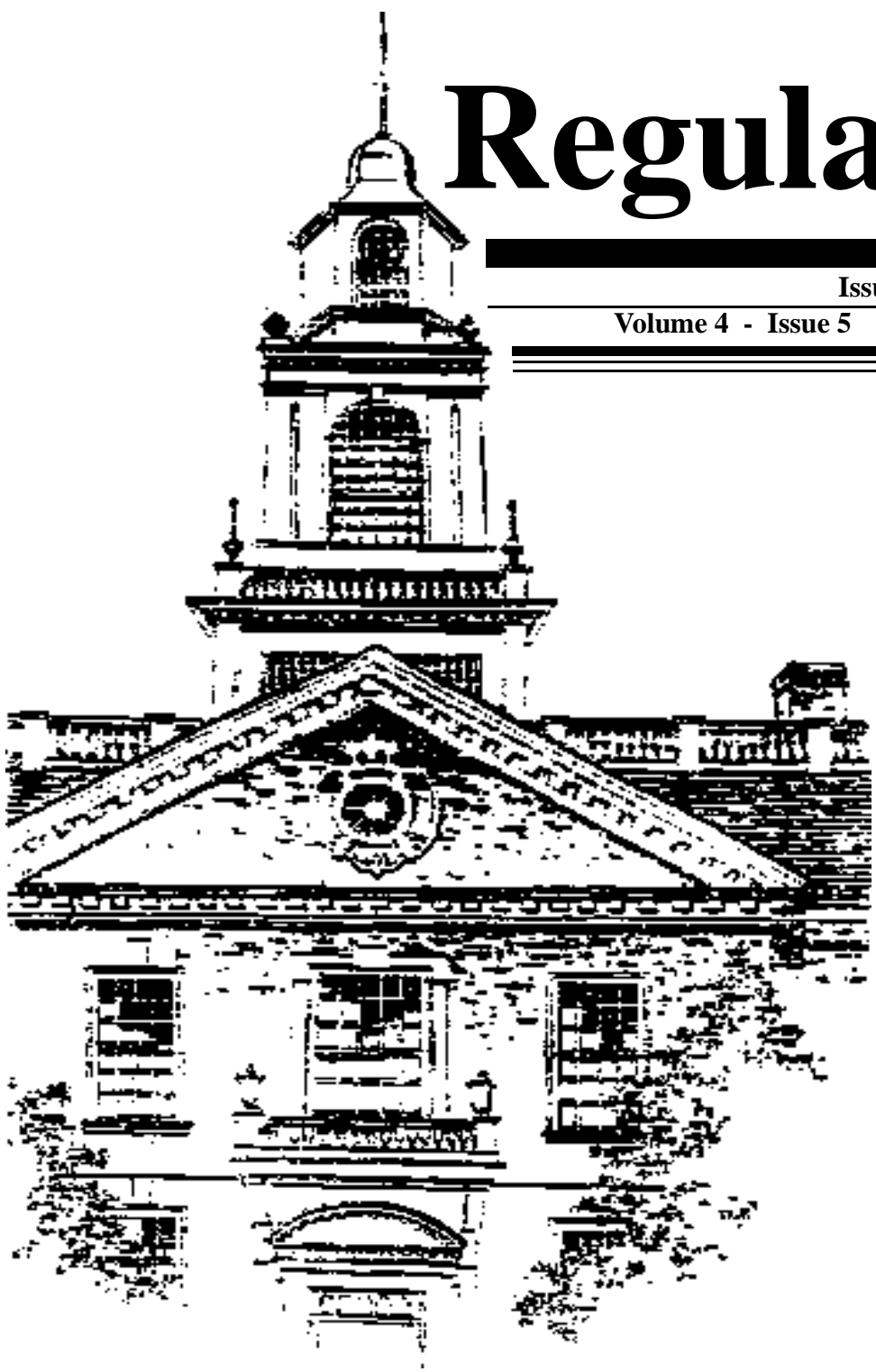


---

---

# Delaware Register of Regulations



---

Issue Date: November 1, 2000

Volume 4 - Issue 5

Pages 760 - 879

---

---

## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Executive Order

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before October 15, 2000.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

761

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

---

### CITATION TO THE DELAWARE REGISTER

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

**3 DE Reg. 737 - 742 (12/1/99)**

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

---

---

### 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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 after receipt, within the time allowed, of all written materials, upon all the testimonial and written

