGRAM)**

This option would authorize the private applicator to make single use application(s) of a restricted use product (or other products of the same formulation). This option will be used only as an emergency provision to accommodate situations such as an unexpected pest problem that requires immediate certification of a previously uncertified private applicator or one whose particular type of certification would not cover the product needed to deal with the problem.

**9.03 DETERMINATION OF COMPETENCY FOR PRIVATE APPLICATORS**

(a) Competence in the use and handling of pesticides by private applicators shall be determined by written examinations with questions based upon study materials made available by the Department. Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(b) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. The applicant may apply for reexamination, which shall be scheduled by the Department at least 30 days after the applicant's initial examination.

(c) Upon showing of hardship, an applicant for private applicator certification may appeal to the Secretary for an exception to paragraphs 9.03 (a) and (b). At his discretion, the Secretary may provide for an alternative means of examination, to include but not be limited to oral examination. Oral examinations shall cover the same material included in the written examination.

**SECTION 10 STANDARDS FOR SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED PRIVATE AND COMMERCIAL APPLICATORS**

10.01 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

10.02 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator. In many situations, where the certified applicator is not required to be physically present,

"direct supervision" shall include verifiable instructions to the competent person, as follows:

(a) Detailed guidance for applying the pesticide properly, and

(b) Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

**SECTION 11 FEDERAL AGENCY PESTICIDE APPLICATORS**

11.01 When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP) or under other plans judged by the Secretary to be at least equal to the Delaware Plan, such employee will be certified by the Secretary in the same category without the need for a written examination nor for the payment of any fee.

11.02 Federal employees qualified under an acceptable Federal Plan to apply restricted use pesticides and who intend to apply restricted use pesticides in Delaware as a part of their agency work shall present their qualifying documents to the Secretary and, if acceptable, these documents will be endorsed or a state document will be issued which will permit the federal employee to use restricted use pesticides in Delaware.

11.03 If, in an emergency situation, federal employees are brought into Delaware to control or eradicate pests and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, such employee shall be considered to be certified in Delaware and he or his agency must, within 10 days, present qualifying credentials to the Secretary. At this time state credentials will be issued if the employee is to remain in Delaware as an applicator of restricted use pesticides.

11.04 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency, however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

**SECTION 12 RECIPROCITY**

12.01 When a commercial applicator is certified under the

state plan of another state and desires to operate as a commercial applicator in Delaware he shall make application to the Secretary and shall include, along with the proper fee and other details required by the LAW, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The Secretary then may, if he approves the credentials, issue a Delaware certification to the applicator in the appropriate classification and/or category(ies) for which he is certified in another state without a written examination. The original certification must be made in the state where the commercial applicator resides or where he has his principle place of business.

### SECTION 13 REVOCATION

13.01 The Department, after due notice and opportunity for a hearing, may deny, suspend, revoke or modify any application for or provision of any certification, including reciprocal certification, under the LAW if the Department finds that the Certified Applicator or the applicant for Certification has committed any act or acts declared by the Law or these regulations to be unlawful.

### SECTION 14 RECORDS

#### 14.01 COMMERCIAL APPLICATORS

Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

(a) The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of **40 Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

(b) When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

(c) The date and specific area treated.

(d) The pest against which the pesticide was used.

(e) The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

(f) When label directions advise precaution in regard to drift, on-site weather conditions to include:

(i) Wind velocity and direction

(ii) Temperature

(iii) Relative humidity

(g) In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any interested person at or adjacent to the application site, with any information contained on the pesticide label.

#### 14.02 RESTRICTED USE PESTICIDES DEALERS

Restricted use pesticide dealers shall keep and maintain for a period of two years, records on the sale or other disposition of restricted use pesticides to include the following:

(a) The name and address of the residence or principal place of business of the certified applicator to whom the pesticide is made available for use.

(b) The certification identification number of the purchaser or receiver of the pesticide on the document.

(c) The product name and E.P.A. registration number on the label of the pesticide.

(d) The quantity of the pesticide made available for use in the transaction.

(e) Date of the sale or transaction.

### SECTION 15 FINANCIAL SECURITY REQUIRED OF LICENSEE

15.01 The Secretary shall not issue a license until the applicant has filed evidence of financial security with the Secretary. Such evidence shall consist of a general liability insurance policy with completed operation coverage or certification thereof from an insurance company, person, or risk retention group formed under the Federal Risk Act of 1986, authorized to do business in Delaware.

#### (a) AGRICULTURE

##### (1) PLANT PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

##### (2) AGRICULTURE ANIMAL PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

#### (b) FOREST PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

#### (c) ORNAMENTAL AND TURF PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred

Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(d) SEED TREATMENT

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(e) AQUATIC PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(f) RIGHT-OF-WAY PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(g) INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

#### 15.02 AERIAL APPLICATORS

Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.03 Nothing to these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Secretary.

### SECTION 16 STORING AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS

#### 16.01 PROHIBITED ACTS

No person shall dispose of or store (or receive for disposal or storage) any pesticide, pesticide container or

pesticide container residue:

(a) In a manner inconsistent with its label or labeling;

(b) So as to cause or allow the open dumping of pesticides or pesticide containers;

(c) So as to cause or allow open burning of pesticide or pesticide containers, except; the open burning by the user of small quantities of combustible containers (but not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorates, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;

(d) So as to cause or allow dumping of pesticides in any stream, river, pond, sewer or lake, except in conformance with permits issued by the Delaware Department of Agriculture or other state agency having jurisdiction regarding water pollution;

(e) So as to violate any applicable state or federal pollution control standard.

#### 16.02 PESTICIDE AND PESTICIDE CONTAINER DISPOSAL

Pesticide containers shall, upon completion of use, be triple rinsed immediately by the applicator or someone under his direct supervision or cleaned by another method or procedure equivalent in residue removal effectiveness.

(a) The standard triple rinse procedure is as follows:

(1) The emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.

(2) A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

(3) The above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix to be applied in accordance with label instructions.

(b) In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with applicable Department of Natural Resources and Environmental Control (DNREC) regulations.

(c) Methods of rinsing or cleaning containers, other

than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally safe manner.

(d) In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill or by incineration if allowed by State and local authorities. Liners removed from pesticide containers containing pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent, prior to their removal from the container. These liners must be handled and disposed of in accordance with applicable DNREC regulations.

(e) Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement. Plastic containers may be burned if allowed by State and local authorities.

(f) Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.02 (a) through 16.02 (e), shall be disposed of at a Solid Waste Facility.

(g) Unused or unwanted farm or commercial use pesticides which qualify as hazardous waste shall be disposed of in accordance with 7 DEL C., Chapter 63 and the Delaware Regulations Governing Hazardous Waste.

(h) Pesticides and/or pesticide containers which are not subject to these regulations are as follows:

(1) Paper, cardboard and fiberboard containers. Storage, handling and disposal must, however, be in accordance with label directions and any applicable DNREC regulations and/or local ordinances. This waiver applies only if all the pesticide contents have been removed from the container using practical methods.

(2) Aerosol containers and compressed gas cylinders, provided that aerosol containers are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

(3) Pesticide containers labeled as returnable, and which are returned to the manufacturer for refill.

(4) Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly during routine municipal solid waste disposal.

#### 16.03 PESTICIDE STORAGE

(a) Pesticides shall be stored in such a manner so as to prevent the contamination of food, feed and/or water.

(b) Pesticides shall be stored out of the reach of children and so as not to present a public nuisance.

(c) Until such time as the Secretary shall, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgate more specific rules and regulations covering the storage of pesticides and pesticide containers not provided in 16.01 and 16.03 of this Section, the recommended procedures for the storage of pesticides and containers detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

#### SECTION 17 PESTICIDE ADVISORY COMMITTEE

##### 17.01 EXPENSES OF MEMBERS NOT FROM GOVERNMENT DEPARTMENTS

Pesticide Advisory Committee members not from governmental departments shall submit expense accounts to the Secretary. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging and meals (out of state) and for transportation according to the regulations applicable to Department employees.

#### SECTION 18 APPLICATION AND EQUIPMENT

18.01 No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which such systems may have shall not leak pesticides and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without contaminating them.

18.02 All hoses, pumps or other equipment used to fill pesticide handling, storage or application equipment shall be fitted with an effective valve or device to prevent backflow of pesticides or pesticide use-dilutions into water supply systems, streams, lakes, other sources of water or other materials. Provided, however, such backflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity



systems when the fill spout, tube or pipe is not allowed to contact or fall below the water level of the application equipment being filled and no other possible means of establishing a backsiphon or backflow exists.

#### SECTION 19 ANTIFOULING PAINT RESTRICTIONS

19.01 For the purposes of this section, the following definitions shall apply:

(a) The term "acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day and as further defined in the Organotin Anti-fouling Paint Control Act of 1988, (Pub. L. - 100-333).

(b) The term "antifouling paint" means a coating, paint, or treatment that is applied to a vessel or any fishing gear used to catch shellfish or finfish to control fresh water or marine fouling organisms.

(c) The term "vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

(d) The term "commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

(e) The term "organotin" means any compound of tin used as a biocide in an anti-fouling paint.

(f) The term "retail" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

19.02 Except as otherwise provided in this Section, no person shall distribute, possess, sell, or offer for sale, apply or offer for use or application any marine anti-fouling paint containing organotin.

19.03 No person may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substances to paint to create an anti-fouling paint.

19.04 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply or purchase for application an anti-fouling paint containing organotin with an acceptable release rate, however, such paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

19.05 A person may distribute, sell, or apply a marine anti-

fouling paint containing organotin having an acceptable release rate, if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

#### SECTION 20 RESTRICTED USE PESTICIDE DEALER PERMITS

20.01 For the purposes of these regulations the following definitions shall apply:

(a) The term "restricted use pesticide dealer" means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide. The term excludes any person who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application.

(b) The term "make available for use" means to distribute, sell, ship, deliver for shipment, or receive, and (having so received) deliver, for use by any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail dealers, acting only in those capacities.

(c) The term "dealership" means any site owned or operated by a restricted use pesticide dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

20.02 Effective December 31, 1990, no person shall make available for use any restricted use pesticide unless that person has a valid Dealer Permit issued by the Department.

20.03 A separate Dealer Permit shall be required for each dealership owned or operated by the restricted use pesticide dealer.

20.04 Issuance of a Dealer Permit:

(a) Application for a Dealer Permit shall be made in writing to the Department on a designated form obtained from the Department.

(b) The Department shall issue a Dealer Permit to an applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

(c) All permits shall remain in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial.

20.05 A restricted use pesticide dealer is responsible for the acts of his employees in the solicitation and sale of all

pesticides and all claims and recommendations for the use of pesticides.

20.06 A dealer permit is not transferable.

20.07 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

#### SECTION 21 [INSTITUTIONAL AND] MAINTENANCE PESTICIDE USE RESTRICTIONS

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

(a) The term "general use pesticide" shall include all pesticides as defined by **3 DEL. C., DELAWARE PESTICIDE LAW**, §1202 (27), with the following exceptions:

(1) Any Restricted Use Pesticides, as defined by **3 DEL. C.** §1202 (30);

(2) Any State Restricted Use Pesticide, as defined by **3 DEL. C.**, §1202 (31);

(3) Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

(b) The term "school" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

(c) The term "apartment building" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

(d) The term "nursing home" shall have the same meaning assigned by **16 DEL. C.**, Chapter 11, §1101.

(e) The term "hospital" shall have the same meaning assigned by **16 DEL. C.**, Chapter 10, §1001 (1).

(f) The term "child day-care center" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or guardian, and for compensation. Provided, nevertheless, that "child day-care center" shall not include any such facility which is operated within a private home.

(g) The term "private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

(h) The term "Institutional and Maintenance Applicator" means any person who:

(1) Owns, operates or maintains a school,

apartment building, nursing home, hospital or child day-care center, or is an employee of a school, apartment building, nursing home, hospital, or child day-care center; and who

(2) Applies general use pesticides inside the school, apartment building, nursing home, hospital, or child day-care center.

21.02 A general use pesticide applicator must be certified pursuant to Section 8 of these regulations, unless, such person possesses a valid certification in subcategory 7.07 (e), Institutional and Maintenance Pest Control.

21.03 A person certified as a general maintenance applicator may not engage in the business of pest control outside the scope of the employment for which they have been certified, unless the person becomes certified as otherwise provided by the LAW.

21.04 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain general maintenance pest control services for the building from a person only by:

(a) Contracting with a business licensed pursuant to **3 DEL. C.**, Chapter 12, §1206;

(b) Having the services performed by a general maintenance applicator with a valid certification in Section 7.07(a) or 7.07(e) of these regulations.

21.05 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.01

#### SECTION 22 RESTRICTIONS ON THE USE OF PESTICIDE FOR THE CONTROL OF SUBTERRANEAN TERMITES

22.01 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants. Nor does it address application technology such as biological control agents or baits.

22.02 For the purpose of this section, the following definition shall apply:

(a) "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for preventing, destroying, repelling or mitigating termites.

22.03 Termiticides shall be used to establish a continuous chemical barrier in all applicable and labeled areas, and shall utilize at least the minimum application concentration and volume prescribed by the label. However, less than label-

specified volume and the exclusion of label prescribed areas of treatment may be permitted if the conditions outlined in both (a) and (b) below occur:

- (a) One or more of the following situations is present:
  - (1) Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;
  - (2) Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;
  - (3) Construction elements are present that would or could encourage a reduced volume, e.g., poured walls vs. hollow block walls;
  - (4) Specific customer request, or at the recommendation of the certified applicator.

(b) Within fourteen (14) days following the termiticide application, the following information is furnished in writing to the customer or appropriate person:

- (1) A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;
- (2) The pesticide used, including brand name and EPA registration number;
- (3) The actual volume of the termiticide applied;
- (4) Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, well locations and sites of termite activity;
- (5) A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.04 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.07(b), Wood Destroying Pest Control.

Recommended Soil Sample Residue Requirements for Termiticides<sup>1</sup>

Termiticide	Parts Per Million (PPM)
Tribute	110
Dragnet	81
Torpedo	63
Prevail	46
Demon	28
Dursban	51
Pryfon	N/A

<sup>1</sup> Adopted by the Association of Structural Pest Control

Regulatory Officials, effective November 14, 1995

**DEPARTMENT OF EDUCATION**

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

**CAREER GUIDANCE AND PLACEMENT COUNSELORS**

The Secretary seeks the consent of the State Board of Education to repeal the regulation, Career Guidance and Placement Counselors, pages A-24 and A-25 in the Handbook for K-12 Education. The existing regulation defines very specifically what the person must do in this type of position. The repeal is recommended because the position is no longer funded from a line item in the budget. Now if the district chooses to employ such a person, the funding for the position comes from their academic excellence units. There are existing certification requirements for Career Guidance and Placement Counselors which will help to define this counselor's role in the school. It is no longer appropriate for the Department of Education to write a job description for the position when the funding source and process has changed.

~~2. CAREER GUIDANCE AND PLACEMENT COUNSELORS~~

~~(a) In the document Guidelines for the Career Guidance and Placement Counselor Program the State Board of Education approved the following job description for the Career Guidance and Placement Counselors:~~

~~Specific Tasks of the Career Guidance and Placement Counselors:~~

- ~~(1) provide coordination to assure students are counseled about vocational and related academic educational programs that best meet their needs at both the regular high school and/or in the vocational school district;~~
- ~~(2) prepare and keep current a file of available jobs in the community and serve as liaison with the State Occupational Information Coordinating Committee (SOICC) and the Department of Labor;~~
- ~~(3) provide coordination with career and vocational counseling of middle school students;~~
- ~~(4) provide job placement counseling and assist students who desire full time placement upon graduation;~~
- ~~(5) assist with the coordination of student assessment, IEP development, and placement of all handicapped and disadvantaged students in mainstream vocational programs;~~
- ~~(6) assist the school district in providing information to all handicapped and disadvantaged students and their parents concerning the opportunities available in~~

vocational education and the requirements for eligibility for enrollment in vocational education programs. (This should be accomplished no later than the beginning of the 9th grade.)

~~(7) complete a follow-up study of graduates and dropouts of each year's graduating class;~~

~~(8) serve as liaison with the employment community and vocational advisory committees;~~

~~(9) assist in on-going pre-vocational/orientation programs to insure relevancy and coordination with the activities of the career guidance and placement counselor's function;~~

~~(10) assist students in exploring nontraditional, as well as traditional, vocational program areas and make career information available to all students for both traditional and nontraditional jobs; and~~

~~(11) coordinate the dissemination of information and the maintenance of records for the Targeted Jobs Tax Credit program for eligible student co-op participants.~~

~~(State Board Approved July 1987)~~

EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL.C. SECTION 122(d)

**K-12 GUIDANCE PROGRAMS**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Secretary seeks the consent of the State Board of Education to amend the regulations for K-12 Guidance Programs, page A-23 and Appendix B in the Handbook for K-12 Education. The amended version of the regulations will still require local school districts to have a plan for their K-12 Guidance Program but will now be based on the National Standards for School Counseling Programs, and will not require sending the plan to the State Department of Education for approval. The existing Delaware Guidelines for Counseling Programs are very similar to the new national standards even dividing the standards into the same categories, Academic Development, Career Development and Personal/Social Development. It was decided that using the National Standards for Delaware's guidance program would be the most appropriate way to move into the new century.

**C. IMPACT CRITERIA**

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

The amended regulation addresses the design of

guidance programs, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education?

The regulation addresses the design of guidance programs, 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 design of guidance programs, not health and safety issues.

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

The amended regulations address the design of guidance programs, not students' legal rights.

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

The amended regulation will preserve the necessary authority and flexibility of the decision makers at the local board and school level.

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

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

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 will remain in the same entity.

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

The amended regulation will not be an impediment to the implementation of other state educational policies.

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

The purpose of the amendment is to make the regulation less burdensome.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no cost to the state or local school boards

for complying with the amended regulation.

AS APPEARS IN THE HANDBOOK FOR K-12  
EDUCATION

H. GUIDANCE AND COUNSELING

1. REGULATIONS AND GUIDELINES FOR K-12  
GUIDANCE PROGRAMS

Regulations and Guidelines for K-12 Guidance Programs were approved in March 1990 by the State Board of Education. These are included in Appendix B. (State Board Approved March 1990)

AS APPEARS IN APPENDIX B OF THE HANDBOOK  
FOR K-12 EDUCATION, PAGES 1 & 2

REGULATIONS FOR K-12 GUIDANCE PROGRAMS

The purpose of these regulations is to provide a framework for a K-12 developmental guidance program. These programs should be planned and coordinated to emphasize the development of positive self-esteem, the development of activities to promote academic/career and personal/social growth, and to encourage economic and social self-sufficiency. This requires the coordination of support services within the school, district, and community.

I. Each school district in Delaware shall have a written plan describing the guidance program for the district which is reviewed periodically and updated at least every five years.

A. The plan shall be submitted to the Department of Public Instruction, Instruction Division, for review prior to the implementation date of September 1, 1991. Any changes or revisions to the district plan shall be submitted to the Department of Public Instruction, Improvement and Assistance Branch, as they occur.

H. The district guidance plan shall be a written description of a sequential program of services and activities to be available to all students in grades K-12.

A. The plan shall address the needs of students in the areas of personal/social development, academic development, and career/life planning.

B. The plan shall systematically include as part of the total program any existing specialized services such as the Career Guidance and Placement Counselor, drug and substance abuse counseling, peer counseling, crisis counseling, and other counseling related programs.

C. The plan shall identify an individual to coordinate the guidance program within the district for all grade levels.

D. The plan shall describe the involvement and responsibilities of counselors, administrators, specialists, and parents in the guidance program.

E. The plan shall describe the working relationships of school counselors to other specialists.

F. The plan shall provide for the involvement of a district level advisory committee which includes parents, district teachers, and/or staff members, counselors from each level of education, administrators, students, representatives of business and industry, and agencies which provide support services for district children.

G. The plan shall include procedures for coordinating school counseling services with agencies and community groups which provide services for children.

H. The plan shall include a job description for each counselor which reflects the activities and services described in the guidance program.

I. The plan shall include a method of evaluating the program which enables counselors to determine their effectiveness in terms of both process and outcome.

J. The plan shall describe services for all students including special needs students and those identified as being at risk.

AS AMENDED

Regulations for K-12 Guidance Programs

Each local school district shall have a written plan describing the guidance program for the district which shall be periodically reviewed and updated. The plan shall reflect the National Standards for School Counseling Programs as developed by the American School Counselors Association.

EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL.C. SECTION 122(d)

**PROMOTION REGULATION**

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulation, Promotion Policy, J.3., page A-27 in the Handbook for K-12 Education. The present policy requires each local school district to have a policy on promotion for students K-12 based on student achievement. It also permits the local district policy to include but not be limited to factors such as emotional stability or instability, physical health and strength and motivational and social skills. The amended regulation still requires each district to have a promotion policy but omits a

reference to the other factors and instructs the districts to include the promotion criteria found in 14 Del. C. The amended regulation also defines English Language Arts as it effects students who are Limited English Proficient.

### C. IMPACT CRITERIA

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

The amendment to the regulation is required by 14 Del. Code, and does address student achievement as it relates to eligibility for promotion.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses conditions for promotion for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses promotion issues, not health and safety issues.

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

The amended regulation addresses promotion issues which can have an effect on students' rights.

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

The amended regulation requires that districts follow the 14 Del. Code requirements as to their promotion policies.

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 probably increase the reporting and administrative requirements at the local board and school level but it is a requirement under 14 Del. Code.

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

The amended regulation reflects changes in 14 Del. Code and does remove some authority from the local school districts.

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 and may strengthen the accountability program.

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

No, 14 Del. Code requires that this regulation be amended.

10. What is the cost to the state and to the local school boards of compliance with the regulation?

There will possibly be additional costs associated with this amended regulation but the FY 2000 budget is to address what funds are needed to address the accountability program.

### AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION

#### ~~3. PROMOTION POLICY~~

~~Each local school district shall have a promotion policy for kindergarten through grade 12 and such policy must be based on student achievement. The promotion policy may also include other factors to be considered when decisions must be made regarding student promotion. Such factors may include, but not be limited to, emotional stability or instability, physical health and strength variables, motivation and social skills. Promotion policy guidelines should be assessed on a continuing basis and modified as appropriate. (State Board Approved January 1978)~~

### AS AMENDED PROMOTION REGULATION

1. Each local school district shall have a promotion policy for kindergarten through grade 12 that, at a minimum, includes the following:

a. Students in grades 1-8 must take classes in the core areas of English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware Content Standards.

b. Students in grades 1-8 must pass 50% of the classes they take each year (excluding physical education) to be promoted to the next grade level. One of the classes that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in core areas include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.

c. Requirements for promotion as defined in 14 Del. C., Chapter 1, Section 153, titled Matriculation and Academic Promotion Requirements and the Administrative

Manual for Exceptional Children.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

#### PUBLIC NOTICE

#### DIVISION OF SOCIAL SERVICES TANF PROGRAM

The Delaware Health and Social Services / Division of Social Services / Temporary Assistance for Needy Families Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3024. The change adds categories of non-citizens who are eligible to receive TANF. The Balanced Budget Act of 1997 allowed certain immigrants who were barred from receiving benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to now be eligible.

#### COMMENT PERIOD

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by November 30, 1998.

#### SUMMARY OF PROPOSED REVISIONS:

- An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).
- Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission

#### NATURE OF PROPOSED REVISIONS:

3024 Citizens and Aliens  
[233.50]

Only U.S. citizens and qualified aliens, as defined in

section 431 of PRWORA, are eligible to receive public assistance benefits

Citizens are those persons born in the 50 states and the district of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).]

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;
3. Asylees, for a period of five years after obtaining such status;
4. Aliens whose deportation or removal has been withheld, for a period of five years after obtaining such status;
5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and



[6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.]

Documentation

1. Lawful permanent resident status is verified by:

- INS Form I-551; or
- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.

2. Refugee status is verified by:

- INS Form I-94 annotated with stamp showing admission under section 207 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
- INS Form I-766 (Employment Authorization Document) annotated "A3"; or
- INS Form I-571 (Refugee travel Document).

3. Asylee status is verified by:

- INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
- INS Form I-766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of INS; or
- Order from an immigration judge granting asylum.

4. The status of an alien whose deportation is withheld is verified by:

- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
- INS Form I-766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.

5. Cuban/Haitian entrant status is verified by:

- INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
- An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU^ or CU&;
- INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
- INS Form I-94 showing parole into the United States on or after October 10, 1980; and
- Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality

6. Amerasian immigrant status is verified by:

- INS Form I-551 with the code AM6, AM7, or AM8; or

- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.

7. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meet the requirements of 8 U.S.C. 1641(c), call PPDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

### **DIVISION OF SOCIAL SERVICES**

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

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#### **PUBLIC NOTICE**

#### **Work for Your Welfare (Workfare) Program**

The Delaware Health and Social Services, Division of Social Services, is proposing to add policy governing the Work for Your Welfare (workfare) program to the Division of Social Services' Manual Section 3000. The policy arises from *A Better Chance* provisions proposed prior to the program's initiation in 1995.

#### **COMMENT PERIOD**

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 the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by November 30, 1998.

#### **SUMMARY OF PROPOSED REVISIONS:**

Clarifies program requirements for the existing workfare program for one and two-parent families.

#### **NATURE OF PROPOSED REVISIONS:**

#### **3031 WORK FOR YOUR WELFARE**

All two-parent households and single-parent adult recipients who reach their 22<sup>nd</sup> month of benefit and are without employment must enter a Work For Your Welfare activity to qualify for benefits. Work for Your Welfare is defined as a work experience program in which participants



work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites.

### **3031.1 HOURS OF PARTICIPATION - ONE PARENT FAMILIES**

Effective 10/1/98, participants in single parent households are required to work for up to 30 hours per week. The 30 hours are the maximum participation hours. DSS determines the actual hours of participation by dividing the ABC and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceeds 30 hours per week, participants are to complete no more than the 30 hours maximum. In addition to these hours, every participant is expected to participate in 10 hours of job search per week.

EXAMPLE: The ABC grant amount for two is \$270. Divided by the minimum wage (\$5.15), this equates to 52 hours per month for the ABC grant (always round down to the nearest whole number). The Food Stamp allotment amount is \$224. Divided by the minimum wage (\$5.15), this equates to 43 hours per month for the Food Stamp allotment. Together this would mean that the participant must work 95 hours per month. Divide the 95 monthly hours by 4.33 (number of weeks per month) to arrive at a weekly

participation rate. 95 divided by 4.33 is 21 hours per week. So the above participant must participate 21 hours per week in a work-for-your welfare placement in order to receive his/her full grant and allotment.

Total performance hours are based on grant amounts regardless of sanctions. In other words, a participant who has a 1/3 sanction does not perform fewer hours because of the sanction. Performance is based on what the total grant would have been without the sanction.

EXAMPLE: A family of two has a grant of \$270. The grant, however, has been reduced by 1/3 because of an employment and training sanction. When DSS assigns this adult to work, the total performance hours are based on the grant amount of \$270 despite the 1/3 sanction.

The 10 hours per week job search requirement still applies. The failure to complete the 10 hours of job search is a sanctionable offense, punishable by the progressive 1/3 penalty for failure to comply with an employment and training activity.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage.

EXAMPLE: A participant in a family size of 2 is required to work 52 hours in a month. The participant however, only works 50 hours. This participant will have the grant reduced by \$5.15 (minimum wage) x 2. DSS will reduce the grant amount for this participant by \$10.00, always rounding down to the nearest dollar amount.

Once DSS determines the hours participants are to work, the contractor will assign participants to a work site. At the work site, participants must complete their assigned hours within the time period determined by the contractor and the work site.

### **3031.2 HOURS OF PARTICIPATION - TWO PARENT FAMILIES**

Two parent households must participate in work for your welfare as soon as DSS determines the household eligible for benefits. In two parent households, one parent must participate at their assigned maximum performance hours (35 hours per week), and the second parent must participate in required employment related activities as determined by DSS and the DSS work for your welfare contractor, unless the second parent is otherwise exempt (e.g., caring for a disabled child or is incapacitated). DSS requires the second parent in the two-parent household to go to the workfare contractor to be placed in a component other than workfare.

If the families of two-parent households receive federally subsidized child care, together they must participate in at least 55 hours per week of required activity. In this case, one parent will do work for your welfare

activity, and the second parent must participate in a sufficient number of hours with the work for your welfare contractor so that, when combined with the hours of the first parent, together they equal 55 hours. If the one parent in the two parent household who is participating in work for your welfare does not complete his/her required performance hours, the grant allowance for the entire family is reduced by the hours not worked times the minimum wage. The grant adjustment occurs regardless of whether the second parent completed his/her required hours of employment related activities.

If the second parent does not complete or refuses to complete the required employment related activities, DSS will impose a separate 1/3 sanction on this second parent. This sanction will increase by 1/3 as long as this second parent refuses to complete his/her required activities. DSS will treat the second parent's 1/3 sanctions separately from the first parent's sanctions. For example, if the first parent in this two-parent family already has a 1/3 sanction, the 1/3 sanction for the second parent will not increase the sanction level to 2/3 for the entire family. However, the highest sanction level of either parent will determine the entire sanction level for the family.

### 3031.3 INITIATING WORK FOR YOUR WELFARE - ONE PARENT FAMILIES

DSS will alert single parent families to report to the work for your welfare contractor in the 22<sup>nd</sup> month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

Participants are to begin their work for your welfare assignment on the 12<sup>th</sup> of the 23<sup>rd</sup> month of benefit receipt. Participants will have until the 11<sup>th</sup> of their 24<sup>th</sup> month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25<sup>th</sup> month. Otherwise, DSS will reduce benefits for the 25<sup>th</sup> month based on any hours not worked.

FOR EXAMPLE: Mary Jones is a single parent receiving benefits. September 1998 is her 22<sup>nd</sup> month of ABC benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for

your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12<sup>th</sup> until November 11<sup>th</sup> to complete her assignment if she is to get benefits in December.

### 3031.4 INITIATING WORK FOR YOUR WELFARE - TWO PARENT FAMILIES

For two parent families, only one parent will have to complete a work for your welfare assignment. DSS will inform the family of their work for your welfare obligation once the family is eligible for benefits, usually within 30 days of the intake interview. In addition, the other parent in the family, unless exempt, must also participate in employment and training activities. Again DSS will send a letter to the family instructing them that one parent must report to a work for your welfare assignment and the other parent must participate with the work for your welfare contractor in a component other than work for your welfare. The family must decide which parent will complete the work for your welfare assignment and which parent will participate in employment and training activities with the work for your welfare contractor. The failure to report to the contractor will result in a progressive 1/3 penalty for an employment and training activity. In addition, the parent who participates in the work for your welfare assignment must also complete 10 hours of job search per week.

The month after DSS determines eligibility is the first required month for which participation hours are calculated. DSS will calculate hours the same as it does for single parent families. That is, the parent in the two parent family must report by the 12<sup>th</sup> of the month and will have until the 11<sup>th</sup> of the following month to complete his/her work for your welfare hours.

FOR EXAMPLE: Mary and Tom Jones apply for cash assistance in August. By September DSS determines them eligible. The family decides that Tom will complete the work for your welfare hours. Having calculated the hours Tom must complete, DSS sends them a letter instructing Tom that he has from October 12<sup>th</sup> until November 11<sup>th</sup> to complete his hours if the family is to receive benefits in December.

### 3031.5 ENDING A WORK FOR WELFARE PLACEMENT

Work for welfare placements will end when any of the following circumstances occur:

- The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of 20 hours or more.
- The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard ABC definition for unemployable. In this case,

DSS will transfer the participants to the Children's Program under ABC.

- The participant requests an end to benefits payments.
- When the 48 month time limit has been reached.

Note, participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working 20 or more hours per week in a non-subsidized job.

## DIVISION OF SOCIAL SERVICES

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

### 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 / Medical Assistance Program is amending its general policy provider manual(s) to revise the definition of Medical Necessity.

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 the Director, Medical Assistance Programs, Division of Social Services P.O. Box 906, New Castle, DE 19720 by November 30, 1998.

REVISION:

### MEDICAL NECESSITY DEFINITION

MEDICAL NECESSITY is defined as:

the essential need for medical care or services (all covered State Medicaid Plan services, subject to age and eligibility restrictions and/or EPSDT requirements) which, when prescribed by the beneficiary's primary physician care manager and delivered by or through authorized and qualified providers, **will**:

- be directly related to the diagnosed medical condition or the effects of the condition of the beneficiary (the physical or mental functional deficits that characterize the beneficiary's condition), and be provided to the beneficiary only;
- be appropriate and effective to the comprehensive profile (e.g. needs, aptitudes, abilities, and environment) of the beneficiary and the beneficiary's family;
- be primarily directed to treat the diagnosed medical condition or the effects of the condition of the

beneficiary, in all settings for normal activities of daily living, but will not be solely for the convenience of the beneficiary, the beneficiary's family, or the beneficiary's provider (~~this means that services which are primarily used for educational, vocational, social, recreational, or other non-medical purposes are not covered under the Medicaid program~~) and not include medications, devices, or services that are used primarily to provide lifestyle enhancements, even if conditions are medically based (for example: Viagra, Weight Watchers, etc.);

- be timely, considering the nature and current state of the beneficiary's diagnosed condition and its effects, and will be expected to achieve the intended outcomes in a reasonable time;
- be the least costly, appropriate, available health service alternative, and will represent an effective and appropriate use of program funds;
- be the most appropriate care or service that can be safely and effectively provided to the beneficiary, and will not duplicate other services provided to the beneficiary;
- be sufficient in amount, scope and duration to reasonably achieve its purpose;
- be recognized as either the treatment of choice (i.e. prevailing community or statewide standard) or common medical practice by the practitioner's peer group, or the functional equivalent of other care and services that are commonly provided;
- be rendered in response to a life threatening condition or pain, or to treat an injury, illness, or other diagnosed condition, or to treat the effects of a diagnosed condition that has resulted in or could result in a physical or mental limitation, including loss of physical or mental functionality or developmental delay;

and will be reasonably determined to:

- diagnose, cure, correct or ameliorate defects and physical and mental illnesses and diagnosed conditions or the effects of such conditions; **or**
- prevent the worsening of conditions or effects of conditions that endanger life or cause pain, or result in illness or infirmity, or have caused or threaten to cause a physical or mental dysfunction, impairment, disability, or developmental delay; **or**
- effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an institutional setting or other Medicaid program; **or**
- restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; **or**
- provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition,

in order that the beneficiary might attain or retain independence, self-care, dignity, self-determination,

personal safety, and integration into all natural family, community, and facility environments and activities.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

~~Statutory Authority: 7 Delaware Code,~~  
Chapter 70 (7 Del.C. Ch. 70)

1. TITLE OF THE REGULATIONS:  
**Regulations Governing Delaware's Coastal Zone**
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:  
Regulations are developed to better administer the Coastal Zone Act. The new regulations will ensure that the environment of coastal Delaware is improved. The new regulations will also provide clarity and better guidance to the regulated public and concerned citizens.
3. POSSIBLE TERMS OF THE AGENCY ACTION:  
None
4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:  
7 Del Code, Ch. 70
5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:  
None
6. NOTICE OF PUBLIC COMMENT:  
A public hearing on the proposed regulation will be held on Monday, November 23, 1998 in the auditorium beginning at 1 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. All comments must be submitted before or during the hearing. Written comments may be submitted to Gail Bell, Coastal Zone Industrial Control Board, 89 Kings Highway, Dover, DE. For copies of the proposed regulations the public should call Ms. Gail Bell at (302) 739-6400.
7. PREPARED BY:  
Dennis Brown 739-4403

**Regulations Governing Delaware's Coastal Zone**

Preamble

These regulations have been developed to accomplish two key goals. They have been designed to promote improvement of the environment within the Coastal Zone

while also providing existing and new industries in Delaware's Coastal Zone with the flexibility necessary to stay competitive and to prosper – all while adhering to the edicts and nuances of one of the most original and innovative environmental and land use statutes in the world.

Delaware's Coastal Zone Act was passed in 1971 and provides to the Secretary of the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board the authority to promulgate regulations to carry out the requirements contained within the Act. For numerous reasons, regulations were never adopted and implementation of Coastal Zone Act was left to an undefined and informal process that frustrated industry and environmentalist alike. That frustration further polarized the debate over the original intention of the Act and what the focus of any regulations should be.

Finally, 25 years after passage of the Act, the negative implications of not having regulations came to outweigh the contentiousness of the debate. An advisory committee of dedicated Delawareans was then convened and, after eighteen months of oftentimes difficult debate, came to consensus agreement on how to embody the linked goals of industry flexibility and environmental improvement. The committee's agreements were memorialized in a Memorandum of Understanding between all participants. That MOU was founded on consensus, respect and necessity and it was used as a basis for these regulations.

**\* PLEASE NOTE: THESE REGULATIONS ARE NEW. THEY ARE NOT AMENDMENTS TO EXISTING REGULATIONS.**

A. Authority

1. These regulations are promulgated pursuant to authority granted to the Secretary and the State Coastal Zone Industrial Control Board by Section 7005(b) and (c) of the Coastal Zone Act, 7 Del. C., Chapter 70.

B. Applicability

1. The Coastal Zone Act program and these regulations are administered by the Delaware Department of Natural Resources and Environmental Control pursuant to 7 Del. C. Section 7005(a).

2. These regulations apply to areas within the Coastal Zone as defined by 7 Del. C. Chapter 70. A map of the coastal zone appears in Appendix A of these regulations.

3. These regulations specify the permitting requirements for existing non-conforming uses already in the coastal zone and for new manufacturing uses proposing to locate within Delaware's coastal zone.

C. Definitions

Many terms which appear in these regulations are defined in the Coastal Zone Act as shown in Appendix E. Terms not defined in the Act shall have the following

meanings:

1. "Administratively Complete" means a coastal zone permit application or status decision request that is signed, dated, and contains, in the opinion of the Secretary, substantive responses to each question, a sufficient offset proposal, if applicable, and includes the appropriate application fee and all enclosures the applicant has referenced in the application.

2. "Board" means the State Coastal Zone Industrial Control Board.

3. "Bulk Product" means loose masses of cargo such as oil, grain, gas and minerals, which are typically stored in the hold of a vessel. Cargoes such as automobiles, machinery, bags of salt and palletized items that are individually packaged or contained are not considered bulk products in the application of this definition.

4. "Certify" means the applicant is attesting, by affirmation, that all the data and other information in the application is true and accurate.

5. "Department" means the Delaware Department of Natural Resources and Environmental Control.

6. "Docking Facility" means any structures and/or equipment used to temporarily secure a vessel to a shoreline or another vessel so that materials, cargo, and/or people may be transferred between the vessel and the shore, or between two vessels together with associated land, equipment, and structures so as to allow the receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment, and administrative maintenance purposes directly related to such receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment.

7. "Environmental indicator" means a numerical parameter which provides scientifically-based information on important environmental issues, conditions, trends, influencing factors and their significance regarding ecosystem health. Indicators inherently are measurable, quantifiable, meaningful and understandable. They are sensitive to meaningful differences and trends, collectible with reasonable cost and effort over long time periods, and provide early warning of environmental change. They are selected and used to monitor progress towards environmental goals.

8. "Footprint" means the geographical extent of non-conforming uses as they existed on June 28, 1971 as depicted in Appendix B.

9. "Port of Wilmington" means those lands contained with the footprint shown in Appendix B of these regulations.

10. "Potential To Pollute" means the proposed use has the potential to cause short and long term adverse impacts on human populations, air and water quality, wetlands, flora and fauna, or to produce dangerous or onerous levels of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors as determined in the applicant's Environmental Impact Statement accompanying the permit

application. The Department will consider mitigating controls and risk management analysis reports from the applicant in evaluating a proposed use's potential to pollute. The Department shall consider probability of equipment failure or human error, and the existence of backup controls if such failure or error does occur, in evaluating an applicant's potential to pollute.

11. "Public Recycling Plant" means any recycling plant or industrial facility whose primary product is recycled materials and which is owned and operated by any city, town, county, district or other political subdivision.

12. "Public Sewage Treatment Plant" means any device and/or system used in conveyance, storage, treatment, disposal, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, which systems are under the jurisdiction of a city, town, county, district or other political subdivision.

13. "Recycle" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the form of raw materials other than fuel for producing heat or power combustion.

14. "Research And Development Activity" means those activities in which research and development substances are used in quantities that are not greater than reasonably necessary for the purposes of scientific experimentation or product or process development. The research and development substances must either be the focus of research and development itself, or be used in the research and development activity focusing on another chemical or product. research and development includes synthesis, analysis, experimentation or research on new or existing chemicals or products. Research and development encompasses a wide range of activities which may occur in a laboratory, pilot plants or commercial plant, for testing the physical, chemical, production, or performance characteristics of a substance, conducted under the supervision of a technically qualified individual. Research and development is distinct from ongoing commercial activities which focus on building a market for a product rather than just testing its market potential. General distribution of chemical substances or products to consumers does not constitute research and development.

15. "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

16. "Vessel" means any ship, boat or other means of conveyance that can transport goods or materials on, over, or through water.

17. "Voluntary Improvements" means improvements, for example, in emissions reductions, habitat creation and spill prevention -- provided that each is definite and measurable and which were made by a facility without any federal or state requirement to do so.

**D. Prohibited Uses**

The following uses or activities are prohibited in the Coastal Zone:

1. Heavy industry use of any kind not in operation on June 28, 1971.
2. Expansion of any non-conforming uses beyond their footprint(s) as depicted in Appendix B of these regulations.
3. Offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971.
4. The conversion of an existing unregulated, exempted, or permitted facility to a heavy industry use.
5. Bulk product transfer facilities and pipelines which serve as bulk transfer facilities that were not in operation on June 28, 1971.
6. The conversion or use of existing unregulated, exempt, or permitted docking facilities for the transfer of bulk products.
7. The construction, establishment, or operation of offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971.
8. Individual pipelines or sets of pipelines which are not associated with a use that obtains a permit but which meet the definition of bulk product transfer facilities.
9. Any new tank farm greater than 5 acres in size not associated with a manufacturing use is prohibited as a new heavy industry use.

**E. Uses Not Regulated**

The construction and/or operation of the following types of facilities and/or activities shall be deemed not to constitute initiation, expansion or extension of heavy industry or manufacturing uses under these regulations:

1. The raising of agricultural commodities or livestock.
2. Warehouses or other storage facilities, not including tank farms.
3. Tank farms of less than five acres.
4. Parking lots or structures, health care and day care facilities, maintenance facilities, commercial establishments not involved in manufacturing, office buildings, recreational facilities and facilities related to the management of wildlife.
5. Facilities used in transmitting, distributing, transforming, switching, and otherwise transporting and converting electrical energy.
6. Facilities used to generate electric power directly from solar energy.
7. The repair and maintenance of existing electrical generating facilities providing such repair or maintenance does not result in any negative environmental impacts.
8. Back-up emergency and stand-by source of power generation to adequately accommodate emergency industry needs when outside supply fails.

9. The continued repair, maintenance and use of any non-conforming bulk product transfer facility where that facility transfers the same products and materials, regardless of the amount of such products or materials, as those transferred on June 28, 1971.

10. Bulk product transfer operations at dock facilities owned by the Diamond State Port Corp. (DSPC), or acquired by the DSPC at any time in the future, and which are located within the Port of Wilmington as shown in Appendix B.

11. Docking facilities used as bulk product transfer facilities located on privately owned lands within the Port of Wilmington which have been granted a status decision extending the bulk product transfer exemption prior to the effective date of these regulations.

12. Docking facilities which are not used as bulk product transfer facilities.

13. Any pipeline that originates outside the Coastal Zone, traverses the Coastal Zone without connecting to a manufacturing or heavy industry use and terminates outside the Coastal Zone.