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

Except as provided in the preceding section,

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

---

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

---

| ISSUE<br>DATE | CLOSING<br>DATE | CLOSING<br>TIME |
|---------------|-----------------|-----------------|
| NOVEMBER 1    | OCTOBER 15      | 4:30 P.M.       |
| 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.       |

---

### DIVISION OF RESEARCH STAFF:

**William S. Montgomery**, Director, Division of Research; **Walter G. Feindt**, Deputy Director; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Administrative Assistant; **Barbara Ryan**, Public Information Clerk; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

Cumulative Tables..... 765

**PROPOSED**

**DELAWARE STATE FIRE PREVENTION COMMISSION**

1997 Edition Part I, Annex A, 1997 Edition Part I, Annex B and 1997 Edition Part III, Chapter 1, Operation, Maintenance and Testing of Fire Protection Systems..... 769

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

Board of Massage and Bodywork..... 771

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Claiming Races, Rule 6.3..... 776

**DEPARTMENT OF EDUCATION**

103 School Accountability for Academic Performance..... 784  
250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data..... 787  
398 Degree Granting Institutions of Higher Education..... 807

**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE**

Technical Memo. 2000-06, Form 1801AC, Application and Computation for Delaware Land & Historic Resource Conservation Credit..... 823

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

Licensing & Registration of Operators of Public Water Supply Systems..... 825

**DIVISION OF SOCIAL SERVICES**

Delaware Prescription Assistance Program (DPAP)... 834

**DEPARTMENT OF LABOR  
OFFICE OF LABOR LAW ENFORCEMENT**

Delaware Prevailing Wage Regulation III. C..... 838

**COUNCIL ON APPRENTICESHIP & TRAINING**

Delaware Apprenticeship and Training Law, Sections 106.9 & 106.10..... 842

**FINAL**

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

Real Estate Commission..... 844

**DEPARTMENT OF EDUCATION**

311 Bilingual Teacher (Spanish) Primary/Middle Level & 312 Bilingual Teacher (Spanish) Secondary..... 851  
501 State Content Standards..... 853

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

4004.6, Minor Student Earned Income - ABC and GA..... 855  
4004.7, Minor Student Earned Income GA, Repeal of..... 855  
10004.3, Sanction Period and Penalty, 10004.3.1, Information Coordination..... 856  
16100.1.2, Initial Eligibility Determination..... 857  
16250 Eligibility Determination..... 858  
14300. Citizenship and Alienage..... 858  
14320.1 Medicaid Eligibility for Qualified Aliens ..... 859  
14320.3 Medicaid Eligibility Not Based on Date of Entry into U.S..... 859  
14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)..... 860  
14380 Documentation of Citizenship or Alien Status ..... 860  
14400 Acceptable Evidence of U.S. Citizenship, Repeal of..... 861

14410 Acceptable Evidence of Qualified Alien  
 Status ..... 861  
 15120.12 Child Support Cooperation..... 862  
 18100.3Fair Hearings, Repeal of..... 862

**DEPARTMENT OF INSURANCE**

Regulation 41, Medicare Supplement Insurance  
 Minimum Standards..... 863

**DEPARTMENT OF LABOR**

Delaware Prevailing wage Regulation III.C..... 863

**DEPARTMENT OF PUBLIC SAFETY**

**BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS &  
PRIVATE SECURITY AGENCIES**

Rules and Regulations..... 864

**GOVERNOR**

Executive Order Eighty-Two, Recycling..... 866  
 Appointments..... 868

**GENERAL NOTICES**

**DEPARTMENT OF EDUCATION**

State Board Of Education Hearing Procedures  
 and Rules..... 869

**DEPARTMENT OF PUBLIC SAFETY**

**BOARD OF EXAMINERS OF CONSTABLES**

Rules and Regulations..... 874

**DEPARTMENT OF TRANSPORTATION**

English Standards ..... 874

**CALENDAR OF EVENTS/HEARING  
NOTICES**

Fire Prevention Commission, Notice of Public  
 Hearing ..... 877  
 Board of Massage & Bodywork, Notice of Public  
 Hearing ..... 877  
 Harness Racing Commission, Notice of Public  
 Comment Period..... 877  
 State Board of Education, Notice of Monthly  
 Meeting ..... 877  
 State Board Of Education, Notice of Public Comment  
 Period..... 877  
 Dept. of Finance, Notice of Public Comment  
 Period..... 878  
 DHSS, Div. of Pubic Health, Notice of Public  
 Hearing ..... 878  
 DHSS, Div. of Social Services, Notice of Public  
 Comment Period..... 879  
 Dept. of Labor, Notice of Public Hearing..... 879  
 Dept. of Labor, Council on Apprenticeship & Training,  
 Notice of Public Hearing..... 879  
 Delaware River Basin Commission, Notice of Public  
 Hearing ..... 879

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.).

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**Division of Professional Regulation**

|  |   |                |                             |
|--|---|----------------|-----------------------------|
| Board of Cosmetology & Barbering.....  | 4 | <b>DE Reg.</b> | 329 (Final)                 |
| Board of Examiners in Optometry.....   | 4 | <b>DE Reg.</b> | 674 (Final)                 |
| Board of Examiners of Psychologists.....   | 4 | <b>DE Reg.</b> | 275 (Prop.)                 |
| Board of Funeral Services.....   | 4 | <b>DE Reg.</b> | 157 (Final)                 |
| Board of Landscape Architecture.....   | 4 | <b>DE Reg.</b> | 385 (Prop.)                 |
| Board of Medical Practice, Respiratory Care Advisory Council.....  | 4 | <b>DE Reg.</b> | 14 (Prop.)                  |
|  |   | 4              | <b>DE Reg.</b> 699 (Final)  |
| Board of Nursing.....  | 4 | <b>DE Reg.</b> | 274 (Prop.)                 |
|  |   | 4              | <b>DE Reg.</b> 672 (Final)  |
| Board of Nursing, Advance Practice Nurses, Independent Practice and/or<br>Independent Prescriptive Authority.....                        | 4 | <b>DE Reg.</b> | 296 (Final)                 |
| Board of Pharmacy, Reg. V Dispensing.....  | 4 | <b>DE Reg.</b> | 8 (Prop.)                   |
| Board of Pharmacy, Reg. I, Pharmacist Licensure Requirements, Reg. II Grounds for<br>Disciplinary Proceeding, and Reg. V Dispensing..... | 4 | <b>DE Reg.</b> | 163 (Final)                 |
|  |   | 4              | <b>DE Reg.</b> 247 (Errata) |
| Board of Pharmacy, Reg.V, Dispensing.....  | 4 | <b>DE Reg.</b> | 682 (Final)                 |
| Board of Pharmacy, Reg. XV.....  | 4 | <b>DE Reg.</b> | 605 (Prop.)                 |
| Board of Podiatry.....   | 4 | <b>DE Reg.</b> | 688 (Final)                 |
| Board of Professional Counselors of Mental Health.....   | 4 | <b>DE Reg.</b> | 267 (Prop.)                 |
| Examining Board of Physical Therapists.....  | 4 | <b>DE Reg.</b> | 21 (Prop.)                  |
|  |   | 4              | <b>DE Reg.</b> 440 (Final)  |
|  |   | 4              | <b>DE Reg.</b> 607 (Prop.)  |
| Gaming Control Board, Regulations Governing Bingo, Section 1.03 (10).....  | 4 | <b>DE Reg.</b> | 334 (Final)                 |
| Real Estate Commission.....  | 4 | <b>DE Reg.</b> | 390 (Prop.)                 |
| Real Estate Commission, Rule 5.2.....  | 4 | <b>DE Reg.</b> | 457 (Final)                 |

**DEPARTMENT OF AGRICULTURE**

|   |   |                |              |
|---|---|----------------|--------------|
| Delaware Standardbred Breeders' Fund Program.....   | 4 | <b>DE Reg.</b> | 37 (Prop.)   |
| Nutrient Management Certification Regulations.....  | 4 | <b>DE Reg.</b> | 609 (Prop.)  |
| Nutrient Management, Regulations Governing the Processing of Complaints<br>of Violations..... | 4 | <b>DE Reg.</b> | 612 (Prop.)  |
| <b>Harness Racing Commission</b> .....  | 4 | <b>DE Reg.</b> | 6 (Errata)   |
| Amend Rules 3.2.8.3; 6.3.2; 7.6.6; 7.6.13; 7.6.14; 7.6.15; 8.3.5.4; and 8.4.3.5.10.....       | 4 | <b>DE Reg.</b> | 336 (Final)  |
| Rules 6.3.3.13 and 8.3.5.9.4.....   | 4 | <b>DE Reg.</b> | 259 (Errata) |
| <b>Thoroughbred Racing Commission</b>   |   |                |              |
| 30 Rule Amendments.....   | 4 | <b>DE Reg.</b> | 173 (Final)  |
| Rules 8.08, 10.07, 15.01.1(b), 15.01.2(d) and 15.02.....                                      | 4 | <b>DE Reg.</b> | 397 (Prop.)  |