14. Maintenance and repair of existing equipment and structures.

15. Replacement in-kind of existing equipment or installation of in-line spares for existing equipment.

16. Installation and modification of pollution control and safety equipment for nonconforming uses within their designated footprint providing such installation and modification does not result in any negative environmental impact over and above impacts associated with the present use.

17. Any facilities which have received, prior to the promulgation of these regulations, a status decision which provided an exemption for the activity in question.

18. Research and development activities within existing research and development facilities.

19. Any other activity which the Secretary determines, through the status decision process outlined in Section G of these regulations, is not an expansion or extension of a non-conforming use or heavy industry use.

**F. Uses Requiring a Permit**

The following uses or activities are permissible in the Coastal Zone by permit. Permits must be obtained prior to any land disturbing or construction activity.

1. The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.

2. Any public sewage treatment plant or public recycling plant.

3. Any new activity, with the exception of those listed in Section E of these regulations proposed to be initiated after promulgation of these regulations by an existing heavy industry or a new or existing manufacturing facility that may result in any negative impact on the following factors as found in 7 Del. C., Section 7004 (b):

a) Environmental impact, including but not limited to, items H.2.a through H.2.j of these regulations.

b) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.

c) Aesthetic effect, such as impact on scenic beauty of the surrounding area.

d) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

e) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

f) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

#### G. Requests For Status Decisions

1. Any person wishing to initiate a new activity or facility may request a status decision to determine whether or not the activity or facility is a heavy industry.

2. A person whose proposed activity is not exempted as specified in Section E above may request of the Secretary a status decision to determine whether or not the proposed activity requires a Coastal Zone permit under the Act or these regulations.

3. Status decision requests must be in writing on a form supplied by the Secretary and shall include, at a minimum, the following:

a) Name, address and contact person for the activity or facility under consideration.

b) Site of proposed activity marked on a map or site plan.

c) A detailed description of the proposed activity under consideration.

d) An impact analysis of the proposed project on the six (6) criteria contained in Section F.3 (a-f) above.

4. Any new manufacturing facility or research and development facility proposed to be sited in the Coastal Zone shall apply for a status decision.

5. The Secretary may, if he has cause to suspect an activity within the confines of the Coastal Zone is prohibited or should receive a permit under these regulations, request of the person undertaking that activity to apply for a status decision as described in this section. Failure of the person to

respond to the Secretary's request shall subject said person to enforcement procedures as contained in the Act and/or Section R of these regulations.

6. Upon receipt of an administratively complete request for a status decision, the Secretary shall publish a legal notice as prescribed in Section N of these regulations advising the public of the receipt of the request and allowing 10 business days for interested persons to review the request and provide the Secretary with input on whether a permit should be required of the applicant.

7. The Secretary shall then, within an additional 15 business days, determine whether or not a permit will be required and notify the applicant in writing of his determination. The Secretary shall publish that determination as a legal notice as prescribed in Section N of these regulations.

#### H. Permitting Procedures

##### 1. Application Contents

The applicant shall complete and submit to the Secretary three (3) identical copies of the Coastal Zone permit application. The application will be on a form supplied by the Secretary and will contain, at a minimum:

a) A certification by the applicant that the information contained with the application is complete, accurate and truthful.

b) Evidence of local zoning approval as required by section 7004 (a) of the Act.

c) An Environmental Permit Application Background Statement as required under 7 Del. C. Chapter 79, if applicable.

d) An Environmental Impact Statement as described in Section H.2 of these regulations.

e) A description of the economic effects of the proposed project, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs and the amount of tax revenues potentially accruing to State and local government.

f) A description of the aesthetic effects of the proposed project, such as impact on scenic beauty of the surrounding area.

g) A description of the number and type of supporting facilities required and the impact of such facilities on all factors listed in this section.

h) A description of the effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

i) A statement concerning the project or activity's consistency with county and municipal comprehensive plans.

j) An offset proposal if required under Section I.1.a of these regulations.

##### 2. Environmental Impact Statement

An environmental impact statement must be submitted with the Coastal Zone permit application and must contain, at a minimum, an analysis of the following:

a) Probable air, land and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error. In addition, the applicant shall provide a statement concerning whether, in the applicant's opinion, the project or activity will in any way result in any negative environmental impact on the Coastal Zone.

b) An assessment of the project's likely impact on the Coastal Zone environmental goals and indicators, when available. Coastal Zone environmental goals and indicators shall be developed by the Department after promulgation of these regulations and used for assessing applications and determining the long-term environmental quality of the Coastal Zone. In the absence of goals and indicators, applicants must meet all other requirements of this section.

c) Likely destruction of wetlands and flora and fauna.

d) Impact of site preparation on drainage of the area in question, especially as it relates to flood control;

e) Impact of site preparation and facility operations on land erosion;

f) Effect of site preparation and facility operation on the quality and quantity of surface and ground water resources,

g) A description of the need for the use of water for processing, cooling, effluent removal, and other purposes;

h) The likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and/or obnoxious odors,.

i) The effect of the proposed project on threatened or endangered species as defined by the regulations promulgated by the State or pursuant to the Federal Endangered Species Act, and,

j) The raw materials, intermediate products, byproducts and final products and their characteristics from material safety data sheets (MSDS's) if available, including carcinogenicity, mutagenicity and/or the potential to contribute to the formation of smog.

### 3. Application Review Process

a) The Department reserves the right to request further relevant information after receipt of an application and prior to the application being deemed administratively complete. The Secretary shall notify the applicant by certified mail when the application is deemed administratively complete.

b) In assessing an application, the Secretary shall consider how the proposed project will affect the six criteria cited in the Act, including direct and cumulative environmental impacts, economic effects, aesthetic effects, number and type of supporting facilities and their anticipated

impacts on these criteria, effect on neighboring land uses, and compatibility with county and municipal comprehensive plans.

c) The Secretary shall also consider any impacts the proposed activity may have on the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone.

d) Prior to public hearing, the Secretary shall provide a written assessment of the project's likely impact on the six criteria listed in Section H.1 above and make available the preliminary determination of the sufficiency of the offset project as required in Section I of these regulations. The Secretary's report will be provided to the applicant and interested citizens prior to the public hearing and made a part of the record.

e) Upon receipt of an administratively complete application and completion of the Secretary's assessment as required in Section H.3.d above, the Secretary shall issue a public notice as prescribed in Section N of these regulations and hold a public hearing in accordance with hearing procedures described in Section O of these regulations.

f) Within 90 days of receipt of an administratively complete application, not counting the day the application became administratively complete, the Secretary shall reply to the request for a Coastal Zone act permit either granting the permit, denying the permit or granting the permit but with special conditions. The Secretary shall state the reasons for his decision.

g) The permit decision shall be sent to the applicant by certified mail and shall be noticed as prescribed in Section N of these regulations. If no appeal is received within the 14-day appeal period following the date of publication of the legal notice, the decision becomes final and no appeal will be accepted.

### I. Offset proposals

#### 1. Offset Proposal Requirements

a) Any application for a Coastal Zone permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Offset proposals must more than offset the negative environmental impacts associated with the proposed project or activity requiring a permit. It is the responsibility of the applicant to choose an offset project that is clearly and demonstrably more beneficial to the environment in the Coastal Zone than the harm done by the negative environmental impacts associated with the permitting activities themselves.

b) All applicants, are required to more than offset the negative impacts of the project or activity that is the subject of the application for a Coastal Zone permit. Applicants who have undertaken past voluntary improvements may be required to provide less of an offset



than applicants without a similar record of past achievements.

c) The Secretary shall give preference to offset projects that are within the Coastal Zone, that occur in the same environmental medium as the source of degradation of the environment, that occur at the same site as the proposed activity requiring a permit and that occur simultaneously with the implementation of the proposed activity needing an offset.

d) Offset proposals should be well-defined and contain measurable goals or accomplishments which can be audited by the Department.

e) Within 30 days of receipt of an application, the Secretary shall make a preliminary determination as to whether the proposed offset commitment is sufficient. If the offset commitment is deemed not to be sufficient, the applicant will be informed that his application is not administratively complete and the Secretary shall request another offset proposal.

f) Where an offset project in itself requires one or more permits from a program or programs within DNREC, the Secretary shall issue the Coastal Zone Permit only after all applicable permit applications for offsetting projects have been received and deemed administratively complete by DNREC.

### 2. Offset Proposal Contents

The applicant may provide whatever materials or evidence deemed appropriate in order to furnish the Secretary with the information necessary for him to determine the adequacy of the offset proposal. The applicant must provide, at a minimum, the following information:

a) A qualitative and quantitative description of how the offset project will more than offset the negative impacts from the proposed project as provided by the applicant pursuant to Section H.2.a of these regulations.

b) How the offset project will be carried out and in what period of time.

c) What the environmental benefits will be and when they will be achieved.

d) How the offset will impact the attainment of the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone.

e) What, if any, negative impacts are associated with the offset project.

f) What scientific evidence there is concerning the efficacy of the offset project in producing its intended results.

g) How the success or failure of the offset project will be measured in the short and long term.

### 3. Enforcement Of Offset Proposals

a) Coastal Zone permits shall be approved contingent upon the applicant carrying out the proposed offset in accordance with an agreed upon schedule for

completion of the offset project. Said schedule will be included in the Coastal Zone permit as an enforceable condition of the permit.

b) Should a Coastal Zone permit applicant fail to receive, within 180 days of issuance of the Coastal Zone permit, any and all permits required to undertake an offset project, the applicant, except for good cause shown by the applicant for additional time, will be required to submit an entirely new application for the activity, including all submissions listed in Section H above, additional permit fees and a new proposed offset project.

### J. Withdrawal Of and Revisions To Applications

1. An applicant may withdraw his request for a status decision or Coastal Zone permit at any time by submitting a written request, signed by the original applicant, to the Secretary. The Secretary shall provide public notice of the applicant's withdrawal request and the Secretary's action on the request for withdrawal. In the case of such withdrawal there shall be no refund of the application fee paid. Once publicly noticed, the decision is final and cannot be reversed by the applicant or the Secretary.

2. Once public notice announcing a public hearing is advertised according to Section N of these regulations, no revisions to any application will be permitted beyond those allowed in Section J.3 below. In the event an applicant finds cause to make substantive revisions to an application after publication of the notice, the applicant will be required to submit a new application, including an additional application fee, an offset project and any other required application submissions as specified under Section H of these regulations.

3. A new application is not required for changes which can be incorporated into the original application where such changes will not significantly affect the nature of the project first proposed and which will not significantly increase the Department's review and evaluation of the application originally submitted. Such changes must be submitted in writing prior to publication of the legal notice announcing the public hearing.

4. If the Secretary receives information which he believes may significantly alter the scope of the project, he may require the applicant to submit a new application to reflect the altered nature of the project.

### K. Permit Transfers

1. Coastal Zone permits may be transferred in cases of real estate transfer, corporate mergers and acquisitions or other actions whereby ownership of the activity or facility changes. Permit transfers shall require a written request of the Secretary and shall be processed within 60 days of receipt of a request for transfer.

### L. Abandoned Uses

1. Any existing facility which is determined to be abandoned shall not be reinstated except as otherwise provided in the Act.

2. Involuntary shutdown of a facility shall not be deemed abandonment or a loss of the facility's non-conforming use status if the Secretary can determine that the owner had no intention to abandon the use.

3. In determining whether or not the cessation of the use is temporary or an abandonment, factors such as, but not limited to, status of environmental permits and/or business licenses, maintenance of machinery and structures, owner presence and involvement to some degree in reinstating the use, and the duration of cessation shall be considered.

4. When, after investigation, the Secretary makes a preliminary determination that an existing use may be abandoned, he shall notify the owner/operator in writing, by registered mail, that he intends to declare the use abandoned. The owner/operator shall have sixty days from the receipt of said notice to demonstrate that there is or was no intention to abandon the use and when operation of the use will resume.

5. Within 120 days from the date of receipt by the owner/operator of the notice of abandonment, the Secretary shall render a decision of abandonment of the facility taking into consideration the response, if any, received from the owner/operator and shall give reasons therefore.

6. The Secretary shall issue a public notice of the decision, which decision may be appealed in accordance with the provisions of Section P of these regulations and 7 Del C. Section 7007.

#### M. Public Information

1. All correspondence, permit applications, offset proposals and any other supporting materials submitted by applicants or materials prepared by DNREC are subject to Delaware's Freedom of Information Act (29 Del C., Chapter 100) and the Department's FOIA policy.

#### N. Public Notification

1. At a minimum, the Secretary shall notify the public by legal notice when the following events occur:

- a) The receipt of a request for status decision.
- b) The decision by the Secretary of a status decision request.
- c) The decision by the Secretary to consider a facility/use as abandoned.
- d) The receipt of an application for a Coastal Zone Permit.
- e) The scheduling of all public hearings.
- f) The decision on all permit applications.
- g) The withdrawal of an application by the applicant.
- h) The receipt of a request for a permit transfer as specified in Section K.1.

2. All legal notices shall appear in one newspaper of statewide circulation and a second newspaper of local circulation in the county in which the proposed project is located. The Secretary will make every effort to publish legal notices on either Wednesdays or Sundays but may publish on other days when schedules require more expeditious handling of legal notices.

3. The Secretary shall also maintain a direct mail program whereby interested citizens may subscribe, free of charge, to a service where copies of all legal notices will be mailed directly to citizens. The Secretary shall advertise this service on an annual basis and renew subscriptions from interested citizens as requested. Failure of the Secretary to mail notices in a timely and accurate fashion shall not be cause for appeal of any action or decision of the Secretary.

#### O. Public Hearings

1. All public hearings shall be held in the county in which the proposed project is to be located and within a reasonable proximity to the proposed project site.

2. The date, location, time and a brief description of the project shall be published at least twenty (20) days prior to the date of the hearing. A copy of the hearing notice shall be mailed to the applicant.

3. A written transcript of the hearing shall be made for the Department.

4. All hearings shall be conducted in accordance with the Delaware Administrative Procedures Act (29 Del. C. Chapter 101).

#### P. Appeals

##### 1. Appeals of Decisions of the Secretary

a) Any person aggrieved by any permit or other decision of the Secretary under the Act may appeal same under Section 7007 of the Act and this section of the regulations.

b) Receipt of an appeal does not serve to stay the activity or approval in question.

c) Applicants must file notice of appeal with the Board within 14 days following announcement by the Secretary of his decision. The day after the date of the announcement shall be considered the beginning date of the 14-day appeal period.

d) The date at which a notice of appeal is considered to have been filed shall be the date the Board receives the notice of appeal at the Dover Office of the Secretary of DNREC, 89 Kings Highway, Dover, Delaware, 19901. Should the end date of the 14-day filing period fall on a Saturday, Sunday, or legal holiday, the ending date of the appeal period shall be 4:30 p.m. of the next working day.

e) It is the responsibility of the applicant to insure that the appeal is received at the Secretary's office within the appeal period.

f) If no appeal is received within 14 days

following the date of the publication of the legal notice, the decision becomes final and no appeal will be accepted.

2. Procedures for Appeals Before the Coastal Zone Industrial Control Board

a) A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on an appeal of a status decision or permit request.

b) The Board shall publish a notice of the hearing as prescribed in 29 Del. C. Chapter 101, Section 10122 at least 20 days prior to the hearing.

c) The Board must process and rule on the appeal in accordance with 29 Del. C., Chapter 101, Subchapter III.

3. Appeals of Decisions of the Coastal Zone Industrial Control Board

a) Any person aggrieved by a final order of the Board as provided for in 29 Del C., Subsection 10128, may appeal the Board's decision to Superior Court in accordance with 29 Del C Subsection 10142. The Secretary may also appeal any decision of the Board as any other appellant.

b) The appeal shall be filed within 30 days of the day the notice of decision is mailed.

c) Appeals to Superior Court shall be carried out as specified in 29 Del. C., Chapter 101.

#### Q. Fees

1. The Secretary shall charge an application fee for Coastal Zone status decisions and permits as found in the Department's fee schedule as approved by the General Assembly.

2. Interested parties shall be entitled, at no charge, to copies of Coastal Zone Act status decisions and permit applications, provided such applications are not unreasonably bulky.

3. The applicant shall bear the costs of all public hearing notices, and the preparation of public hearing transcripts for the Department in addition to the application fee charged by the Department. Anyone desiring a typed transcript of the hearing must acquire their copy directly from the court reporter.

#### R. Enforcement

1. In cases of non-compliance with these regulations or the provisions of 7 Del. C. Chapter 70, the Secretary may revoke any permit issued pursuant to these regulations or exercise other enforcement authorities provided for in the Act.

2. If an applicant fails to carry out any offset project in accordance with the schedule outlined in their permit, the Secretary may take any enforcement action he deems appropriate, including revocation of the Coastal Zone permit.

#### S. Severability

1. If, at any time, provisions within these regulations relating to Sections E and I are invalidated by a court of law, the entire regulation shall become null and void with the exception of the footprints for non-conforming uses shown in Appendix B and the public notice provisions of Section N of these regulations.

2. If, at any time, provisions other than those relating to requirements in Sections E and I are invalidated by a court of law, then only those particular provisions will become null and void and all other provisions will remain operational.

#### Appendix A

##### Map of the Coastal Zone

**\*PLEASE CONTACT THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL FOR A COPY OF THIS DOCUMENT.**

#### Appendix B

##### Footprints of Nonconforming Uses

**\*PLEASE CONTACT THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL FOR A COPY OF THIS DOCUMENT.**

#### Appendix C

##### DNREC Guidance For Implementation and Interpretation of the Regulations Governing Delaware's Coastal Zone

#### A. Introduction

1. These regulations are built around two linked goals as developed by Governor Carper's Coastal Zone Regulatory Advisory Committee. This committee met in late 1996, through 1997 and culminated their work in early 1998 with signing of the Memorandum of Understanding that formed the basis for these regulations. These regulations are designed to ensure environmental improvement in the Coastal Zone while at the same time providing industry with the needed flexibility to remain competitive in a global marketplace.

2. In order to meet these two goals, a regulatory process comprised of regulatory exemptions, permitting requirements and offset provisions has been developed. This regulatory process has been designed so that each nonconforming use and new manufacturing uses can add new products, change existing products, increase production capacity, add new processes and modify existing processes or do any other activity so long as these activities are: 1) undertaken in a way that assures environmental improvement in the Coastal Zone; and 2) undertaken in such a way that they meet the six criteria outlined in the Coastal

Zone Act.

3. For a more thorough explanation of the deliberations of the Advisory Committee and the foundation upon which these regulations are built, the reader is referred to the final Memorandum of Understanding dated March 19, 1998, and which is available in the offices of the Department at 89 Kings Highway, Dover, Delaware.

4. The following guidance is made available to interested citizens and applicants to better understand how these regulations will be interpreted and implemented by the Department. This guidance is, however, not a regulation and does not have the force of law. In the event of a conflict between this guidance and the regulations, the regulations will prevail.

#### B. Guidance in determining whether a permit is required

1. When a business wants to conduct an activity that may be one of the activities exempted from the permitting process as outlined in Section E, but the business is unsure of its determination, then the company may choose to seek a status decision from the Secretary rather than proceeding with filing a Coastal Zone permit application.

2. The Advisory Committee recommended that DNREC establish a tiered system of Coastal Zone Act permitting and emphasized that such a system would promote efficiency to the permitting process by tailoring the extent of regulatory review to the expected impacts of the proposed project. Under the tiered approach outlined in the MOU, an industry would have been required to obtain a Coastal Zone Act permit only in those instances when a proposed new manufacturing facility, or a change in the operations of a heavy industrial or manufacturing facility, may have a negative impact on one or more of the six criteria cited in the Act.

3. These regulations have maintained that provision, however, they have removed the concept of a tiered system and in its place created essentially two levels of review. The first are activities that are clearly exempted from regulation because they have no environmental consequence, they are exempted in the Act or they were seen by the advisory committee to be activities that simply shouldn't require a permit. The second level is the full Coastal Zone act permit where any negative impact on the six criteria will trigger the permit requirement. In cases where the applicant is unsure of the impact or how their activity will be viewed by the Department, they may apply for what has historically been -- and will continue to be -- called the "status decision".

#### C. Environmental Goals and Indicators

1. DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. The

indicators will serve several important purposes. First, they will assist DNREC in developing a more accurate picture of the environmental quality of the Coastal Zone, and measuring trends in this quality over time. Second, they will assist DNREC and project applicants by providing a means for evaluating the potential impacts of proposed changes in facility operations and proposed offsets on the Coastal Zone environment.

2. DNREC is responsible for defining, prioritizing, and making a matter of public record the set of goals and indicators for assessing the environmental quality in the Coastal Zone. Once goals for Coastal Zone have been established, DNREC will select a detailed set of indicators for use in assessing the quality of the environment as measured against those goals, and to monitor progress over time.

3. DNREC will periodically review and reissue the Coastal Zone environmental indicators (perhaps bi-annually). As conditions in the Coastal Zone change, and scientific methods for tracking and analyzing these changes evolve, it may be necessary to add or change some indicators, or drop others. It may also be necessary to reprioritize them as some parameters of environmental health improve and others decline. DNREC's periodic review of the indicators will allow for these kinds of adjustments to be made.

4. DNREC's process for developing and prioritizing the indicators will include opportunities for formal public review and comment. To ensure that the public has opportunities to provide input into the development and any subsequent revision of the environmental indicators, the Advisory Committee recommended that DNREC establish an Environmental Indicator Technical Advisory Committee (EITAC).

5. A substantial proportion of the members of the EITAC should be technical experts. The Committee should also include representatives of various stakeholder groups, for example, heavy industry and manufacturing in the Coastal Zone, industry outside the Coastal Zone, agricultural interests, environmental advocacy groups and labor. EITAC meetings should be public and any reports generated by the Committee should be made available to the public.