**DEPARTMENT OF EDUCATION**

|   |   |                |                            |
|---|---|----------------|----------------------------|
| 101 Delaware Student Testing Program.....                           | 4 | <b>DE Reg.</b> | 69 (Prop.)                 |
|   |   | 4              | <b>DE Reg.</b> 464 (Final) |
| 245 Michael C. Ferguson Achievement Awards Scholarship Program..... | 4 | <b>DE Reg.</b> | 224 (Final)                |
| 310 Speech/Language Pathologist.....                                | 4 | <b>DE Reg.</b> | 184 (Final)                |

|  |   |                |              |
|--|---|----------------|--------------|
| 311 Bilingual Teacher (Spanish) Primary/Middle Level.....  | 4 | <b>DE Reg.</b> | 408 (Prop.)  |
| 312 Bilingual Teacher (Spanish ) Secondary.....  | 4 | <b>DE Reg.</b> | 408 (Prop.)  |
| 391 Limited Standard Certification for Middle Level Mathematics and Science<br>and Secondary Science Certificate for Middle Level Science..... | 4 | <b>DE Reg.</b> | 222 (Final)  |
| 396 Private Business and Trade Schools.....  | 4 | <b>DE Reg.</b> | 614 (Prop.)  |
| 501 State Content Standards.....   | 4 | <b>DE Reg.</b> | 343 (Final)  |
|  |   |                | 407 (Prop.)  |
| 510 Computer Literacy Amendments to the Graduation Requirements, Repeal of.....  | 4 | <b>DE Reg.</b> | 626 (Prop.)  |
| 522 Visual and Performing Arts.....  | 4 | <b>DE Reg.</b> | 634 (Prop.)  |
| 525 Requirements for Vocational-Technical Education Programs.....  | 4 | <b>DE Reg.</b> | 634 (Prop.)  |
| 542 Physical Education.....  | 4 | <b>DE Reg.</b> | 634 (Prop.)  |
| 716 Maintenance of Local School District Personnel Records.....  | 4 | <b>DE Reg.</b> | 635 (Prop.)  |
| 729 School Custodians.....   | 4 | <b>DE Reg.</b> | 225 (Final)  |
| 920 Educational Programs for Students with Limited English Proficiency.....  | 4 | <b>DE Reg.</b> | 71 (Prop.)   |
|  |   |                | 467 (Final)  |
| 925 Children with Disabilities.....  | 4 | <b>DE Reg.</b> | 43 (Prop.)   |
|  |   |                | 470 (Final)  |
| 930 Supportive Instruction (Homebound).....  | 4 | <b>DE Reg.</b> | 75 (Prop.)   |
|  |   |                | 344 (Final)  |
|  |   |                | 381 (Errata) |
|  |   |                | 497 (Final)  |
| 1051 DSSAA, Senior High School Interscholastic Athletic Eligibility Rules.....   | 4 | <b>DE Reg.</b> | 185 (Final)  |
| 1052 DSSAA, Junior High/Middle School Interscholastic Athletic Eligibility Rules.....  | 4 | <b>DE Reg.</b> | 185 (Final)  |
| 1101 Standards for School Buses.....   | 4 | <b>DE Reg.</b> | 637 (Prop.)  |

**DEPARTMENT OF FINANCE****Division of Revenue**

|   |   |                |             |
|---|---|----------------|-------------|
| Technical Memo. 2000-02, Duty to Report Sales of Cigarette Products<br>made by Non Participating Manufacturers..... | 4 | <b>DE Reg.</b> | 346 (Final) |
|---|---|----------------|-------------|

**Office of the State Lottery**

|   |   |                |             |
|---|---|----------------|-------------|
| Delaware Lottery & Video Lottery, Introduction, Sections 13, 16, 18, 19 & 29..... | 4 | <b>DE Reg.</b> | 78 (Prop.)  |
|   |   |                | 498 (Final) |

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****Division of Mental Retardation**

|                           |   |                |             |
|---------------------------|---|----------------|-------------|
| Eligibility Criteria..... | 4 | <b>DE Reg.</b> | 228 (Final) |
|---------------------------|---|----------------|-------------|

**Division of Public Health**

|  |   |                |             |
|--|---|----------------|-------------|
| Conrad State 20/J-1 Visa Waiver Program..... | 4 | <b>DE Reg.</b> | 349 (Final) |
| Delaware Early Defibrillation Program.....   | 4 | <b>DE Reg.</b> | 412 (Prop.) |

**Division of Services for Aging and Adults with Physical Disabilities**

|  |   |                |             |
|--|---|----------------|-------------|
| Establishment of Delegation of Power of Relative Caregivers to<br>Consent to Medical Treatment of Minors.....    | 4 | <b>DE Reg.</b> | 263 (Emer.) |
|  |   |                | 283 (Prop.) |
|  |   |                | 599 (Emer.) |
|  |   |                | 656 (Prop.) |
| Establishment of Delegation of Power of Relative Caregivers to<br>Consent for Registering Minors for School..... | 4 | <b>DE Reg.</b> | 264 (Emer.) |
|  |   |                | 284 (Prop.) |
|  |   |                | 600 (Emer.) |
|  |   |                | 657 (Prop.) |

**Division of Social Services**

|   |   |                |             |
|---|---|----------------|-------------|
| DSSM 4006.1, Excluded Income, DSSM 8030.1, Excluded Income, DSSM 9059,<br>Income Exclusions, DSSM 11003.9.1, Countable Income,<br>DSSM 14710, Income..... | 4 | <b>DE Reg.</b> | 229 (Final) |
| 4004.6, Minor Student Earned Income.....  | 4 | <b>DE Reg.</b> | 89 (Prop.)  |
| 10004.3, Sanction Period and Penalty, 10004.3.1, Information Coordination.....  | 4 | <b>DE Reg.</b> | 89 (Prop.)  |

|  |   |                |   |                             |
|--|---|----------------|---|-----------------------------|
| 14300 Citizenship and Alienage.....                                      | 4 | <b>DE Reg.</b> |   | 91 (Prop.)                  |
| 14320.1 Medicaid Eligibility for Qualified Aliens.....                   | 4 | <b>DE Reg.</b> |   | 92 (Prop.)                  |
| 14320.3 Medicaid Eligibility Not Based on Date of Entry into U.S.....    | 4 | <b>DE Reg.</b> |   | 92 (Prop.)                  |
| 14330.2 Eligibility for State Funded Benefits (Nonqualified Aliens)..... | 4 | <b>DE Reg.</b> |   | 92 (Prop.)                  |
| 14380 Documentation of Citizenship or Alien Status.....                  | 4 | <b>DE Reg.</b> |   | 93 (Prop.)                  |
|  |   |                | 4 | <b>DE Reg.</b> 382 (Errata) |
| 14400 Acceptable Evidence of U.S. Citizenship, Repeal of.....            | 4 | <b>DE Reg.</b> |   | 93 (Prop.)                  |
| 14410 Acceptable Evidence of Qualified Alien Status.....                 | 4 | <b>DE Reg.</b> |   | 93 (Prop.)                  |
| 15120.1.2 Child Support Cooperation.....                                 | 4 | <b>DE Reg.</b> |   | 95 (Prop.)                  |
| 16100.1.2 Initial Eligibility Determination.....                         | 4 | <b>DE Reg.</b> |   | 383 (Emer.)                 |
|  |   |                | 4 | <b>DE Reg.</b> 418 (Prop.)  |
| 16250 Eligibility Determination.....                                     | 4 | <b>DE Reg.</b> |   | 384 (Emer.)                 |
|  |   |                | 4 | <b>DE Reg.</b> 418 (Prop.)  |
| 18100.3 Fair Hearings.....   | 4 | <b>DE Reg.</b> |   | 95 (Prop.)                  |
|  |   |                | 4 | <b>DE Reg.</b> 382 (Errata) |
| Delaware Prescription Assistance Program (DPAP), Eligibility Policy..... | 4 | <b>DE Reg.</b> |   | 95 (Prop.)                  |