#### D. Principles for Assessing an Application

1. Any negative environmental impact associated with a proposed project will have to be more than offset, thus assuring continuing improvement in the Coastal Zone environment. The Secretary will only grant Coastal Zone permits in those cases where the overall environmental impacts of the total application, both positive and negative, assure improvement in the quality of the environment in the Coastal Zone.

2. Therefore, activities proposed for a Coastal Zone permit which would measurably increase air emissions,

water discharges, or would cause negative impacts on the Coastal Zone environment, shall include provisions for net environmental improvement of the Coastal Zone environment. These environmental improvements may be part of the permitted activity itself or realized through an enforceable offset proposal that will be implemented by a date agreed to by the company and DNREC.

3. DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. These indicators will be "prioritized" in accordance with their significance to achieving the Coastal Zone environmental goals. These prioritized indicators will provide Coastal Zone permit applicants a good idea of which types of future offset investments will yield the greatest environmental benefit and will allow a determination of which investments are most cost-effective. These indicators should also provide the rational basis for permit decisions that involve offset proposals.

#### E. Evaluation of Offset Proposals

1. Although offsets within the Coastal Zone, in the same environmental medium and at the same site are preferred, there will be circumstances when offsets outside the Coastal Zone, in other media, or at another site within the zone provide greater environmental benefit or otherwise make sense, and will be considered by the Secretary.

2. While it is the applicant's responsibility to fully describe an offset proposal in the Environmental Impact Statement, it is the Secretary's responsibility to carefully assess whether the applicant's offset proposal will more than offset negative impacts of the project, and thus ensure environmental improvement in the Coastal Zone.

3. The Secretary shall make decisions on applicants' status decision requests and environmental impact assessments, in writing, based on all of the expected environmental impacts of the total project on the health of the Coastal Zone, including both positive and negative impacts. Impacts may be related to air and water emissions, or they may be related to other factors such as the viability of wildlife habitat, the protection of wetlands, or the creation or preservation of open space. The Secretary will develop and use a set of prioritized environmental indicators as a tool for assisting these determinations as discussed elsewhere in this guidance.

4. The Secretary shall consider likely cumulative impacts of proposed activities on the environment and the relevant environmental indicators. The Secretary shall also give consideration to the potential for negative cumulative impacts in situations where cross-media offsets are proposed.

5. In addition, the Secretary will give more weight to

offset proposals that: 1) have established track records and are likely to succeed from a technical standpoint; and 2) will produce beneficial effects that are verifiable.

6. If an applicant includes in its permit application evidence of past voluntary environmental improvements and/or investments made prior to the time of application, DNREC will consider this history of environmental performance in determining the magnitude of the required offsets for the proposed project (with the understanding that the total project must assure improvement in the quality of the environment in the Coastal Zone).

7. The Secretary will also consider the applicant's ability to carry out such improvements as evidenced by its compliance history. Compliance with environmental standards and enforcement histories of facilities is not in itself a factor in determining the required magnitude of the potential offset project, but will be used by DNREC in gauging the applicant's ability to carry out the offset project with a minimum of supervision.

8. All offset projects must be incorporated into the Coastal Zone permit as an enforceable condition of the permit. Since some of the benefits of "flexibility" are achieved immediately upon issuance of a permit (i.e. permission to proceed), and most benefits of "environmental improvement" are achieved over time, the permit itself must include well-defined and measurable commitments or accomplishments which are independently auditable by the Department, and available to the public via the Freedom of Information Act (FOIA). DNREC will also include inspection, reporting and/or notification obligations in the permit depending on the company's compliance record and the nature of the offset project.

9. In cases where an applicant fails to receive all required offset permits within 180 days and must therefore show good cause why a new permit application should not be required, good cause shall mean, but not be limited to, delays on the part of DNREC or other permitting authorities that could otherwise not have been expected and are considered by the Secretary to be extraordinary.

#### F. Guidance regarding activities within the Port Of Wilmington

1. All proposed manufacturing uses within the footprint of the Port of Wilmington are not in any way exempted from permitting requirements and must apply for and be issued a Coastal Zone Act permit if otherwise applicable.

2. Proposed uses within the Port of Wilmington which constitute heavy industry uses are prohibited.

3. The regulations do not prohibit or restrict activities involving containerized, palletized, or otherwise confined materials at any location within the Diamond State Port Corp. Bulk products, once off-loaded within the designated area, may be stored, transported, or otherwise used

throughout the Port, subject to all other appropriate local, state and federal statutory and regulatory provisions.

4. The MOU negotiated by the Advisory Committee goes to some length to define the area that is the Port of Wilmington, some of which area is actually owned by the Diamond State Port Corporation. Regardless of the definition of the Port, it is nonetheless the equivalent of a "footprint" as that term is used to define other areas of industrial activity within the Zone. Therefore the definition of the Port as negotiated in the MOU is not repeated within the definitions section of these regulations but is rather transformed into a map or footprint similar to the other non-conforming industrial uses found in Appendix B of the regulation.

5. The current boundary of the Port of Wilmington is the area beginning at the intersection of the right of way of US Route I-495 and the southern shore of the Christina River; thence southward along said I-495 right of way until the said I-495 right-of-way intersects the Reading Railroad Delaware River Extension; thence southeast along the said Reading Railroad Delaware River Extension to its point of intersection with the Conrail Railroad New Castle cutoff; thence southward along the Conrail Railroad New Castle cutoff until it intersects the right of way of U.S. Route I-295; thence eastward along said I-295 right of way until the said I-295 right of way intersects the western shore of the Delaware River; thence northward along the western shore of the Delaware River as it exists now to the confluence of the Christina and Delaware Rivers; thence westward along the southern shore of the Christina River to the beginning point of the intersection of the said I-495 right of way and the Southern shore of the Christina River.

#### G. Coastal Zone Report

1. To ensure that the public is kept fully informed about the regulatory process under the Coastal Zone Act and about the quality of the Coastal Zone generally, the Secretary will issue a report twelve months after the regulations are promulgated, and every twenty-four months thereafter. The report will include:

a) A description of progress towards environmental goals developed by DNREC for the Coastal Zone;

b) Information on the general trends in the environmental indicators, in the form of narrative text as well as charts and graphs that will be easily understandable to a lay reader;

c) A list of permits issued, a brief description of the status of activities under those permits, and a review of selected existing permits and actual versus projected environmental benefits; and

d) A description of the cumulative impacts of permitted activities on the environmental indicators.

#### Appendix D Permitting Flow Chart

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#### Appendix E Delaware's Coastal Zone Act

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### **DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

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#### 1. TITLE OF THE REGULATIONS:

**REGULATION NO. 38 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES"**

#### 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend Regulation No. 38 by adopting the National Emission Standards for Hazardous Air Pollutants for Source Categories found at 40 CFR Part 63 Subpart M by reference.

Subpart M establishes the general compliance, notification, testing, recordkeeping and reporting requirements for perchloroethylene dry-cleaning facilities. Subpart M will apply to all coin-operated and owner-operated dry-cleaning machine systems that use perchloroethylene as a solvent in cleaning articles.

#### 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:

One public hearing on this proposed amendment to Regulation 38 will be held on Tuesday, December 1, 1998

beginning at 7:30 p.m. at the Terry Campus of Delaware Technical & Community College (DTCC) in Dover, DE. Two public hearings will be held on Wednesday, December 2, 1998 at the Stanton Campus of DTCC in Newark, DE. The first public hearing will begin at 7:30 p.m. and a second one will begin upon completion of the 7:30 p.m. hearing or at 8:00 p.m., whichever is later. This second public hearing will be translated into Korean. One public hearing will be held on Thursday, December 3, 1998 beginning at 7:30 p.m. at the Owens Campus of DTCC in Georgetown, DE.

7. PREPARED BY:

James R. Snead (302) 323-4542

The Department amends Regulation 38 by adding Subpart M, which follows. Subpart M does not change any of the existing subparts of Regulation 38 and shall be placed between existing Subpart B and Subpart Q.

REGULATION NO. 38 Amendment  
EMISSION STANDARDS FOR HAZARDOUS  
AIR POLLUTANTS FOR SOURCE CATEGORIES

2/11/99

Subpart M

Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

The provisions of Sections 63.320 through 63.325 in Subpart M, 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) Except in section 63.325 of this subpart, "Department" shall replace "Administrator".

(b) Paragraph 63.320(b) shall be replaced with the following language: "Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on February 11, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act."

(c) Paragraph 63.320(c) shall be replaced with the following language: "Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of this subpart beginning on February 11, 1999."

(d) Dry cleaning machine systems subject to paragraphs 63.320(d) or 63.320(e) shall also be subject the requirements of 63.324(c).

(e) Paragraph 63.320(f) shall be replaced with the

following language: "(f)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324, unless there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (d) or (e) before the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (d) or (e).

(2) A dry cleaning facility identified in paragraph (f)(1) above shall comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 within 180 calendar days from the date that the facility determined that it exceeded the amounts specified in paragraph (d) or (e)."

(f) Paragraph 63.320(i) shall be replaced with the following language: "(i)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under Secs. 63.322, 63.323, and 63.324, unless there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (g) before the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (g).

(2) A dry cleaning facility identified in paragraph (i)(1) above shall comply with the appropriate requirements for major sources under Sec. 63.322, Sec. 63.323, and Sec. 63.324 within 180 calendar days from the date that the facility determined that it exceeded the amounts specified in paragraph (g)."

(g) Paragraph 63.320(j) shall be replaced with the

following language: “(j)(1) All coin-operated dry cleaning machines are exempt from Sec. 63.320(f), Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).

(2) Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k).”

(h) Paragraph 63.320(k) shall be replaced with the following language: “The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting until December 9, 1999. All sources receiving deferrals shall submit Regulation 30 permit applications by December 9, 2000. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320.”

(i) The definition of Administrator found in Section 63.321 shall be replaced with the following language: “*Administrator* means the Administrator of the United States Environmental Protection Agency.”

(j) The definition of Department is added to the list of definitions found in Section 63.321 with the following language: “*Department* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.”

(k) The opening to paragraph 63.322(b) shall be replaced with the following language: “The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed on or after September 22, 1993.”

(l) Paragraph 63.322(m) shall be replaced with the following language: “The owner or operator of a dry cleaning system shall repair all perceptible leaks detected under paragraph (k) or (l) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.”

(m) The opening to paragraph 63.324(a) shall be replaced with the following language: “Each owner or operator of a dry cleaning facility shall notify the Department in writing by February 11, 1999 or upon startup, whichever is later, and provide the following information:”.

(n) The opening to paragraph 63.324(b) shall be replaced with the following language: “Each owner or operator of a dry cleaning facility shall submit to the Department on or before the 30th day following start-up or February 11, 1999, whichever is later, a notification of compliance status providing the following information and

signed by a responsible official who shall certify its accuracy:”.

(o) The opening to paragraph 63.324(c) shall be replaced with the following language: “Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements under Sec. 63.320 (f)(1) or (i)(1) shall submit to the Department on or before the dates specified in Sec. 63.320 (f)(2) or (i)(2), a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:”.

(p) Paragraph 63.324(d)(1) shall be replaced with the following language: “The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log. If the purchased perchloroethylene was to used to initially fill a newly installed dry-to-dry machine, the volume and date of the purchase is identified separately from the other monthly purchases;”.

(q) The opening to paragraph 63.325(a) shall be replaced with the following language: “Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under Sec. 63.322 shall collect, verify, and submit to the Administrator (with copy to the Department) the following information to show that the alternative achieves equivalent emission reductions:”.

**DIVISION OF AIR & WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

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1. TITLE OF THE REGULATIONS:  
**REGULATION NO. 24 - “CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS”**

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend Regulation No. 24 by repealing Section 39.

Adopted on January 11, 1993, Section 39 established the general compliance, notification, testing, recordkeeping and reporting requirements for dry-cleaning facilities that use perchloroethylene. The State has since taken regulatory actions that adds perchloroethylene to the list of selected volatile organic compounds that are exempt from the requirements of Regulation No. 24. Because Section 39 is no longer applicable, it is being repealed.



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:  
One public hearing on this proposed amendment to Regulation 24 will be held on Tuesday, December 1, 1998 beginning at 7:30 p.m. at the Terry Campus of Delaware Technical & Community College (DTCC) in Dover, DE. Two public hearings will be held on Wednesday, December 2, 1998 at the Stanton Campus of DTCC in Newark, DE. The first public hearing will begin at 7:30 p.m. and a second one will begin upon completion of the 7:30 p.m. hearing or at 8:00 p.m., whichever is later. This second public hearing will be translated into Korean. One public hearing will be held on Thursday, December 3, 1998 beginning at 7:30 p.m. at the Owens Campus of DTCC in Georgetown, DE.

7. PREPARED BY:  
James R. Snead (302) 323-4542

The Department amends Regulation 24 by repealing Section 39. Section 39 and the Table of Contents reference to Section 39 follows.

Section 39 - Perchloroethylene Dry Cleaning [RESERVED].  
1/11/93 2/11/99

a. Applicability.

1. This Section applies to any perchloroethylene dry cleaning facility.

2. Perchloroethylene dry cleaning facilities that are coin-operated are exempt from the provisions of paragraphs (e)(1) and (e)(2) of this Section.

3. Any other facilities that the Department determines are demonstrated to experience hardships that justify exclusion are exempt from the provisions of paragraphs (e)(1) and (e)(2) of this Section provided that their exemption is approved as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments, or in Section 2 of this regulation.

"Dry cleaning facility" means a facility engaged in the

cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, any washer, dryer, filter and purification system, waste disposal system, holding tank, pump, and attendant piping and valves.

e. Standards. The owner or operator of a perchloroethylene dry cleaning facility subject to this Section shall:

1. Vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective control device.

2. Emit no more than 100 parts per million volumetric (ppmv) of volatile organic compounds (VOCs) from the dryer control device before dilution.

3. Maintain the system so as to prevent the leaking of liquid VOC and prevent perceptible vapor losses from gaskets, seals, ducts, and related equipment.

4. Cook or treat all diatomaceous earth filters so that the residue contains 25 kilograms (kg) (55 pounds [lb]) or less of VOC per 100 kg (220 lb) of wet waste material.

5. Reduce the VOCs from all solvent stills to 60 kg (132 lb) or less per 100 kg (220 lb) of wet waste material.

6. Drain all filtration cartridges in the filter housing for at least 24 hours before discarding the cartridges.

7. Dry or store all drained cartridges so that VOC is not emitted to the atmosphere.

d. Compliance provisions.

1. Compliance with paragraphs (e)(1), (e)(6), and (e)(7) of this Section shall be determined by means of a visual inspection.

2. Compliance with paragraph (e)(3) of this Section shall be determined by means of a visual inspection of the following components:

i. Hose connections, unions, couplings and valves.

ii. Machine door gaskets and seatings.

iii. Filter head gasket and seating.

iv. Pumps.

v. Base tanks and storage containers.

vi. Water separators.

vii. Filter sludge recovery.

viii. Distillation unit.

ix. Diverter valves.

x. Saturated lint from lint basket.

xi. Cartridge filters.

3. Compliance with paragraph (e)(2) of this Section shall be determined by one of the following:

i. A test as described in EPA Guideline Series document, "Measurement of Volatile Organic Compounds," EPA-450/2-78-041.

ii. Proof of the proper installation, operation, and

maintenance of equipment that has been demonstrated to be adequate to meet the emission limit in paragraph(e)(2) of this Section.

4. Compliance with paragraphs (c)(4) and (c)(5) of this Section shall be determined by means of the test method in paragraph(e) of this Section.

e. Test methods. The test method in paragraph (e) of this Section shall be used to determine compliance with paragraphs(e)(4) and (e)(5) of this Section.

1. Applicability of the method. This method is applicable to the sampling and determination of perchloroethylene in wet waste material from diatomaceous earth filters and solvent stills at perchloroethylene dry cleaners on a weight percent basis.

2. Principle. Samples are obtained from waste material at a perchloroethylene dry cleaning facility. A known sample mass is mixed with water and placed in a glass still equipped with a Liebig straight-tube-type reflux condenser and a Bidwell-Sterling-type graduated trap. Water and perchloroethylene in the sample are separated through repeated distillation until all of the perchloroethylene has been recovered in the trap and the volume recorded. The mass of perchloroethylene collected is determined from the product of its volume and specific gravity. The total weight of perchloroethylene obtained is divided by the total weight of sample analyzed to obtain the perchloroethylene content of the wet waste residue.

3. Apparatus. The following apparatus shall be used:

i. Flask. Round bottom, short-necked flask having a nominal capacity of 500milliliters (ml).

ii. Condenser. Liebig straight-tube type, with a jacket not less than 400millimeters (mm) long and with an inner tube having an outside diameter of 10 to 13mm.

iii. Trap. Bidwell-Sterling type, graduated from 0 to 5ml in 0.1 ml divisions. Calibrate at four or more points by first filling the trap with water and then adding a hydrophobic solvent with a specific gravity greater than water from a standard buret having a calibrated capacity at least equal to that of the trap. The error of the indicated volume shall not exceed 0.05ml.

iv. Heater. Any suitable gas burner or electric heater for the glass flask.

v. Sample container. Metal can with a leakproof closure, 150ml.

4. Sampling procedure.

i. From distiller (cooker).

A. After a cycle of perchloroethylene distilling and when the still bottoms have come approximately to room temperature (i.e., 21 to 38EC), obtain three 150 ml samples of the wet waste residue from the distiller (cooker) drain. Completely fill each of the three sample containers to prevent evaporation loss.

B. Immediately close the sample container

lids securely.

C. Label the containers using waterproof and oil-proof ink.

D. Store the samples in a cool, dry atmosphere.

E. Transfer the samples to the appropriate laboratory for analysis within 48 hours of obtaining the samples. The samples shall remain sealed until the time of analysis.

ii. From wet waste containers.

A. Large unmixed containers. Using a clean sampling spoon, spatula, or other appropriate device, obtain three 150-ml samples. Each sample shall be comprised of three 50-ml subsamples, one each from the top, midpoint, and bottom of the wet waste container. Transfer the three subsamples that comprise each of the 150-ml samples to a sample container. Each of the three sample containers should be completely filled to prevent evaporation loss.

B. Small containers. If the waste container can be thoroughly mixed prior to sampling, mix the container contents thoroughly and obtain three 150-ml samples by pipetting. The pipette should have a capacity of at least 150 ml and should be long enough to reach within 2 cm of the bottom of the wet waste container. Each 150-ml sample should be transferred to a sample container. Each sample container should be completely filled to prevent evaporation loss.

C. Immediately close the sample container lids securely.

D. Label the containers using waterproof and oil-proof ink.

E. Store the samples in a cool, dry atmosphere.

F. Transfer the samples to the appropriate laboratory for analysis within 48hours of obtaining the samples. The samples shall remain sealed until the time of analysis.

5. Analysis procedure.

i. Conduct duplicate analyses of each sample and record the recovered perchloroethylene from each analysis.

ii. For each analysis, weigh and record the weight of an empty flask and stopper ( $W_1$ ) to the nearest 0.1mg.

iii. Mix each unopened sample container by shaking.

iv. Open the sample container and immediately transfer approximately 20 ml of wet waste material to the flask.

v. Stopper the flask and reseal the sample container.

vi. Weigh and record the weight of the flask plus added portion,  $d_1$ , to the nearest 0.1g. The mass added to the flask shall not exceed 35g.

vii. Add water to the flask to make a total mixture volume of approximately 250ml.

viii. Fill the trap with cold water.

ix. Connect the flask to the distillation trap.

x. Assemble the apparatus so that the tip of the condenser is directly over the indentation in the trap.

xi. Heat the flask so that refluxing starts within 7 to 10 minutes. Adjust the rate of boiling so that the condensed distillate is discharged from the condenser at a rate of 1 to 3 drops per second.

xii. From the time refluxing starts, obtain readings of the amount of perchloroethylene collected after 5, 15, and 30 minutes, and each following 15 minutes. End the test when the volume of perchloroethylene is increased by not more than 0.1 ml in a 15-minute period or the amount of perchloroethylene exceeds the trap capacity.

xiii. At the end of the test run, turn off the heater. Allow the equipment to stand at least 30 minutes to allow the distillate to settle clear and to cool to room temperature.

xiv. Read the volume of perchloroethylene collected in the trap. If the amount of perchloroethylene exceeded the calibrated capacity of the trap, report the volume of perchloroethylene as 5.0 ml plus.

#### 6. Calculations.

i. Calculate the total mass of the portion in the flask:

$$S_i = d_i - W_i$$

where:

$S_i$  = Weight of wet waste portion, g.

$W_i$  = Weight of the empty flask and stopper, g.

$d_i$  = Weight of flask plus wet waste portion, g.

ii. Calculate the total mass of perchloroethylene ( $f_i$ ) collected in the trap from each analysis:

$$F_i = V_i \times D$$

where

$f_i$  = Weight of perchloroethylene in the wet waste portion, g.

$V_i$  = Volume of perchloroethylene collected in the trap, ml.

$D$  = Density of perchloroethylene at 20°C, 1.6227 g/ml.

iii. Calculate the perchloroethylene content of the wet waste ( $R$ ) using the following equation:

$$R = \frac{\sum_{i=1}^n 3f_i}{\sum_{i=1}^n 3S_i} \times 100$$

$i=1$

where:

$R$  = The perchloroethylene content of the wet waste, expressed in kg per 100 kg (lb per 200 lb) wet waste material.

$f_i$  = Weight of perchloroethylene in the wet waste portion, g.

$S_i$  = Weight of wet waste portion, g.

$n$  = The total number of analyses.

#### 7. Precision and Accuracy.

i. Accuracy. Concentrations of audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10-percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report.

ii. Precision. Duplicate results produced by the same analyst should be considered suspect if they differ by more than 5 percent.

f. Recordkeeping. Each owner or operator of a perchloroethylene dry cleaning facility subject to this Section shall maintain the following records in a readily accessible location for at least 5 years and shall make these records available to the Department upon verbal or written request:

1. A record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit.

2. A record of the results of visual leak inspections conducted in accordance with paragraph (d) of this Section.

3. The results of all tests conducted in accordance with the requirements described in paragraphs (d)(3) and (d)(4) of this Section.

g. Reporting requirements. The owner or operator of any facility containing sources subject to this Section shall:

1. Comply with the initial compliance certification requirements of Section 5(a) of this regulation.

2. Comply with the requirements of Section 5(b) of this regulation for excess emissions related to the control devices required to comply with paragraph (c) of this Section, as well as any other State of Delaware exceedance reporting requirements.

## STATE FIRE PREVENTION COMMISSION

STATE FIRE MARSHAL'S OFFICE

Statutory Authority: 16 Delaware Code,

**Section 6603 (16 Del.C. 6603)**

A public hearing concerning the following proposed regulatory change will be held on Tuesday, December 15, 1998, at the State Fire Prevention Commission offices on the grounds of the Delaware State Fire School, 1463 Chestnut Grove Road, Dover, Delaware 19904 at 10:00 a.m. Public comments should be submitted to the State Fire Prevention Commission on or before December 8, 1998. Comments should be sent to the above address.

**\* Please Note: The existing Part V Chapter 5 regulation is replaced in its entirety with the following proposed regulation.**

Part V  
Chapter 5

**Standard For The Marking, Identification, And Accessibility  
Of Fire Lanes, Exits, Fire Hydrants, Sprinkler, And  
Standpipe Connections**

5-1 General.

**5-1.1 Scope.**

**5-1.1.1** This Regulation establishes the minimum requirements for the design criteria and marking of fire lanes so as to provide access by emergency services to buildings and structures, fire hydrants, standpipes and sprinkler connections.

**5-1.1.2** This Regulation also establishes the minimum requirements for the design criteria and marking of free and unobstructed areas or zones around fire hydrants; standpipe and sprinkler connections; building exits for access by emergency services and to prohibit the blocking of such areas.

**5-1.2 Purpose.**

**5-1.2.1** The purpose of this Regulation is to provide for requirements that ensure a reasonable degree of operational access by emergency services to buildings and structures for those fire protection and life safety features routinely utilized by the emergency services.

**5-1.3 Application.**

**5-1.3.1** For the purpose of meeting 5-1.1.1, this regulation shall apply to:

(a) All buildings >10,000 square feet in gross floor area

(b) All buildings:

(1) 3 or more stories in height OR

(2) Over 35 feet in height

(c) All buildings or operations whose primary occupancy is classified as "High Hazard Occupancy"

**5-1.3.2** For the purpose of meeting 5-1.1.2, this regulation shall apply to all fire hydrants and fire department connections which are part of a specific buildings fire protection features.

**5-1.3.3** This Regulation shall apply to all buildings, additions or those buildings undergoing a change in occupancy as specified in Part I, Chapter 1 of these Regulations.

**5-1.3.4** This Regulation does not apply to:

(a) One- and two-family dwellings as defined in Part I, Chapter 1 of these Regulations.

(b) Residential units occupied as one- and two-family units when constructed in a "townhouse" configuration.

**5-1.3.5\*** Where, in the opinion of the State Fire Marshal, an occupancy's fire protection features are such that fire lanes do not contribute to the overall level of life safety and/or property conservation, the State Fire Marshal may modify the requirements of this Chapter. Such occupancies shall be identified on a case by case basis and listed by the State Fire Marshal.

**A-5-1.3.5** The intent of this section is to allow the State Fire Marshal, on a case by case basis, to modify the fire lane requirements (including the use of forestry lanes) based on the occupancy's site configuration, building size and construction, occupancy classification, and internal features of fire protection, such as fire alarm signaling and fire suppression systems.

**5-1.4 Definitions.**

**5-1.4.1** The definitions as found in this section shall be in addition to the definitions found in other sections of these Regulations and shall be applicable to Part V, Chapter 5.

**Edge of Roadway.** Shall be defined as:

1. Alongside of a curb, or
2. The outer edge of a roadway, or
3. The outer edge of the designated fire lane

**Yellow Color.** The specific color yellow shall be uniformly accepted yellow as utilized by State of Delaware Department of Transportation (DelDOT).

**High Hazard Occupancy.** Any building or area classified as high hazard within the Life Safety Code, NFPA 101, or as

extra hazard within the Standard for the Installation of Sprinkler Systems, NFPA 13.

### **5-2 Fundamental Requirements.**

**5-2.1** Every building, structure or property shall be provided with sufficient emergency access to and from both primary and secondary entrances, exits, and necessary equipment such as fire hydrants, fire department connections, drafting pads, and like items.

**5-2.2** Every fire lane, fire hydrant, fire department connection and other like items shall be clearly marked in accordance with applicable sections of this Chapter.

**5-2.3** Every fire lane, fire hydrant, fire department connection and other like items shall be continuously maintained free of all obstructions or impediments allowing full and instant use in case of an emergency.

**5-2.4** Every fire lane, fire hydrant, fire department connection, and other like items shall be maintained by the property owner to such a degree so as to keep said equipment properly marked, accessible, and visible at all times.

**5-2.5** Where, in the absence of specific instructions, signs or other notification, the color yellow shall denote "NO PARKING."

**5-2.6** Where required by this regulation, fire lanes, fire hydrants, fire department connections and other like items shall use demarcation lines to define specific areas.

**5-2.7** All demarcation lines shall be a minimum of four inches (4") in width.

**5-2.8** All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

**5-2.9** Enforcement action to require the appropriate design and marking of fire lanes and other like items shall be as prescribed in this Regulation and 16 Del. C. §6611.

**5-2.10** Enforcement action regarding stopping, standing or parking a vehicle in a fire lane shall be as prescribed in this regulation and 21 Del. C. §7001.

**5-2.11** Enforcement action regarding stopping, standing or parking a vehicle within 15 feet of a fire hydrant shall be as prescribed in this regulation and 21 Del. C. 4179

**5-2.12** Four copies of an independent and specific record type plan, shall be submitted to the State Fire Marshal's

Office providing specific identification and marking details of access roadways, fire lanes, fire department connections and fire hydrants.

### **5-3 Access Roadways.**

**5-3.1** Where emergency services have to utilize access roadways between public streets or roads to reach designated fire lanes, etc. such access roadways shall be constructed to meet the minimum engineering specifications and/or requirements to support emergency apparatus.

**5-3.2** Access roadways with no parking on one or both sides shall be marked as follows:

(1) Curbs painted yellow or a yellow line pursuant to Figure 1 of these Regulations

(2) Signs posted along the curb, building line, or side of the roadway placed at each end of the access roadway and spaced at 150 foot intervals maximum; all signs shall be located no less than six feet above the pavement and no higher than eight feet

**5-3.3** Access roadways with parking on both sides shall not require marking

### **5-4 Design Of Fire Lanes.**

**5-4.1** Design and location of fire lanes around buildings, structures or properties are dependent on many considerations, such as occupancy, building height, construction, property grades, etc. As a result, only those persons having a good working knowledge of fire department operations and equipment limitations should determine fire lane locations. The following criteria shall be followed to effect a proposed design for submittal to the State Fire Marshal or his duly authorized representative for review and approval.

**5-4.2** Primary fire lanes shall be a minimum 24 feet in width.

**5-4.3** Secondary fire lanes shall be a minimum 16 feet in width.

**5-4.4\*** The minimum width of primary and/or secondary fire lanes may be reduced when, in the opinion of the State Fire Marshal, the reduced width will not impact on the accessibility of fire department emergency vehicles.

**A-5.4.4** The intent of this section is to allow the State Fire Marshall to accept a primary and/or secondary fire lane width less than what is required by these Regulations.

**5-4.5** Fire lanes shall be constructed to meet the minimum engineering specifications and/or requirements to support emergency apparatus.

**5-4.6** "Speed Bumps" or any other like device used to reduce vehicle speed will be installed pursuant to the State of Delaware Department of Transportation specifications.

**5-4.7** One row of parking shall be permitted between any fire lane and the building.

**5-4.8** Overhangs, canopies, balconies, or any other building feature shall not project over any primary or secondary fire lane.

### **5-5 Location Of Fire Lanes.**

**5-5.1** Primary fire lanes shall be required to run along the "front of the building" as determined by the primary entrance/exit, windows, balconies, etc. In cases where there is more than one primary entrance/exit, each shall be served by a primary fire lane even if this exceeds the accessibility percentage as required in Table 5-7.

**5-5.2** Secondary fire lanes are acceptable to achieve the remaining required perimeter accessibility percentage and to provide access to fire department connections and secondary exits.

**5-5.3** The closest edge of both primary and secondary fire lanes shall not be located further than 50 feet from an exterior wall if one or two stories; 40 feet if three or four stories and 30 feet if over four stories in height.

### **5-6 Marking Of Fire Lanes.**

#### **5-6.1 General.**

**5-6.1.1** All fire lanes shall be marked in accordance with figures 1, 2, 3 and 4 of these regulations

**5-6.1.2** Fire lanes with no parking between the fire lane and the building shall be marked as follows:

(1) Curbs painted yellow or 4 inch yellow demarcation lines on both the inner and outer edges as illustrated in Figures 1 and 3 of these regulations

(2) Signs meeting the design of figure 9, posted along the curb, building line, or edge of the roadway placed at each end of the fire lane and spaced at 150 foot intervals maximum; all signs shall be located no less than six feet above the pavement and no higher than eight feet

**5-6.1.3** Fire lanes with parking between the fire lane and the building shall not require any form of marking as illustrated in Figures 2 and 4 of these regulations

#### **5-7 Perimeter Accessibility.**

**5-7.1** Perimeter accessibility is calculated based on building occupancy, height, and internal fire protection features.

**5-7.2** Table 5-7 shall be used in determining perimeter accessibility in new buildings and existing buildings undergoing occupancy change.

**5-7.3** Table 5-7 shall be used for existing buildings also, except that only 50 percent of the determined perimeter accessibility percentage will be required. There shall be no credit for automatic sprinklers in existing buildings.

**5-7.4** For this regulations purpose, building height shall be measured from the lowest level of fire department vehicle access to the floor of the highest occupiable story.

**5-7.5** Perimeter accessibility may be reduced by up to 50 percent when the building is completely protected by an automatic sprinkler system installed pursuant to the specifications and standards of the Standard for the Installation of Sprinkler Systems, NFPA 13, as adopted and/or modified by these Regulations.

Exception: Perimeter accessibility shall not be reduced for Health-Care, Detention and Correction, or institutional occupancies.

#### **5-8 Forestry Lanes.**

**5-8.1** Forestry lanes may only be utilized pursuant to §5-1.3.5 of this Regulation.

**5-8.2** Forestry lanes shall be a minimum of 16 feet in width

**5-8.3** Forestry lanes shall be constructed of no less than six inches (6") of crusher run on a well compacted base of select material with a two inch (2") maximum cover of top soil and seed

**5-8.4** All forestry lanes shall be marked by use of no smaller than three foot (3') and no longer than five foot (5') trees or shrubs spaced 20 feet on center. Trees and shrubs of the same size and type shall be placed at the end of the forestry lane to denote its end

**5-8.5** All forestry lanes shall be provided with adequate curb cuts and each side of the curb cuts shall be provided with signs the same type of which are specified in §5-6.1.2 of this chapter

#### **5-9 Marking And Identification Of Exits.**

**5-9.1** This regulation may be applied to exits which are obstructed by the parking of vehicles or other obstructions.

**5-9.2** Exits shall have demarcation lines to define specific areas.

**5-9.3** Demarcation lines shall be a minimum of four inches (4") in width.

**5-9.4** Demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

**5-9.5** Demarcation lines on secondary exits shall be measured from the center line of the exit way and shall extend for a distance of six feet (6') on either side to the public way (fire lane).

**5-9.6** Demarcation lines need not be located on sidewalk surfaces or other pedestrian surfaces not subject to vehicular traffic but shall extend from the end of the sidewalk surface to the fire lane.

**5-9.7** No objects, stands, displays, or other impediments shall be located within the demarcation area.

**5-10 Marking And Identification Of Fire Hydrant Location.**

**5-10.1** All fire hydrants shall be marked in accordance with Figures 5, 6 and/or 7.

**5-10.2** When fire hydrants are located along the curb line, the area between the fire hydrant and the fire lane shall be stenciled with the words "NO PARKING" which shall extend to a distance of 15 feet on either side to be measured from the center line of the fire hydrant (See Figure 5).

**5-10.3** Where fire hydrants are located on a curb island extension in such a manner that the hydrant is directly accessible to the access or fire lane, it will only be necessary to paint the curb island extension for the distance it traverses the access lane. (See Figure 7)

**5-10.4** The distance between a fire hydrant and the nearest demarcation line of a fire lane shall not be greater than seven feet (7') unless an alternate distance is approved by the State Fire Marshal.

**5-10.5** The steamer connection of all fire hydrants shall be so positioned so as to be facing the fire lane.

**5-10.6** Where fire hydrants are located in parking lots or other areas susceptible to blockage by parked vehicles they shall be treated as follows (See Figure 6):

(a) Fire hydrants shall be protected in all directions for a distance of seven feet (7') with barriers or curbing

(b) A fire lane or vehicle access roadway, a minimum of 16 feet in width, shall run through the parking area and adjacent to the demarcation area of the fire hydrant.

**5-10.7** All fire hydrants shall have demarcation lines to define specific areas.

**5-10.8** All demarcation lines shall be a minimum of four inches (4") in width.

**5-10.9** All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

**5-11 Marking And Identification Of Standpipes And Sprinkler Connections.**

**5-11.1** In addition to the requirements outlined in Part III, Chapter 1, §1-1.4.1 of these Regulations, all standpipe and sprinkler connections shall also be marked in accordance with Figure 8.

**5-11.2** Demarcation lines shall be measured from the center line of connection and extend for a distance of four feet (4') on either side.

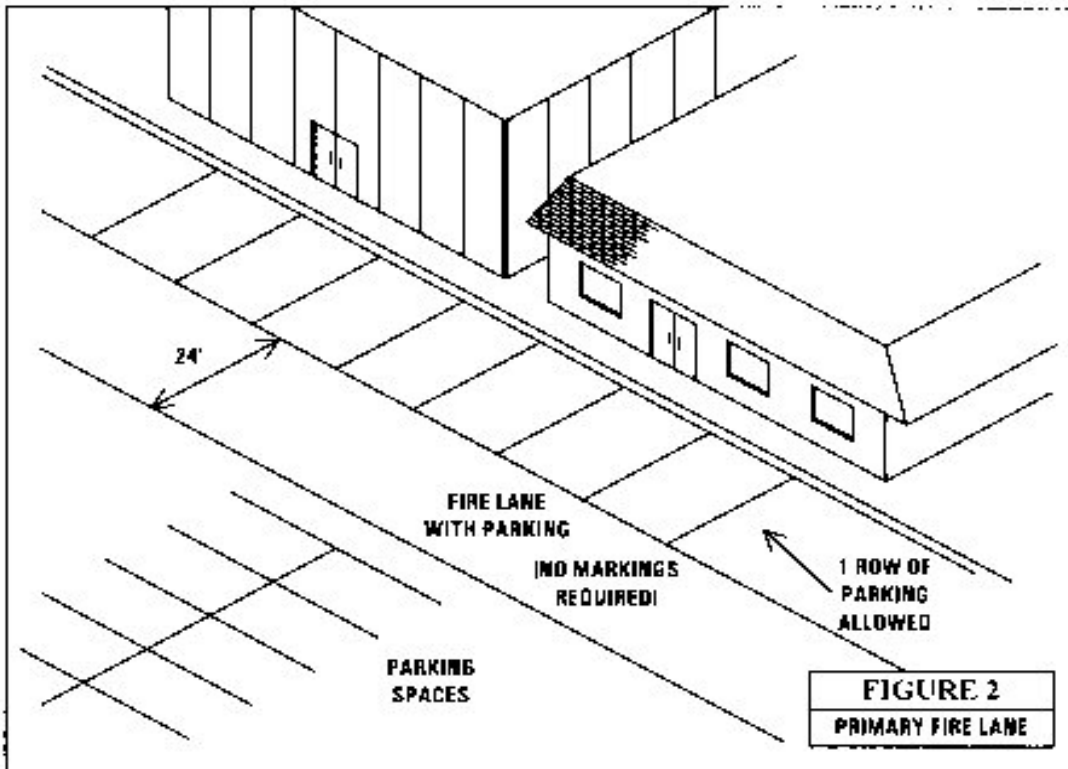
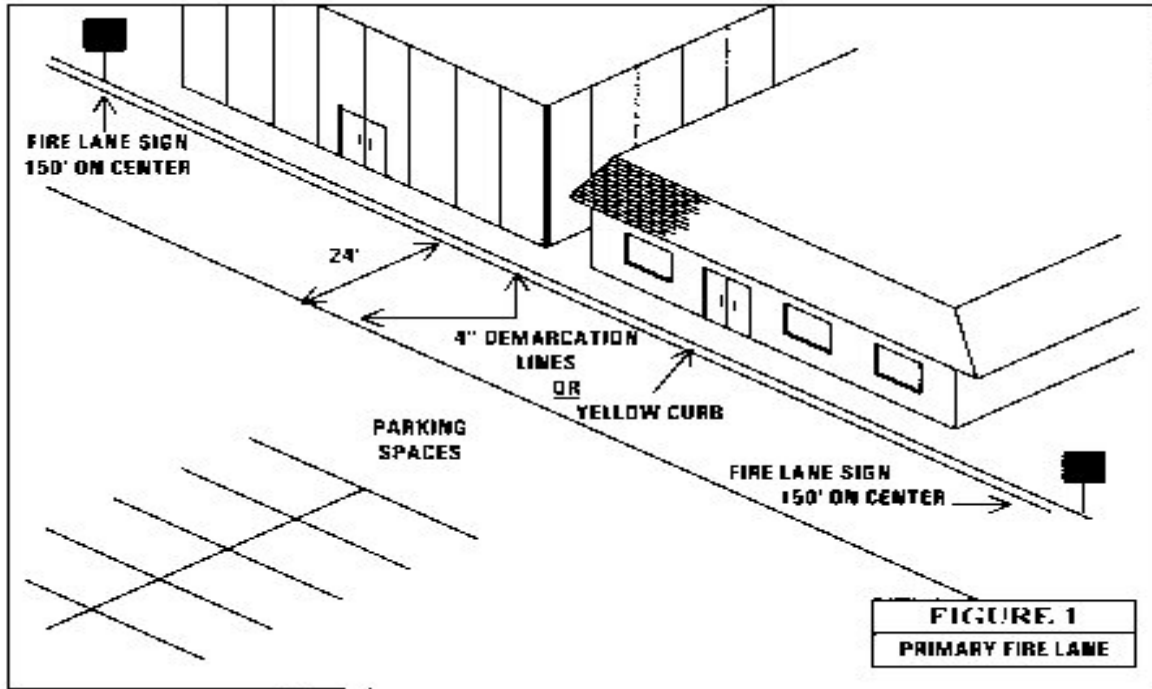
**5-11.3** Demarcation lines need not be located on sidewalk surfaces but should extend from the end of the sidewalk surface to the fire lane.

**5-11.4** No objects, stands, displays, or other impediments shall be located within the demarcation area.

**5-11.5** All standpipe and sprinkler connections and other such like items shall have demarcation lines to define specific areas.

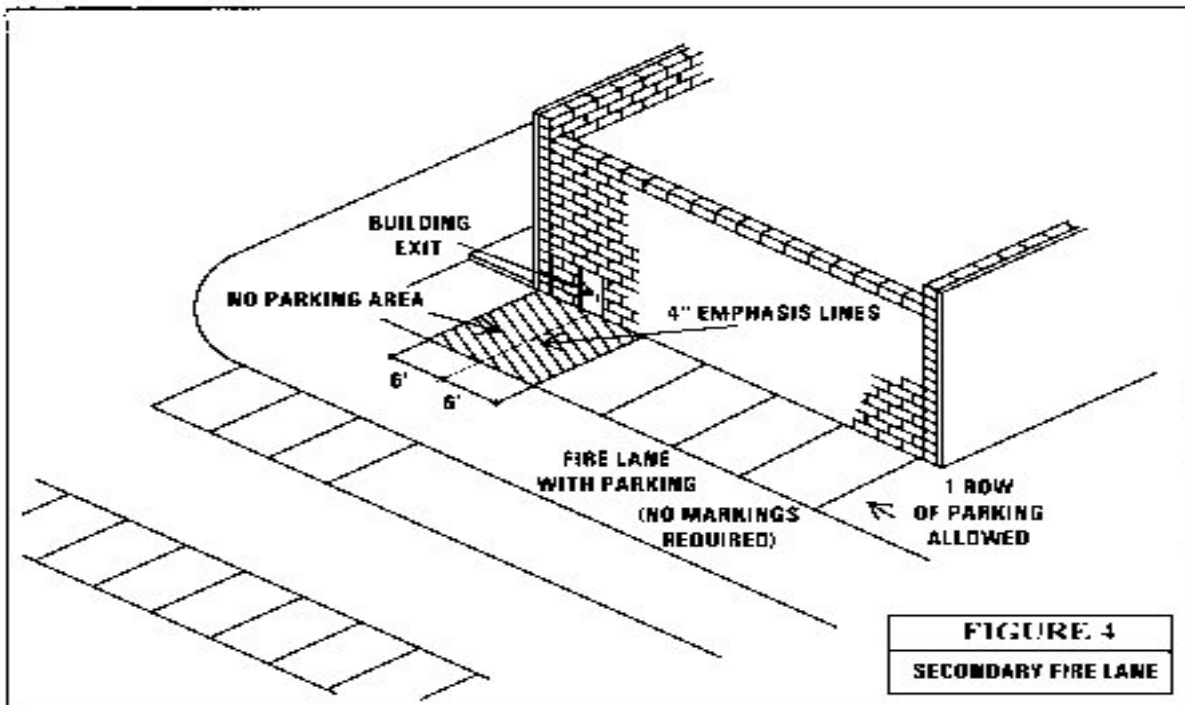
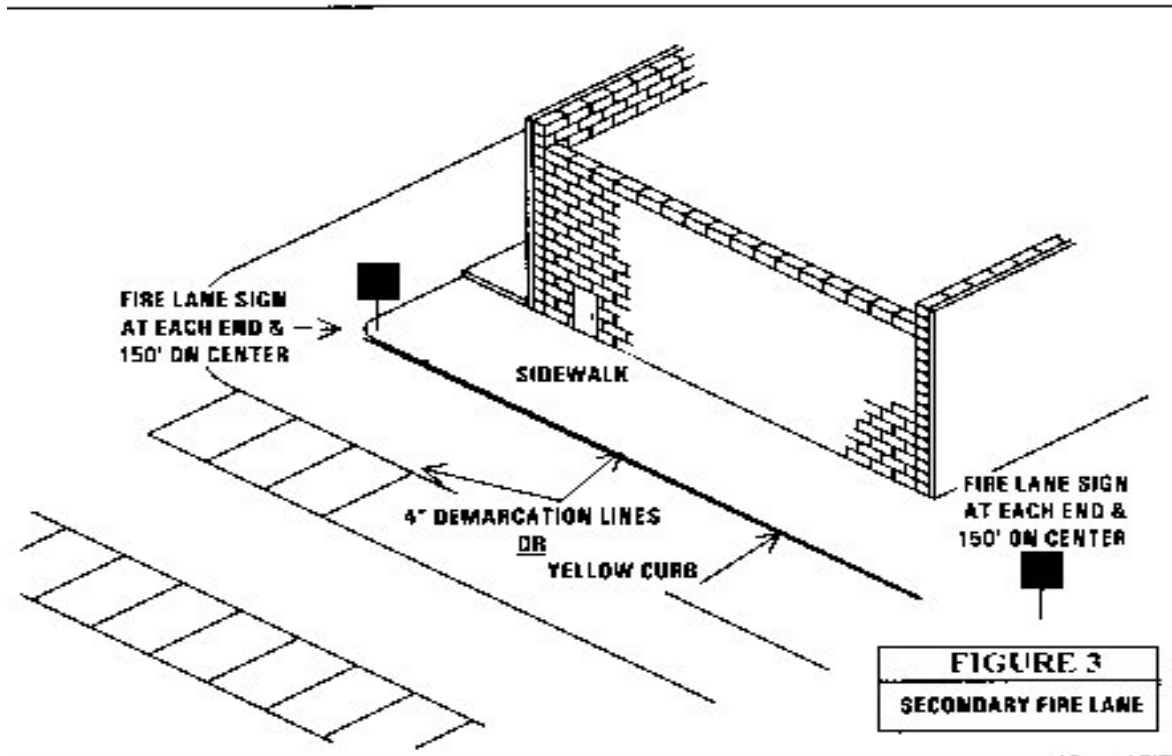
**5-11.6** All demarcation lines shall be a minimum of four inches (4") in width.