**DEPARTMENT OF INSURANCE**

|  |   |                |  |             |
|--|---|----------------|--|-------------|
| Regulation 81, Prompt Payment of Settled Claims..... | 4 | <b>DE Reg.</b> |  | 659 (Prop.) |
|--|---|----------------|--|-------------|

**DEPARTMENT OF JUSTICE**

|   |   |                |  |             |
|---|---|----------------|--|-------------|
| Delaware Securities Act, Rules 700, 701, 710..... | 4 | <b>DE Reg.</b> |  | 510 (Final) |
|---|---|----------------|--|-------------|

**DEPARTMENT OF LABOR**

|  |   |                |  |             |
|--|---|----------------|--|-------------|
| Delaware Prevailing Wage Regulation III.C..... | 4 | <b>DE Reg.</b> |  | 419 (Prop.) |
|--|---|----------------|--|-------------|

**DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL**

|   |   |                |  |             |
|---|---|----------------|--|-------------|
| Freedom of Information Act Regulations..... | 4 | <b>DE Reg.</b> |  | 660 (Prop.) |
|---|---|----------------|--|-------------|

**Division of Air and Waste Management**

Air Quality Management Section

|  |   |                |   |                            |
|--|---|----------------|---|----------------------------|
| Reg. No. 38, Emission Standards for Hazardous Air Pollutants for<br>Source Categories, Subparts M and N..... | 4 | <b>DE Reg.</b> |   | 286 (Prop.)                |
|  |   |                | 4 | <b>DE Reg.</b> 707 (Final) |

|  |   |                |  |             |
|--|---|----------------|--|-------------|
| Reg. No. 39, NOx Budget Trading Program.....                   | 4 | <b>DE Reg.</b> |  | 419 (Prop.) |
| 2002 Rate-of-Progress Plan for Kent & New Castle Counties..... | 4 | <b>DE Reg.</b> |  | 664 (Prop.) |

Waste Management Section

|  |   |                |  |             |
|--|---|----------------|--|-------------|
| Solid Waste Regulations.....               | 4 | <b>DE Reg.</b> |  | 101 (Prop.) |
| Regulations Governing Hazardous Waste..... | 4 | <b>DE Reg.</b> |  | 514 (Final) |

**Division of Fish and Wildlife**

|   |   |                |  |             |
|---|---|----------------|--|-------------|
| Tidal Finfish Reg. No. 7, Striped Bass Possession Size Limit; Exceptions..... | 4 | <b>DE Reg.</b> |  | 229 (Final) |
|---|---|----------------|--|-------------|

|  |   |                |  |             |
|--|---|----------------|--|-------------|
| Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons;<br>Quotas..... | 4 | <b>DE Reg.</b> |  | 602 (Emer.) |
|--|---|----------------|--|-------------|

|   |   |                |  |             |
|---|---|----------------|--|-------------|
| Tidal Finfish Reg. No. 27, Spiny Dogfish, Closure of Fishery..... | 4 | <b>DE Reg.</b> |  | 603 (Emer.) |
|---|---|----------------|--|-------------|

**Division of Water Resources**

|   |   |                |  |             |
|---|---|----------------|--|-------------|
| Regulations Governing the Control of Water Pollution..... | 4 | <b>DE Reg.</b> |  | 103 (Prop.) |
|---|---|----------------|--|-------------|

**DEPARTMENT OF PUBLIC SAFETY**

**Board of Examiners of Private Investigators & Private Security Agencies**

|                              |   |                |  |             |
|------------------------------|---|----------------|--|-------------|
| Employment Notification..... | 4 | <b>DE Reg.</b> |  | 361 (Final) |
|------------------------------|---|----------------|--|-------------|

**DEPARTMENT OF TRANSPORTATION**

|                            |   |                |  |             |
|----------------------------|---|----------------|--|-------------|
| Toll Exemption Policy..... | 4 | <b>DE Reg.</b> |  | 294 (Prop.) |
|----------------------------|---|----------------|--|-------------|

|                             |   |                |   |                            |
|-----------------------------|---|----------------|---|----------------------------|
| Traffic Calming Manual..... | 4 | <b>DE Reg.</b> |   | 105 (Prop.)                |
|                             |   |                | 4 | <b>DE Reg.</b> 528 (Final) |



**GOVERNOR'S OFFICE**

Appointments & Nominations.....4 **DE Reg.** 233  
4 **DE Reg.** 367  
4 **DE Reg.** 580  
4 **DE Reg.** 716

Executive Order No. 79, Relating to Community-based Alternatives  
for Individuals with Disabilities.....4 **DE Reg.** 231

Executive Order No. 80, Establishing the Council on Deaf and Hard  
of Hearing Equality and other Related Matters.....4 **DE Reg.** 365

**PUBLIC SERVICE COMMISSION**

Rules for the Provision of Telecommunications Services.....4 **DE Reg.** 516

**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.

---

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 6603 (16 **Del.C.** 6603)

**PROPOSED AMENDMENTS  
STATE FIRE PREVENTION REGULATIONS  
1997 EDITION  
PART I, ANNEX A**

|   | <u>NFPA Code</u> | <u>SFMO NOW</u><br><u>USING (Edition)</u> | <u>CHANGING TO</u><br><u>(Edition)</u> |
|---|------------------|---|--|
| The <b>Delaware State Fire Prevention Commission</b> will hold a hearing pursuant to 16 <b>Del. C.</b> §6603 and 29 <b>Del.C.</b> 101 on Tuesday, November 21, 2000, at 1:00 p.m. and 7:00 p.m. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations. 1997 Edition Part I, Annex A, 1997 Edition Part I, Annex B and 1997 Edition Part III, Chapter 1, Operation, Maintenance and Testing of Fire Protection Systems. | 10               | 1994                                      | 1998                                   |
|   | 13               | 1996                                      | 1999                                   |
|   | 13R              | 1996                                      | 1999                                   |
|   | 14               | 1996                                      | 2000                                   |
|   | 20               | 1996                                      | 1999                                   |
|   | 22               | 1996                                      | 1998                                   |
|   | 72               | 1996                                      | 1999                                   |
|   | 88A              | 1995                                      | 1998                                   |
|   | 88B              | 1991                                      | 1997                                   |
|   | 90A              | 1996                                      | 1999                                   |
|   | 96               | 1994                                      | 1998                                   |
|   | 99               | 1996                                      | 1999                                   |
|   | 101              | 1997                                      | 2000                                   |
|   | 220              | 1995                                      | 1999                                   |
|   | 221              | 1994                                      | 1997                                   |
|   | 230              | Not currently adopted                     | 1999                                   |
|   | 231              | 1995                                      | Delete (rolled into 230)               |
|   | 231C             | 1995                                      | Delete (rolled into 230)               |
|   | 909              | Not currently adopted                     | 1997                                   |

**PROPOSED AMENDMENTS  
STATE FIRE PREVENTION REGULATIONS  
1997 EDITION  
PART I, ANNEX B**

| Current Modification   | Proposed Modification  |
|--|--|
| SFPR Page 41<br>Modification to NFPA 13,<br>1996<br>Chapter 4, Installation<br>Requirement<br>Section 4-15.2.3.5 Fire<br>Department Connection                 | Change section reference to<br>NFPA 13, 1999<br>Chapter 5, Installation Require-<br>ments<br>Section 5-15.2 Fire Department<br>Connections<br>5-15.2.3.5<br><b>No change to modification<br/>wording</b> |
| SFPR Page 41<br>Modification to NFPA 13,<br>1996<br>Chapter 6, Plans and Calcula-<br>tions<br>Section 6-4.4.9  | Change section reference to<br>NFPA 13, 1999<br>Chapter 8<br>8-4.4.9 Calculation Procedure<br><b>No change to modification<br/>wording</b>   |
| SFPR Page 42<br>Modification to NFPA 13R,<br>1996<br>Chapter 2, Working Plans,<br>Design, Installation, Accep-<br>tance Tests and Maintenance<br>Section 2-4.2 | <b>Delete our modification.</b> 1999<br>standard uses our modification<br>wording.   |
| SFPR Page 42<br>Modification to NFPA 13R,<br>Section 2-4.6   | <b>No change – same reference<br/>and wording</b>  |
| SFPR Page 42<br>Modification to NFPA 14, 4-<br>3.5.2   | <b>No change – same reference<br/>and wording</b>  |
| SFPR Page 47<br>Modification to NFPA 72,<br>Section 1-5.7  | <b>Delete our modification.</b><br>Wording in 1999 code is now<br>almost exactly the same as our<br>modification wording.  |