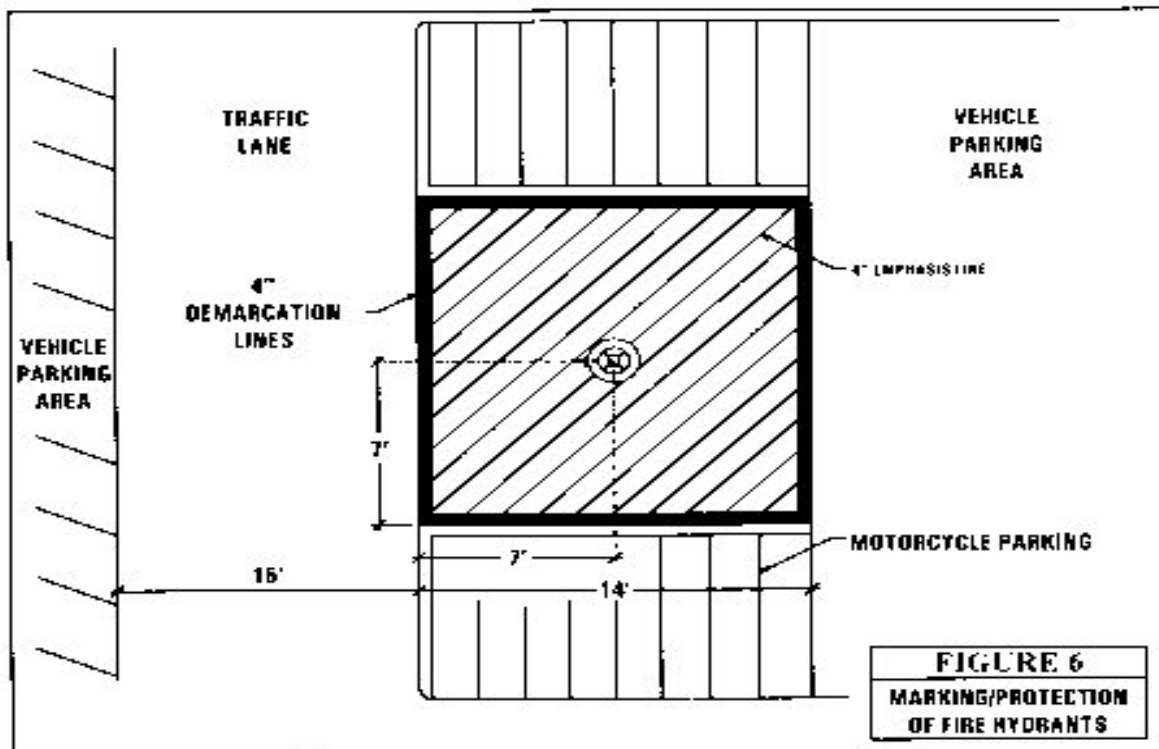
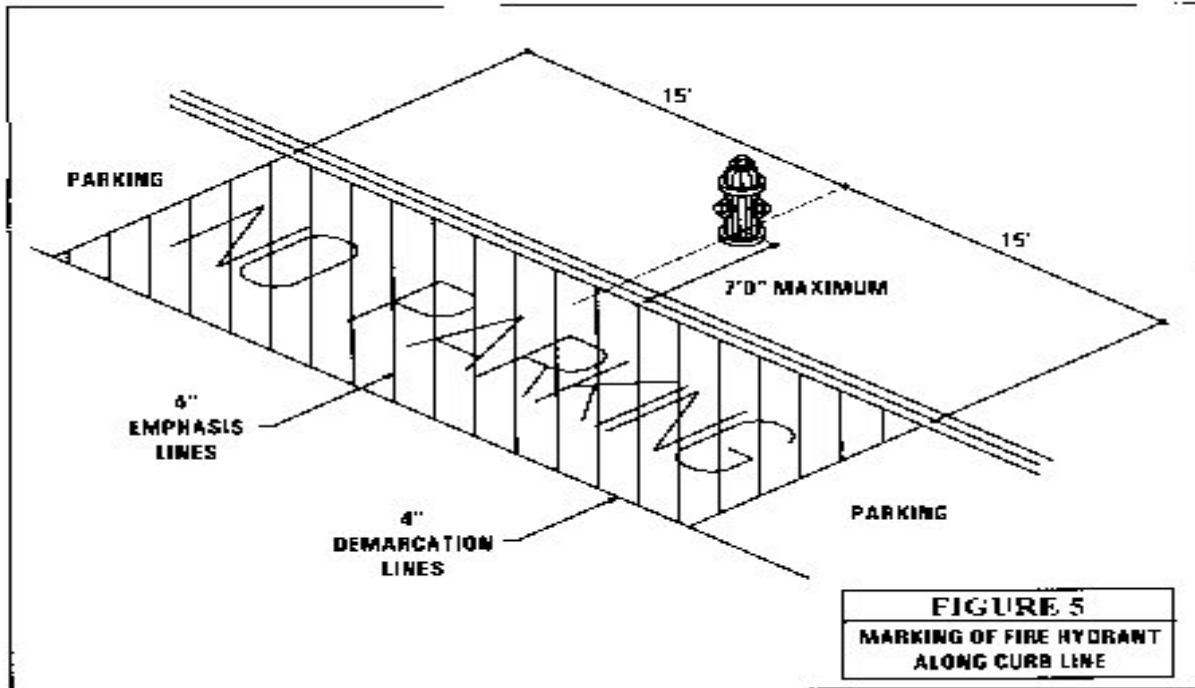
**5-11.7** All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

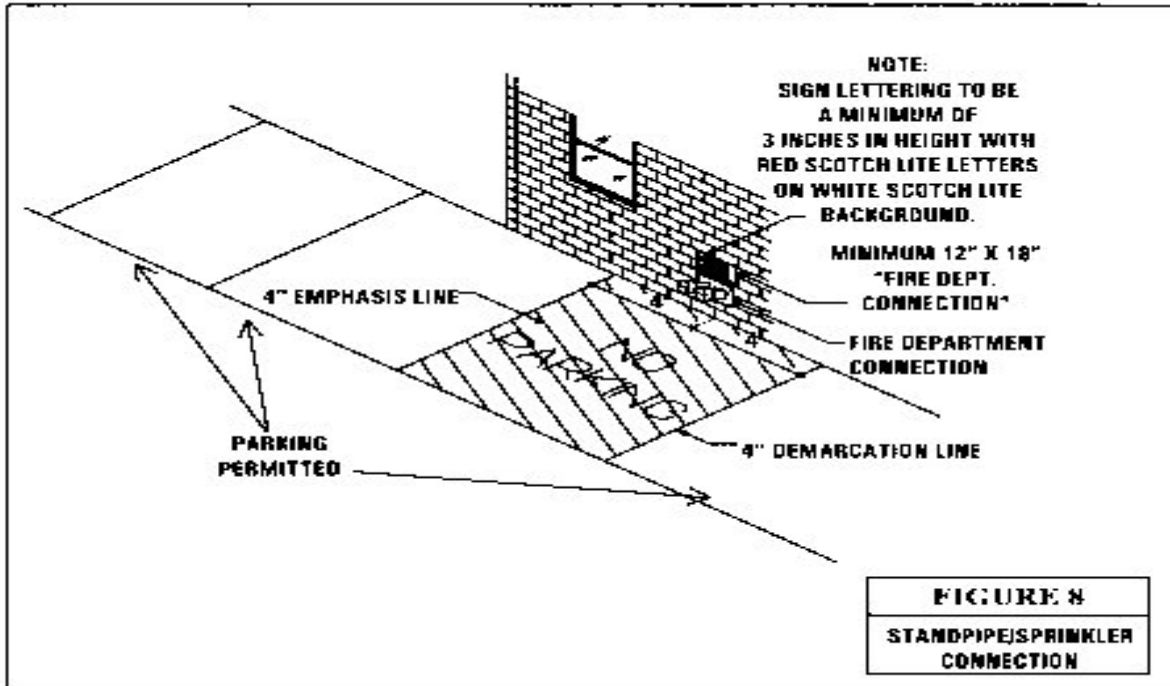
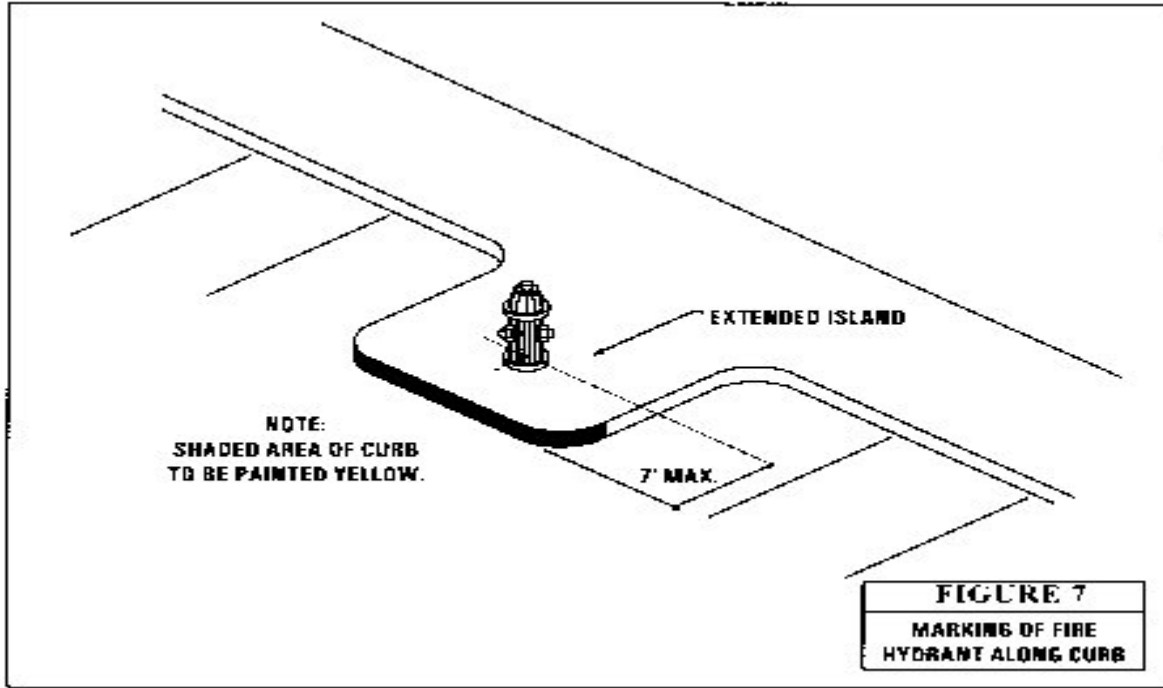




# PROPOSED REGULATIONS







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# PROPOSED REGULATIONS

773

Statutory Authority: 11 Delaware Code,

2. REMOVE THE FOLLOWING RULE FROM THE

**NOTES:**

1. THE SIGN SHALL HAVE A WHITE SCOTCHLITE BACKGROUND WITH RED SCOTCHLITE LETTERS, EXCEPT FOR THE WORD "NO" WHICH SHALL HAVE THE COLOR SCHEME REVERSED.
2. THE SIGNS SHALL BE LOCATED AT EACH END & 150' ON CENTER ALONG FIRE LANES.
3. ALL LETTERING SHALL BE 3 INCHES IN HEIGHT, EXCEPT FOR THE WORD "PARKING" WHICH SHALL BE 2 INCHES IN HEIGHT.

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~~Section 9004(4) (11 Del.C. 9004(4))~~~~VCCB RULES & REGULATIONS.~~

The **Violent Crimes Compensation Board** proposes the following changes in its rules and regulations. A public hearing has been scheduled, on the proposed changes, for Tuesday, November 24, 1998 from 7:00 P.M. to 9:00 P.M. at the Del Tech Terry Campus. Written comment should be received at the office of the Violent Crimes Compensation Board no later than Wednesday, November 18, 1998.

1. REMOVE THE FOLLOWING RULE FROM THE VCCB RULES & REGULATIONS.

~~RULE XXVI - MENTAL SUFFERING AWARD~~

~~Maximum award for mental suffering is set at \$2,500.00. Clarification of this motion is that over the past two years there has been a substantial increase in claims. The Board feels it is necessary to cap mental suffering awards at \$2,500.00 to insure an equitable distribution of funds for all victims, and to initiate a uniformity and consistency in awarding mental suffering claims with emphasis on counseling and rehabilitation.~~

~~This rule shall apply to crimes that occurred before February 11, 1992. Revised October 17, 1991.~~

JUSTIFICATION: THIS RULE IS OFFICIALLY REMOVED FROM THE VCCB RULES &

REGULATIONS, AS MENTAL SUFFERING AWARDS ARE PROHIBITED BY STATUTE EFFECTIVE 02/11/92.

~~RULE XXVIII - MENTAL HEALTH COUNSELING AWARD~~

~~(A) In the event of a claim for costs associated with mental health counseling, the Board may, following initial review of the case, award counseling not to exceed three (3) months in duration and a total cost of \$1,250.00.~~

~~(B) In the event that additional counseling will be required beyond the period provided for in Section (A), the claimant must submit a request to the Board prior to the expiration of the initial award. Failure to submit such request in a timely fashion may, at the Board's discretion, result in the denial of such request and refusal to make payment for treatment in excess of the initial award. Any request for a mental health counseling award shall be accompanied by an evaluation and treatment plan including, but not limited to:~~

~~(1) A determination that the need for counseling resulted directly from the crime in question rather than a previously existing condition; and~~

~~(2) A statement or certification that the treatment will address only crime-related injuries.~~

~~(C) The Board, at its discretion, may require production of any documents it deems necessary to its determination of a request for a mental health counseling award.~~

JUSTIFICATION: THIS RULE IS OFFICIALLY REMOVED FROM THE VCCB RULES & REGULATIONS, AS THE VCCB COMMISSIONERS MOVED TO MODIFY MENTAL HEALTH COUNSELING PROCEDURES ON 08/01/96.

3. AMEND THE FOLLOWING RULE IN THE VCCB

## RULES &amp; REGULATIONS.

RULE XXIX - MENTAL HEALTH PRACTITIONER  
QUALIFICATIONS/LICENSURE

To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, ~~treatment must be provided by a practitioner possessing an advanced degree in an applied mental health discipline~~ a practitioner possessing an advanced degree in an applied mental health discipline must provide treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

~~To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, services must be provided by a licensed mental health practitioner. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.~~

To be eligible for crime victim's compensation for adult psychological assessments, within and without the State of Delaware, a licensed psychologist or a licensed psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits is: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.

Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.

~~The Violent Crimes Compensation Board may consider payment for services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph two, sentence two. Claims for payment of services rendered by an unlicensed practitioner will be decided on a case-by-case basis by the Violent Crimes Compensation Board.~~

The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph one, sentence two. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

JUSTIFICATION: THE AMENDMENTS TO RULE XXIX CLARIFY THE TYPES OF MENTAL HEALTH PROVIDERS THAT MAY PERFORM PSYCHOLOGICAL ASSESSMENTS ON ADULT AND CHILD VICTIMS.

4. ADD THE FOLLOWING RULE IN THE VCCB  
RULES & REGULATIONS.VCCB Rule XXX. Child Victim Counseling & Assessment  
Program (CCAP) Provisions

For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

JUSTIFICATION: THIS NEW RULE FULFILLS THE REQUIREMENTS OF SENATE BILL 417, SIGNED BY GOVERNOR THOMAS R. CARPER ON JULY 17, 1998. THE LAW REQUIRES THE VCCB TO DETERMINE A MAXIMUM AMOUNT TO BE PAID FOR PSYCHOLOGICAL ASSESSMENTS AND/OR SHORT-TERM COUNSELING (11 Del. C. 90, section 9020(c). "...the Board shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations."

**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.

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**DEPARTMENT OF****ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION****DELAWARE BOARD OF CLINICAL SOCIAL****WORK EXAMINERS**

Statutory Authority: 24 Delaware Code,  
Section 3901, 3906(a)(1) (24 **Del.C.** 33901,  
3906(a)(1))

**BEFORE THE BOARD OF CLINICAL SOCIAL WORK  
EXAMINERS OF THE STATE OF DELAWARE**

IN RE: |  
ADOPTION OF RULES AND |  
REGULATIONS |

**ORDER ADOPTING RULES AND REGULATIONS**

AND NOW, this 19th day of October, 1998, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Clinical Social Work Examiners of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

## Nature of the Proceedings

Pursuant to its authority under 24 *Del.C.* §3906(1), the Board proposed to adopt changes and additions to its existing Rules and Regulations relating to continuing education credits, inactive status and education credential evaluations.<sup>1</sup> The public hearing on the Board's proposal was scheduled for September 21, 1998. Notice of the hearing was published in the Delaware *Register of Regulations* at 2:2 *Del.R.* 164-166 (August 1, 1998) and in two Delaware newspapers of general circulation, all in accordance with 29 *Del.C.* §10115. (Affidavits from personnel of *The News Journal* and *The Delaware State News* confirming such publication were received into evidence at the public hearing.) The public hearing was held as noticed on September 21, 1998.

## Evidence and Information Submitted at Public Hearing

The Board received no comments in response to the notice of its intention to revise the Rules and Regulations. Additionally, no member of the public attended the September 21, 1998 Public Hearing.

## Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to revise its regulations and an adequate opportunity to provide the

Board with comments on the proposed changes. The Board further concludes that its consideration of the proposed Rules and Regulations is within the Board's authority to promulgate regulations under 24 *Del.C.* §3906(1) and other specific statutory provisions, as follows:

First, the proposed change to Section 3 of the regulations would require that an applicant for licensure who holds a degree from an academic program outside the United States provide the Board with an evaluation of their academic credentials from an agency approved by the Board for that purpose. The Board concludes that given the breadth and variety of the educational programs available internationally, such a requirement is necessary to help it determine whether an applicant qualifies for licensure, as required by its statutory mandate to grant licenses to "all persons who meet the qualifications for licensure...." 24 *Del.C.* §3906(6).

Secondly, the Board notes that 24 *Del.C.* §3906(7) allows it to develop the continuing education standards applicable to license renewal. The proposed changes to Section 5 of the Rules and Regulations establish the date by which licensees must submit proof to the Board that they have completed the required continuing education hours and establishes the procedure by which licensees can request an extension of time in which to complete their hours. As such, the proposed change to regulation Section 5 helps the Board implement Section 3906(7) of Title 24 in a way consistent with the interests of the public, the regulated practitioners, and the Board's need to process license renewals in an orderly and efficient manner.

Finally, the Board finds that proposed regulation Section 6, which outlines the procedures by which a licensee may enter inactive status and reenter active licensure, implements 24 *Del.C.* §3911(c) and puts practitioners on notice of the requirements for electing inactive licensure.

The Board concludes that the proposed additions and changes to Sections 3 and 5, and the addition of Section 6, are necessary for the enforcement of 24 *Del.C.* Chapter 39 and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulations as proposed is in the interests of the citizens of the State of Delaware and is necessary to protect the general public, particularly those people receiving clinical social work services. The Board, therefore, adopts the proposed changes to regulations Sections 3 and 5, and adopts proposed regulation Section 6, all as set forth in Exhibit "A" attached hereto.

#### ORDER

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board of Clinical Social Work Examiners,

**IT IS HEREBY ORDERED THAT:**

1. Proposed Rules and Regulations, Sections 3, 5 and

6, are *approved and adopted* in the exact text attached hereto as Exhibit "A". These Sections replace in their entirety the corresponding sections of the Board's Rules and Regulations adopted on August 15, 1996 and any changes subsequent thereto.

2. 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(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

#### BY ORDER OF THE BOARD OF CLINICAL SOCIAL WORK EXAMINERS:

Charles E. Marvil, LCSW, President  
 Elizabeth Stiff, LCSW, Vice-President  
 Mary E. Wagner, Secretary  
 Janet E. Tovo, LCSW, Professional Member  
 Kathleen Gray, Public Member  
 Lisa R. Savage, LCSW, Professional Member

1 The Board's immediately prior Rules and Regulations were effective August 15, 1996.

**\* Please note that no changes were made to the regulation as originally proposed and published in the August 1998 issue of the Register at page 164 (2:2 Del. R. 164). Therefore, the final regulation is not being republished. Please refer to the June 1998 issue of the Register or contact the State Board of Clinical Social Work Examiners.**

**DIVISION OF PROFESSIONAL REGULATION  
 DELAWARE BOARD OF PSYCHOLOGISTS  
 Statutory Authority: 24 Delaware Code,  
 Section 3506(a)(1) (24 *Del.C.* 33901, 3506(a)(1))**

**BEFORE THE BOARD OF EXAMINERS OF  
 PSYCHOLOGISTS OF THE STATE OF DELAWARE**

IN RE: |  
 ADOPTION OF RULES AND |  
 REGULATIONS |

#### ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 9th day of November, 1998, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Examiners of Psychologists of the

State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

#### Nature of the Proceedings

On March 9, 1998, the Board held a public hearing on a proposed comprehensive revision of its rules and regulations. As a result of that hearing, the Board adopted most of the proposed new rules, but declined to adopt proposed regulations Sections 6, 7, 9, and 14, finding that these proposals should be revised in light of the public comments.

After further consideration and revision, the Board has again proposed new Rules and Regulations to replace Sections 6, 7, 9, and 14. The public hearing on the Board's proposal was scheduled for October 5, 1998. Notice of the hearing was published in the Delaware *Register of Regulations* at 2:3 *Del.R.* 341-348 (September 1, 1998) and in two Delaware newspapers of general circulation, all in accordance with 29 *Del.C.* §10115. (Affidavits from personnel of *The News Journal* and *The Delaware State News* confirming such publication were received into evidence at the public hearing.) The public hearing was held as noticed on October 5, 1998.

#### Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of its intention to revise the Rules and Regulations. The Board received just one comment at the public hearing: Rick Armitage, Director of Public Relations from the University of Delaware, thanked the Board members for their hard work in revising the regulations and noted that the current proposals reflect the Board's careful consideration of the public's comments and concerns.

#### Findings of Fact and Conclusions

The public was given appropriate notice of the Board's intention to revise Sections 6, 7, 9, and 14 of its regulations and an adequate opportunity to provide the Board with comments on the proposed changes. The Board further concludes that its consideration of the proposed Rules and Regulations is within the Board's authority under 24 *Del.C.* §3506.

While the Board received no public comments regarding the current proposed regulations, the Board carefully considered the comments received at its March 1998 hearing before again proposing changes to Sections 6, 7, 9, and 14; the Board has taken those comments in consideration as part of its current findings. Specifically, proposed Section 6, "Evaluation of Credentials," describes the core curriculum and characteristics of doctoral programs which are "psychological in content and specifically designed to train and prepare psychologists," as required by

24 *Del.C.* §3508(a)(1). Proposed Section 9 defines the respective responsibilities of licensed Psychological Assistants and their supervising licensed Psychologists and establishes the ratio of Assistants to supervising Psychologists, all as required by 24 *Del.C.* §3509(c); the Board concludes that as proposed, the Section protects the public by assuring adequate supervision of Psychological Assistants without unduly burdening agencies that rely heavily on the services of Assistants or adversely affecting the clients of such agencies. Finally, Sections 7 and 14, concerning supervised experience and licensure of full-time faculty members, have been changed from the original proposal primarily to allow the supervision of graduate students to count towards the postdoctoral experience required for licensure as a Psychologist; the proposed regulations continue to require 3,000 hours of postdoctoral experience and require that these hours be accumulated in concentrated time frames, standards the Board believes critical to effective post-doctoral learning.

The Board concludes that the proposed changes to these four Sections are necessary for the enforcement of 24 *Del.C.* Chapter 35 and for the full and effective performance of the Board's duties under that chapter. The Board also finds that adopting the regulations as proposed is in the interests of the citizens of the State of Delaware and is necessary to protect the general public and to regulate and oversee the practice of psychology. The Board, therefore, adopts proposed regulations Sections 6, 7, 9, and 14 as set forth in Exhibit "A" attached hereto.

#### ORDER

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Examiners of Psychologists,

#### IT IS HEREBY ORDERED THAT:

1. Proposed Rules and Regulations, Sections 6, 7, 9, and 14 are *approved and adopted* in the exact text attached hereto as Exhibit "A". These Sections replace in their entirety the corresponding sections of the Board's Rules and Regulations adopted on December 13, 1993 and any changes subsequent thereto.

2. 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(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BY ORDER OF THE BOARD OF EXAMINERS OF  
PSYCHOLOGISTS:

Jane Gilbert, Ph.D., President

Jane Crowley, Psy.D., Vice-President



Kulendu Bole, Secretary  
 David Lindemer, Ph.D.  
 Robert Benjamin, Public Member  
 Shirley Reichelt, Public Member  
 John Starke, Public Member

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 1998 issue of the Register at page 341 (2:3 Del. R. 341). Therefore, the final regulation is not being republished. Please refer to the September 1998 issue of the Register or contact the State Board of Psychologists.**

## DEPARTMENT OF EDUCATION

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

### REGULATORY IMPLEMENTING ORDER SCHOOL CUSTODIANS

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary recommends amending the regulations concerning the experience classification, and awarding of certificates for school custodians and the criteria for generating the unit allocation for custodial positions. The amended regulations clarify and focus the language of the regulations. The amendments also allow for an allocation of ½ unit for heating plant services in schools with up to six classrooms instead of the existing ½ unit for schools with 4-6 classrooms and no unit allocation for schools with 1-3 classrooms. The third change is the inclusion of additional ways that a custodian may be classified as a skilled craftsperson.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend these regulations in order to clarify and focus the language of the regulations and to increase the ways that districts may classify custodians as skilled craftspersons.

#### III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Sec. 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled 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., Sec. 122, on October 15, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** this 15th day of October, 1998.  
 DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 1998 issue of the Register at page 353 (2:3 Del. R. 353). Therefore, the final regulation is not being republished. Please refer to the September 1998 issue of the Register or contact the State Department of Education.**

### REGULATORY IMPLEMENTING ORDER RELEASING STUDENTS TO PERSONS OTHER THAN THEIR PARENTS OR LEGAL GUARDIANS

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the consent of the State Board of Education to amend the regulation part 2.c. under Safety on page A-46 in the Handbook for K-12 Education which addresses the issue of releasing students to persons other than their parents or legal guardians. The present regulation states that only parents and legal guardians can pick up their children from school and that the school authorities should

check to see that the person picking up the child is authorized to do so. The amendment states the issue in a more proactive manner by requiring that each district have a policy outlining the procedures for releasing students to persons other than their parents or legal guardian.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on September 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend this regulation because each local school district needs to have a clear written policy on the procedures for permitting the release of students to persons other than their parents or legal guardians.

## 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., Sec. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation as amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the document entitled 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., Sec. 122, in open session at the said Board's regularly scheduled meeting on October 15, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** this 15th day of October, 1998.  
DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 15th day of October, 1998.  
STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President

Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 1998 issue of the Register at page 357 (2:3 Del. R. 357). Therefore, the final regulation is not being republished. Please refer to the September 1998 issue of the Register or contact the State Department of Education.**

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## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,  
Section 4805(a) (29 **Del.C.** 4805(a))

BEFORE THE DELAWARE STATE LOTTERY OFFICE

**IN RE: PROPOSED AMENDMENTS  
TO VIDEO LOTTERY REGULATIONS**

## ORDER

Pursuant to 29 Del. C. §4805(a), the Delaware State Lottery Office hereby issues this Order regarding proposed amendments to the Video Lottery Regulations. The Lottery proposed to amend section 5.2(2) and 7.9 of the Video Lottery Regulations. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

### SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Lottery posted public notice of the proposed amendments to the Video Lottery Regulations in the Register of Regulations and in the News Journal and Delaware State News. The Lottery requested written comments from the public during the month of September, 1998. No public comments were received at the Lottery Office.

## FINDINGS OF FACT

2. The public was given notice and an opportunity to provide the Lottery with comments in writing on the proposed Regulations.

3. The proposed Amendments were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. §4805 (a). The Amendment to Regulation 5.2(2) is necessary to comply with recent amendments to the Video Lottery Regulations. The Amendment to Regulation 7.9 is necessary to be in compliance with 29 Del. C. §4812. The Lottery deems the proposed Amendments necessary for the effective enforcement of 29 Del. C. §4805 and for the full and efficient performance of the Lottery's duties thereunder. The Lottery concludes that the adoption of the proposed Amendments would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and the general welfare of the people under §4805 (a).

4. The Lottery adopts the proposed Amended Regulations to sections 5.2(2) and 7.9. Those Amended Regulations will now provide as follows:

5.2 All contracts with technology providers shall include without limitation, provisions to the following effect.:

(2) the technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of Twenty Five Dollars (\$25) shall be permitted for wagering on a single play of any video game.

7.9 No credit slip shall be redeemed more than one (1) year from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one year from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one (1) year and one (1) day from the date of issuance of the credit slip or occurrence of the winning jackpot. The one year redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

5. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on November 1, 1998.

IT IS SO ORDERED 13th day of October, 1998

Wayne Lemons  
Lottery Director

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 1998 issue of the Register at page 358 (2:3 Del. R. 358). Therefore, the final regulation is not being republished. Please refer to the September 1998 issue of the Register or contact the State Lottery Office.**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

BEFORE THE DELAWARE DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:

REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update the numbering of the Medicaid eligibility rules. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 1998 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 1998, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 1998 Register of Regulations should

be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective November 10, 1998.

Gregg C. Sylvester, M.D.  
Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 1998 issue of the Register at page 359 (2:3 Del. R. 359). Therefore, the final regulation is not being republished. Please refer to the September 1998 issue of the Register or contact the State Department of Health and Social Services.**

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**DEPARTMENT OF STATE**  
**OFFICE OF THE STATE BANKING**  
**COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. 121(b))

ORDER ADOPTING REVISED REGULATIONS  
5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003,  
5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 AND  
5.2905(e).0002

IT IS HEREBY ORDERED, this 2nd day of October, 1998, that revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 are adopted as regulations of the State Bank Commissioner. Copies of revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 are attached hereto and incorporated herein by reference. Revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 supersede previous regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218(5)/2231(3).0003, 5.2741.0001.NC, 5.2743.0002.NC, 5.2905(e)/122(b).0001 and 5.2905(e).0002, respectively. The effective date of revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 is November 12, 1998. Revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 were published in the September 1, 1998 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on September 4, 1998, and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before October 2, 1998, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on October 2, 1998 at 10:00 a.m. in Room 113 of the Tatnall Building, William Penn Street, Dover, Delaware 19901.

2. No comments were received on or before October 2, 1998.

3. A public hearing was held on October 2, 1998 at 10:00 a.m. regarding the proposed amended regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002. The State Bank Commissioner, the Deputy Bank Commissioner for Supervisory Affairs, the Non-Depository Institutions and Compliance Administrator and the Compliance Officer of the Office of the State Bank Commissioner and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided to adopt revised regulations 5.2102(b)/2112.0001, 5.2210(d).0001, 5.2218/2231.0003, 5.2741.0001, 5.2743.0002, 5.2905(e)/122(b).0001 and 5.2905(e).0002 as proposed.

Timothy R. McTaggart  
State Bank Commissioner

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Regulation No.: 5.2102(b)/2112.0001

Effective Date: [November 12, 1998]

### Mortgage Loan Brokers Operating Regulations

(5 Del. C. §§2102(b) and 2112)

#### 1. Application of Chapter

(a) Chapter 21 of Title 5 of the Delaware Code governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the Delaware Code does not apply to the brokering of commercial mortgage loans, including a first or second mortgage on any income producing property that does not fall into the aforementioned definition.

(b) Mortgage loan brokers shall be termed "non-processing" or "originating" brokers if they neither:

1. Arrange for third party settlement services other than engaging a lender; nor
2. Receive fees paid directly from the potential borrower, prior to closing, in excess of \$50.00.

(c) For the purposes of §2102(b) of Title 5 of the Delaware Code, non-processing or originating brokers shall be exempt from the licensing requirements provided that they observe the following three requirements:

1. Register annually with the Office of the State Bank Commissioner as a non-processing or originating broker;
2. Advertise and disclose their status as a non-processing or originating broker; and
3. Observe the Minimum Disclosure Requirements contained in Commissioner's Regulation No. 5.2113.0004.

#### 2. Maintenance of Copies of Applicable Regulations

All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the Delaware Code, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the Delaware Code shall maintain copies of all applicable regulations. These regulations include:

- 5.2102(b)/2112.0001 - Mortgage Loan Brokers Operating Regulations;
- 5.2111(a).0002 - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;
- 5.2115.0003 - Mortgage Loan Brokers Itemized Schedule of Charges;
- 5.2113.0004 - Mortgage Loan Brokers Minimum Disclosure Requirements;
- 5.2111(b).0005 - Report of Delaware Loan Volume;

- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the Delaware Code and this regulation.

#### 3. Fees for Examination and Supervisory Assessment

Mortgage Loan Broker licensees are subject to examination pursuant to §2110 of Title 5 of the Delaware Code. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the Delaware Code.. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the Delaware Code. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

#### 4. Representations at Mortgage Loan Closings

At no time shall a mortgage loan close in the name of the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

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**Regulation No.: 5.2210(d).0001**

Effective Date: [November 12, 1998]

Licensed Lenders Operating Regulations

(5 Del. C. §2210(d))

#### 1. Application of Chapter

Chapter 22 of Title 5 of the Delaware Code applies to consumer credit transactions, including, but not limited to, mortgage lending secured by one to four family residential, owner-occupied property intended for personal, family or household purposes.

#### 2. Maintenance of Operating Regulations for Licensed Lenders



All licensees shall conduct business in compliance with Chapter 22 of Title 5 of the Delaware Code. Each office licensed under Chapter 22 of Title 5 of the Delaware Code shall possess copies of all applicable regulations. These regulations include:

- 5.2210(d).0001 Licensed Lenders Operating Regulations;
- 5.2213.0002 Licensed Lenders Minimum Requirements for Content of Books and Records;
- 5.2218/2231.0003 Licensed Lenders Itemized Schedule of Charges;
- 5.2208.0004 Required Amount of Licensed Lender's Surety Bond or Irrevocable Letter of Credit;
- 5.2210(e).0005 Report of Delaware Loan Volume;
- 5.2111/2210/2906.0006 Report of Delaware Assets; and
- 5.141.0001.NC Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2213 of Title 5 of the Delaware Code and this regulation.

### 3. Fees for Examination and Supervisory Assessment

Licensed Lenders licensees are subject to examination pursuant to §2210 of Title 5 of the Delaware Code. The cost of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the Delaware Code. A licensee shall remit payment not later than 30 days after the date of the invoice for the examination. In addition, the Commissioner annually assesses each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the Delaware Code. Failure of a licensee to remit timely payment of this examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

### 4. Mortgage Satisfaction/Security Interest

A licensee shall cause an entry of the satisfaction or performance of a debt or duty secured by a mortgage or conveyance in the nature of a mortgage on real estate to be made as required by Chapter 21 of Title 25 of the Delaware Code. A licensee shall take the necessary action(s) to discharge or release any other security interest for loans under Chapter 22 of Title 5 of the Delaware Code within

sixty days from the date the debt secured by such other collateral or security interest is satisfied or performed. Failure of a licensee to take such action within the period prescribed will be a violation of this regulation.

### 5. Principal Reduction

No loan shall be made under the provisions of this Chapter that does not allow for a reduction of principal over the term of the loan unless it is a product available through federal governmental or quasi-governmental entities.

### 6. Credit Life and Credit Health Insurance

(a) Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware as well as rules and regulations that the Insurance Commissioner may prescribe from time to time.

(b) Every lender offering credit life and health insurance whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 5 shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate as well as approval by the Insurance Commissioner of the rate.

(c) Credit life insurance refunds shall be calculated as of the date of death.

(d) Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

(e) The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 5 and any subsequent applicable regulations promulgated to each licensee.

### 7. Other Insurance

(a) Any lender may require proof of insurance coverage for any loan secured by a motor vehicle, real property (real estate), or other collateral. Borrower has the right to submit any existing policy(s) naming lender as beneficiary as his/her interest may appear, provided such policy is acceptable to the lender as to coverage, prepaid term and the carrier meets required financial standards. Upon notification to the lender of cancellation of any policy for non-payment, lender may place coverage to secure his/her interest. Borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. Any lender may, if requested by the borrower, place such insurance coverage as is necessary to secure his/her interest at the inception of the loan.

(b) A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may,

upon written approval, permit. No such insurance may be offered without the State Bank Commissioner's written approval.

#### 8. Borrower-Signed Authorization for Insurance

Any insurance authorized by this regulation, other than the insurance coverage authorized by section 7(a) of this regulation, must be supported by a specific request signed by the borrower. This request shall be attached to or made a part of the application documents.

#### 9. Purchase or Sale of Accounts by Licensed Lenders

(a) A licensee shall not sell or otherwise transfer contracts to any person or corporation not licensed under Chapter 22 of Title 5 of the Delaware Code, except at the discretion of the State Bank Commissioner.

(b) Purchasers shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.

(c) This section shall not apply to:

(1) The purchase or transfer of loan contracts between licensees under the same management or control;

(2) The sale or transfer of a loan contract to an out-of-state affiliate for collection or for the convenience of a consumer;

(3) The transfer of a loan contract by a licensee to any maker or person secondarily liable on the contract; and,

(4) The sale of a participation or a whole loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings and loan association, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

#### 10. Origination of Mortgage Loans for Resale

Solely for the purposes of the loan limitation provisions contained in the last sentence of Section 2228(a) of Title 5 of the Delaware Code, the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this state (or secured by certificates of stock or other evidence of ownership interest in, and proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise conveys its entire interest in the loan (except servicing if servicing is retained) within 120 days following the date the loan is made. Additional time may be granted at the discretion of the State Bank Commissioner.

**Regulation No. 5.2218/2231.0003**

Effective Date: [November 12, 1998]

Licensed Lenders Regulations Itemized Schedule of Charges (5 Del. C. §§2218 and 2231)

1. Notification - Every licensee shall make available for review to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement.

#### 2. Interest

(a) A lender may charge and collect interest in respect to a loan at such a daily, weekly, monthly, annual, or other periodic percentage rate or rates (variable) as the agreement governing the loan provides, or as established in the manner provided in such agreement.

(b) If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to any or all outstanding and unpaid amounts of such loan.

3. Additional Fees and Charges; Limitations - In addition to, or in lieu of, interest at a periodic percentage rate or rates permitted by Chapter 22, Title 5 of the Delaware Code, the licensee may charge and collect the following fees and charges, subject to the limitations provided below, in respect to loans:

(a) Revolving Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following charges for loans subject to the provisions of Subchapter II, Chapter 22, Title 5 of the Delaware Code:

(i) periodic charge - a daily, weekly, monthly, annual or other periodic charge, in such amount or amounts as the agreement may provide, for the privileges made available to the borrower under the plan;

(ii) transaction charge - a transaction charge or charges, in such amount or amounts as the agreement may provide, for each separate purchase or loan under the plan;

(iii) minimum charge - a minimum charge, in such amount or amounts as the agreement may provide, for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(iv) fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for

reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrowers default or other credit loss, inspection, and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees, and travel expenses.

(v) overlimit charge - a charge in such amount or amounts as the agreement may provide, for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which total outstanding indebtedness exceeds the credit limit established under the plan.

(vi) delinquency charge - if the agreement governing a revolving credit plan so provides, a licensee may impose a late or delinquency charge upon such installment payments or portions thereof; provided, however, that no more than one such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due.

(vii) bad check charge - a bad check charge may be assessed to consumers, in such amount or amounts as the agreement may provide, provided the amount(s) of such charges are reasonable.

(viii) charges incurred in connection with real estate secured transactions - in the case of revolving credit secured by real estate such additional charges as outlined in item (c) of this section may also be collected within the limitations stated therein.

(ix) prepayment charges imposed to terminate a revolving credit plan if the agreement governing the plan so provides.

(b) Closed-end Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees for loans subject to the provisions of Subchapter III, Chapter 22, Title 5 of the Delaware Code:

(i) fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrowers default or other credit loss, inspection, and other formal acts necessary or appropriate to the security of the loan filing fees, attorney's fees, and travel expenses.

(ii) delinquency charge - if the agreement governing the loan so provides, a delinquency charge may be

imposed upon any installment which is completely or partially in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default;

(iii) bad check charge - a bad check charge may be assessed to consumers, provided the amount(s) of such charges are reasonable.

(iv) charges incurred in connection with real estate secured transactions - in the case of closed-end credit secured by real estate such additional charges as outlined in item (c) of this section may also be collected within the limitations stated therein.

(c) Real Estate Secured Transactions - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees subject to the limitations herein, for loans subject to the provisions of Subchapters II (Revolving Credit) and III (Closed-End Credit), Chapter 22, Title 5 of the Delaware Code when such loans are secured by real estate:

(i) points - points charged to the borrower may not exceed 10% of the principal amount of the loan. Such points may be deducted from the gross proceeds of the loan. For purposes of this regulation "gross proceeds" is the amount financed as defined in Federal Reserve Regulation Z. Upon prepayment, points are not subject to rebate;

(ii) property appraisal fees - property appraisal fees shall be limited to the amount paid to a third party for such appraisal and shall be limited to those amounts meeting reasonable industry standards;

(iii) mortgage loan broker fees - mortgage loan broker fees incurred by the applicant may be utilized as a portion of the gross proceeds of the loan;

(iv) credit report fees - credit report fees shall be limited to the actual cost of the report if paid to a third party, not an employee of the lender or affiliate;

(v) title insurance premiums - title insurance and/or cost of a title certificate or examination shall be limited to those amounts actually expended by the lender for such purposes. Any such fees or charges collected, but not paid out by the lender, shall be refunded to the borrower;

(vi) recording/satisfaction fees - recording/satisfaction fees shall be limited to those actually expended by the lender to any governmental authority for protection of interest in collateral tendered. The State Bank Commissioner may approve the payment of alternative fees for this purpose provided the amount of said fee (payable by the borrower) shall not exceed the amount which would be payable to any governmental authority for protection of interest in collateral tendered;

(vii) legal fees - other legal fees incurred in



securing a loan shall be limited to amounts actually paid to an attorney not in the employ of the Company, its Parent, or Affiliate, and such charges shall not exceed those which are customary and reasonable;

(viii) fees incidental to loan closing - other fees such as closing fees, document preparation fees and tax services may be charged as incurred by the lender. Such other fees shall be limited to the amounts actually paid or incurred, and shall conform to customary and reasonable industry standards.

(ix) prepayment penalties or other charges specified in the agreement.

(x) notwithstanding the provisions of this item (c) of this section, Licensed Lenders who are making mortgage loans pursuant to the rules, regulations, guidelines and/or loan forms established by the State of Delaware or federal governmental or quasi-governmental entity (including, without limitation, the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) shall be permitted to charge and collect any fees, charges or sums prescribed to be charged and collected in connection with a mortgage loan originated pursuant to a lending program conducted or supervised by any such entity.

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**Regulation No.: 5.2741.0001**

Effective Date: [November 12, 1998]

Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations (5 Del. C. §2741)

**1. Maintenance of Operating Regulations for Licensed Cashier of Checks, Drafts or Money Orders**

All licensees shall conduct business in compliance with Chapter 27, Title 5, Delaware Code, and any regulations issued thereunder. Each office licensed under Chapter 27, Title 5, Delaware Code, shall possess copies of all applicable regulations. These regulations include:

- 5.2741.0001 - Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations
- 5.2743.0002 - Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records
- 5.141.0001.NC - Retention of Financial Institution Records

The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulation shall be made known to the Office of the State Bank Commissioner and replacements will be furnished.

Failure to maintain the aforementioned regulations shall constitute a violation of both 5 Del. C. §2743 and this regulation.

**2. Examination and Supervisory Assessment Fees**

Cashing of Checks, Drafts, and Money Order licensees shall be subject to examination pursuant to §122 of Title 5 of the Delaware Code. The cost of such examinations shall be assessed to the licensee in accordance with §127(a) of Title 5 of the Delaware Code. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment, due and payable on August 1 of each year, as provided in §127(b) of Title 5 of the Delaware Code. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

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**Regulation No.: 5.2743.0002**

Effective Date: [November 12, 1998]

Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records (5 Del. C. §2743)

1. The fee schedule set forth in §2742 of Title 5 of the Delaware Code shall be conspicuously displayed in a place easily visible to consumers at the licensed location, whether such location be a mobile unit or otherwise.

2. Each licensed office shall establish and maintain the following books and records, on a current basis, at the licensed office. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested:

a. Transactions Journal - All transactions involving the cashing of checks, drafts, or money orders shall be entered into this journal. All entries in this journal shall contain the following details:

1. Date of transaction;
2. Customer's name;
3. Customer's address;
4. Type of identification;
5. Check, Draft, or Money Order and Item

Number;

- 6. Amount of item;
- 7. Fee paid;
- 8. Employee's initials.

Written approval may be granted for the recording of items #2, #3, and #4 in a card file which assigns an identification number to each customer. The identification number may then be recorded in the Transactions Journal in lieu of the customer's name, address, and form of identification.

b. Record of Deposits - A copy of each day's deposit made of the checks, drafts, and money orders cashed shall be maintained.

c. Summary of Business - A record of daily and monthly totals shall be maintained, to include:

- 1. The number of checks, drafts, and money orders cashed;
- 2. The aggregate fees received.

d. Any licensee operating two or more locations may maintain a consolidated or combined set of books and records, provided such books and records reflect separate figures for each location.

- (a) Name and address of the borrower;
- (b) Loan number;
- (c) Date of loan;
- (d) Total amount of loan;
- (e) Total sale price;
- (f) Rate of interest charges and the amounts of all charges;
- (g) Terms of repayment;
- (h) Description of motor vehicle;
- (i) Where and to whom hypothecated;
- (j) Names of endorsers, comakers, guarantors, or sureties;
- (k) The actual date of receipt of payment of principal and charges; and,
- (l) Name of assignee or purchaser of retail installment contract.

(3) File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a retained title or lien was released within the time period prescribed in Motor Vehicle Sales Finance Regulation No. 5.2905(e).0002, Item (4).

(4) Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be entered in this record. Details of disbursements to, or for, the account of borrowers shall be itemized.

(5) Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossessions, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- (a) Loan number, original amount of loan and unpaid balance;
- (b) Description of motor vehicle, attached, replevined, repossessed, or surrendered;
- (c) Date and terms of settlement of account or, if after judgement, the date and amount of judgement, prejudgement balance, current balance, unearned charges credited to borrower's account, and legal costs;
- (d) Evidence of the terms of sale if the security was sold after repossession, such evidence including copies of all bids or other offers received together with the purchaser's name and address, price, date of sale and cash or financing terms.
- (e) Evidence that notification of the time and place of sale was sent to the borrower;
- (f) Evidence of amount paid, if any, to third party repossessors; and,

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**Regulation No.: 5.2905(e)/122(b).0001**  
**Effective Date: [November 12, 1998]**

Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records (5 Del. C. §§122(b) 2905(e))

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested.

(1) Retail Installment Contract Applicant Register This shall be a record showing the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of lender's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed, date application was denied and reason for denial.

(2) Individual Accounts with Borrowers - A record shall be kept for each borrower and shall include the following:

(g) Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the existing (principal or branch) office and should reflect a correct current balance.

(6) Credit Insurance Claims Register - A credit insurance claims register or file which is a record of all claims submitted by borrowers to the insurer shall disclose the following:

- (a) Date of claim;
  - (b) Amount of claim;
  - (c) Date and amount of payment by insurer or the date of rejection and the reason therefor;
  - (d) Borrower's name;
  - (e) Loan number;
  - (f) Reason for claim (i.e. death, illness, etc.);
  - (g) Proof of death;
  - (h) A copy of the check(s) issued by the insurance company in payment of life, accident, health, or accident and health benefits; and,
  - (i) A copy of the check(s) issued by the insurance company, or other evidence of credit, which result from prepayment of the loan or cancellation of the insurance.
- (7) In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

**Regulation No.: 5.2905(e).0002**

Effective Date: [November 12, 1998]

Motor Vehicle Sales Finance Companies Operating Regulations (5 Del. C. §2905(e))

1. Application of Chapter

(a) Lease Contracts

(i) A lease contract is governed by Chapter 29 of Title 5 of the Delaware Code, when all of the following exist:

(1) The lessee contracts to pay a sum substantially equivalent or in excess of the value of the motor vehicle for the use of the motor vehicle over the lease term.

(2) The lessee is bound to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract.

(3) The value for which the motor vehicle is to be sold at the end of the lease term is not payable in a single installment (Cash Sale).

(ii) A lease contract is not governed by Chapter 29 of Title 5 of the Delaware Code, when any one of the contract provisions described in 1.(a) (i), (1), (2), and (3) is absent.

(b) For the purposes of Chapter 29 of Title 5 of the

Delaware Code, all 'motor vehicles' which meet the definition contained in 5 Del. C. §2901(1), regardless of whether the intended use is commercial or personal, fall under the auspices of this chapter.

2. Maintenance of Operating Regulations for Motor Vehicle Sales Finance Companies

All licensees shall conduct business in compliance with Chapter 29 of Title 5 of the Delaware Code, and any regulations issued thereunder. Each office licensed under Chapter 29 of Title 5 of the Delaware Code shall possess copies of all applicable regulations. These regulations include:

- 5.2905(e)/122(b).0001 - Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records;
- 5.2905(e).0002 - Motor Vehicle Sales Finance Companies Operating Regulations;
- 5.2906(e).0003. - Report of Delaware Loan Volume Motor Vehicle Installment Contracts;
- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulations shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 Del. C. §2905(e) and this regulation.

3. Examination and Supervisory Assessment Fees

Motor Vehicle Sales Finance Companies licensees shall be subject to examination pursuant to §122 of Title 5 of the Delaware Code. The cost of such examinations shall be assessed to the licensee in accordance with 5 Del. C. §127(a). A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for the examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment fee, due and payable on August 1 of each year, as provided in 5 Del. C. §127(b). Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

4. Security Interest

A licensee shall take the necessary action(s), to release

or satisfy a retained title or a lien created by a retail installment contract, within thirty days of the date the debt secured by the motor vehicle is satisfied or performed.

5. Credit Life, Health, and Accident Insurance

(a) A licensee may request, but not require, an individual borrower to be insured under a life, health, accident, health and accident, or other credit or other permissible insurance policy, whether group or individual.

(b) Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware, as well as rules and regulations of the Insurance Commissioner, as may from time to time be prescribed.

(c) Every lender offering credit life and health insurance, whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 5, shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate, as well as approval by the Insurance Commissioner of the rate.

(d) Credit life insurance refunds shall be calculated as of the date of death.

(e) Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers, regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

(f) The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 5, and any subsequent applicable regulations promulgated, to each licensee.

6. Other Insurance

(a) Any licensee may require a proof of insurance coverage for any loan secured by a motor vehicle.

(b) A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered, after January 1, 1992, without the State Bank Commissioner's written approval. Those insurances offered prior to January 1, 1992 shall not require written approval, provided such insurances were reported to the State Bank Commissioner before February 10, 1993.

7. Borrower-Signed Authorization for Insurance

Any insurance authorized by these Rules and Regulations must be supported by a specific request signed by the borrower. This request shall be attached to, or made a part of, the application documents.

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Authority on Radiation Protection	Mr. Norman W. Henry, II	09/15/01
Board of Medical Practice	Dr. Bruce Bolasny Dr. Lois W. Dow	09/22/01 09/22/01
Committee on Massage/Bodywork Practitioners	Ms. Kathleen Donelan	10/21/01
Council on Apprenticeship and Training	Ms. Bonnie. E. Embry	10/02/01
Council on Libraries	Ms. Grace S. Husted Ms. Lynn Schneider	09/29/01 09/29/01
Council on Social Services	Ms. Beverly Miles	09/18/01
Council on Volunteer Services	Mr. Vincent F. Jacono, Jr. Ms. Nancy O. Landskroener	09/22/00 09/22/00
Delaware Arts Council	Mr. Gonzalo Martinez	10/02/01
Delaware Board of Nursing	Mr. Janet M. West	10/21/01
Delaware Commission on Women	Dr. Mary S. Schreiber Ms. Alisa Swain	10/21/01 10/21/01
Delaware State University Board of Trustees	Ms. Cora Norwood Selby	09/25/04
Delaware Thoroughbred Racing Commission	Mr. Henry James Decker Ms. Carolyn D. Wilson	09/22/04 09/22/04
Delaware Veteran's Day 1998	Mr. Benjamin Pernol, Jr., Chairman	
Delaware Workforce Development Council	The Honorable Thomas Eichler	Pleasure of the Governor
Foster Care Review Board	Ms. Janice K. Baly Mr. Michael. M. Benefield, Sr. Mr. Roger D. Blevins Mr. Charles B. Carter Mr. Patrick Casey Ms. Ellen A. Clarke Ms. Nancy Czeiner Mr. Jeffrey Davidson	10/15/01 10/15/01 10/15/00 10/15/01 10/15/99 10/15/01 10/15/01 10/15/01

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**GOVERNOR'S APPOINTMENTS**

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791

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Foster Care Review Board	Ms. Catherine W. Kallal	10/15/01
	Ms. Wilberta Lewis	10/15/99
	Ms. Arlita McGregor	10/15/01
	Ms. Elaine Markell	10/15/00
	Mr. William C. Miller	05/02/99
	Ms. Kwang Sun Moon	10/15/01
	Mr. William J. Murrery	10/15/01
	Ms. Cora P. Norwood-Selby	10/15/01
	Ms. Cynthia Elliott Oates	10/15/01
	Mr. Donald F. Schneck	10/15/01
	Ms. Linda Shopland	10/15/01
	Mr. Rodney C. Smith	10/15/99
Greater Wilmington Convention and Visitors Bureau	Ms. Peggy Amsterdam	06/30/00
	Mr. Stephen T. Bruni	06/30/01
	Mr. Vincent DiFonzo	06/30/00
	Ms. Carol S. Harding	06/30/01
	Mr. Peter C. Morrow	06/30/00
Historical Records Advisory Board	Mr. Richard B. Carter	09/26/01
	Dr. Leon de Valinger	09/26/01
	Dr. Henry Hirschbiel	09/26/01
Local Records Commission	The Honorable Charles A. Weller	Pleasure of the Governor
Office of Information Services Advisory Committee	The Honorable John J. Nold	Pleasure of the Governor
Public Assessment & Accountability Advisory Committee	Mr. Paul Fine	Pleasure of the Governor
	Mr. Allen Kemp	Pleasure of the Governor
	Ms. Nancy King	Pleasure of the Governor
	Dr. Susanna Lee	Pleasure of the Governor
	Ms. Margaret Lopez-Waite	Pleasure of the Governor
	Dr. Joseph Pika	Pleasure of the Governor

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**GOVERNOR'S APPOINTMENTS**


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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Public Assessment & Accountability Advisory Committee	Ms. Mary Ann Pry	Pleasure of the Governor
	The Honorable Bruce Reynolds	Pleasure of the Governor
	The Honorable David Sokola	Pleasure of the Governor
	Ms. Margaret Tansley	Pleasure of the Governor
Superior Court, Associate Judge	Mr. James T. Vaughn, Jr., Esq.	10/28/10
State Board of Social Work Examiners	Ms. Grace A. Pesickey	10/02/01
State Examining Board of Physical Therapists	Mr. Roger Hunt	10/08/01
State Fire Prevention Commission	Mr. Donald W. Knight	09/25/99
United Nations Day Chairman	Mr. Allan R. Loudell	
Vocational Rehabilitation Advisory Council	Ms. Debra A. Wallace	Ex-Officio Member

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**DEPARTMENT OF AGRICULTURE**

A public hearing will be held on November 23, 1998, at 6:00 pm at the Delaware Department of Agriculture in Conference Room 1 regarding **Delaware pesticide rules** and regulations.

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**DEPARTMENT OF EDUCATION**

The **Department of Education** will hold its monthly meeting on Thursday, November 19 at 10:00 a.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE  
DIVISION OF SOCIAL SERVICES  
TANF PROGRAM**

The Delaware Health and Social Services / Division of Social Services / Temporary Assistance for Needy Families Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3024. The change adds categories of non-citizens who are eligible to receive TANF. The Balanced Budget Act of 1997 allowed certain immigrants who were barred from receiving benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to now be eligible.

**COMMENT PERIOD**

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by November 30, 1998.

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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE  
Work for Your Welfare (Workfare) Program**

The Delaware Health and Social Services, Division of Social Services, is proposing to add policy governing the Work for Your Welfare (workfare) program to the Division of Social Services' Manual Section 3000. The policy arises

from *A Better Chance* provisions proposed prior to the program's initiation in 1995.

**COMMENT PERIOD**

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 the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by November 30, 1998.

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**DIVISION OF SOCIAL SERVICES****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 / Medical Assistance Program is amending its general policy provider manual(s) to revise the definition of Medical Necessity.

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 the Director, Medical Assistance Programs, Division of Social Services P.O. Box 906, New Castle, DE 19720 by November 30, 1998.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

1. TITLE OF THE REGULATIONS:  
**Regulations Governing Delaware's Coastal Zone**
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:  
Regulations are developed to better administer the Coastal Zone Act. The new regulations will ensure that the environment of coastal Delaware is improved. The new regulations will also provide clarity and better guidance to the regulated public and concerned citizens.
3. POSSIBLE TERMS OF THE AGENCY ACTION:  
None



## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del Code, Ch. 70

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed regulation will be held on Monday, November 23, 1998 in the auditorium beginning at 1 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. All comments must be submitted before or during the hearing. Written comments may be submitted to Gail Bell, Coastal Zone Industrial Control Board, 89 Kings Highway, Dover, DE. For copies of the proposed regulations the public should call Ms. Gail Bell at (302) 739-6400.

## 7. PREPARED BY:

Dennis Brown 739-4403

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**DIVISION OF AIR & WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

## 1. TITLE OF THE REGULATIONS:

**REGULATION NO. 38 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES"**

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend Regulation No. 38 by adopting the National Emission Standards for Hazardous Air Pollutants for Source Categories found at 40 CFR Part 63 Subpart M by reference.

Subpart M establishes the general compliance, notification, testing, recordkeeping and reporting requirements for perchloroethylene dry-cleaning facilities. Subpart M will apply to all coin-operated and owner-operated dry-cleaning machine systems that use perchloroethylene as a solvent in cleaning articles.

## 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:

One public hearing on this proposed amendment to Regulation 38 will be held on Tuesday, December 1, 1998 beginning at 7:30 p.m. at the Terry Campus of Delaware Technical & Community College (DTCC) in Dover, DE. Two public hearings will be held on Wednesday, December 2, 1998 at the Stanton Campus of DTCC in Newark, DE. The first public hearing will begin at 7:30 p.m. and a second one will begin upon completion of the 7:30 p.m. hearing or at 8:00 p.m., whichever is later. This second public hearing will be translated into Korean. One public hearing will be held on Thursday, December 3, 1998 beginning at 7:30 p.m. at the Owens Campus of DTCC in Georgetown, DE.

## 7. PREPARED BY:

James R. Snead (302) 323-4542

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**DIVISION OF AIR & WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

## 1. TITLE OF THE REGULATIONS:

**REGULATION NO. 24 - "CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS"**

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend Regulation No. 24 by repealing Section 39.

Adopted on January 11, 1993, Section 39 established the general compliance, notification, testing, recordkeeping and reporting requirements for dry-cleaning facilities that use perchloroethylene. The State has since taken regulatory actions that adds perchloroethylene to the list of selected volatile organic compounds that are exempt from the requirements of Regulation No. 24. Because Section 39 is no longer applicable, it is being repealed.

## 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:

One public hearing on this proposed amendment to Regulation 24 will be held on Tuesday, December 1, 1998

beginning at 7:30 p.m. at the Terry Campus of Delaware Technical & Community College (DTCC) in Dover, DE. Two public hearings will be held on Wednesday, December 2, 1998 at the Stanton Campus of DTCC in Newark, DE. The first public hearing will begin at 7:30 p.m. and a second one will begin upon completion of the 7:30 p.m. hearing or at 8:00 p.m., whichever is later. This second public hearing will be translated into Korean. One public hearing will be held on Thursday, December 3, 1998 beginning at 7:30 p.m. at the Owens Campus of DTCC in Georgetown, DE.

7. PREPARED BY:

James R. Snead (302) 323-4542

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**STATE FIRE PREVENTION  
COMMISSION  
STATE FIRE MARSHALL'S OFFICE**

A public hearing concerning the proposed regulatory change will be held on Tuesday, December 15, 1998, at the State Fire Prevention Commission offices on the grounds of the Delaware State Fire School, 1463 Chestnut Grove Road, Dover, Delaware 19904 at 10:00 a.m. Public comments should be submitted to the State Fire Prevention Commission on or before December 8, 1998. Comments should be sent to the above address.

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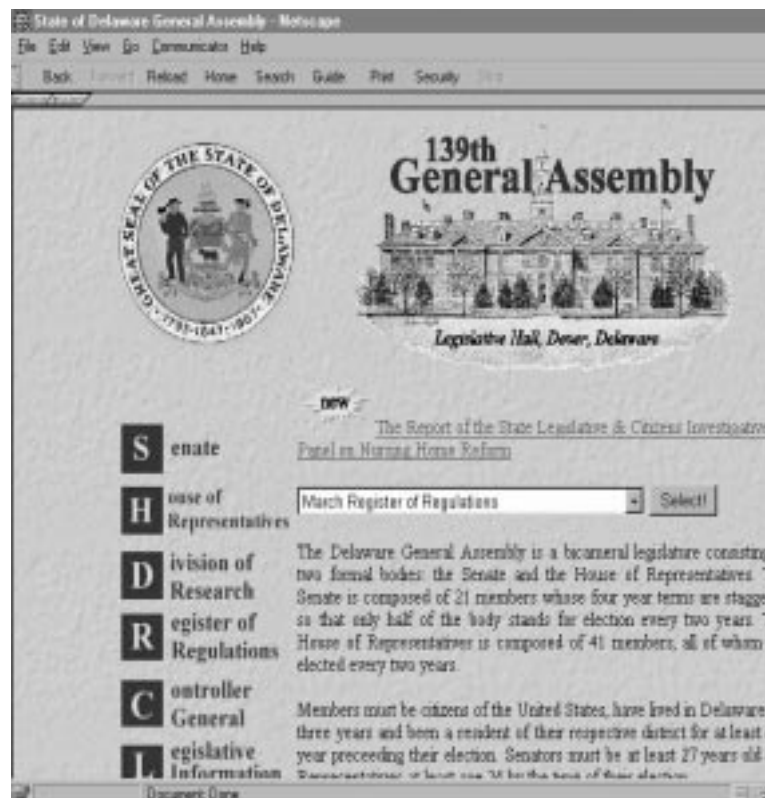
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