|  |  |
|--|--|
| SFPR Page 47<br>Modification to NFPA 99,<br>1996, Health Care Facilities<br>Chapter 3, Electrical Sys-<br>tems<br>Section 3-4.2.2.2(b)<br>AMEND 3-4.2.2.2(b), Life<br>Safety Branch by adding a<br>new subsection to read as<br>follows:<br>3-4.2.2.2(b)(7) Electric Fire<br>Pumps   | Change modification to:<br>NFPA 99, 2000 Health Care<br>Facilities<br>Chapter 3, Electrical Systems<br>Section 3-4.2.2.2(b)<br>AMEND 3-4.2.2.2(b) by adding<br>a new subsection:<br>3-4.2.2.2(b)(8)<br><b>No change to modification<br/>wording</b><br>New edition of NFPA 99 now<br>has a (b)(7) section. We're sim-<br>ply bumping our subsection we<br>are adding up one number so as<br>not to conflict.   |
| SFPR Page 47<br>Modification to NFPA 101,<br>1997, The Life Safety Code<br>Chapter 7, Building Service and<br>Fire Protection Equip-<br>ment<br>Section 7-2 Heating, Venti-<br>lating and Air Condition<br>AMEND 7-2.2 by adding a<br>new 7-2.3, unvented fuel-<br>fired heating equipment, and<br>renumber the following sec-<br>tions, to read as follows: | Change modification to:<br>NFPA 101, 2000 The Life<br>Safety Code<br>Chapter 9, Building Service and<br>Fire Protection Equipment<br>Heating, Ventilating and Air<br>Conditioning<br>AMEND 9.2.1 by adding a new<br>9.2.1.1<br>New wording to read:<br>Unvented fuel-fired heating<br>equipment shall be prohibited in<br>bathrooms and sleeping areas of<br>all occupancies. In all other<br>areas, gas space heaters<br>installed in compliance with<br>NFPA 54 as adopted and modi-<br>fied by these regulations shall<br>be permitted.<br><br>NOTE: Rather than having<br>multiple modifications within<br>our SFPR related to various<br>specific occupancies, this<br>change prohibits unvented heat-<br>ing devices in bathrooms and<br>sleeping areas across the board.<br><br>NOTE: New edition of NFPA<br>101 has added chapters thus<br>skewing all past references.<br>Our change corrects our refer-<br>ence in order to track with the<br>new 101. . |
| SFPR Page 48<br>Modification to NFPA 101,<br>1997 The Life Safety Code<br>Chapter 18,<br>18-3.4.1  | Change section reference to:<br>NFPA 101, 2000<br>Chapter 30<br>30.3.4.1<br><b>No change to modification<br/>wording</b>   |

|   |   |
|---|---|
| SFPR Page 48<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 18, 18-3.4.4  | Change reference to NFPA 101, 2000 Chapter 30 30.3.4.4.1<br><b>No change to modification wording</b>  |
| SFPR Page 49<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 18, 18-3.5.2  | Change reference to NFPA 101, 2000 Chapter 30 30.3.5.2<br><b>No change to new exceptions wording</b>  |
| SFPR Page 49<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 20, 20-3.3.5  | Change reference to NFPA 101, 2000 Chapter 26 26-3.3.4<br><b>No change to modification wording</b>  |
| SFPR Page 49<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 21 21-1.1.2   | Change reference to NFPA 101, 2000 Chapter 24 24.1.1.2<br><b>No change to modification wording</b>  |
| SFPR Page 50<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 22 Adding 22-2.2.7, 22-2.2.8, 22-2.2.9 and 22-2.3.4.4 Deleting existing 22-3.3.4.6 and inserting our modification | Change reference to NFPA 101, 2000 Chapter 32 Adding of 32.2.2.7, 32.2.2.8, 32.2.2.9 and 32.2.3.4.4 Deleting 32.3.3.4.6 and insert our existing modified wording<br><b>No change to addition or modification wording in any section</b> |
| SFPR Page 50<br>Modification to NFPA 101, 1997 The Life Safety Code Chapter 30 Delete existing 30-2.2.2.2 and 30-3.4.4 Exception and insert our modification                                  | Change reference to NFPA 101, 2000 Chapter 16 Delete 16.2.2.2.2 and 16.3.4.4 Exception and insert our modification<br><b>No change to modification wording in either section</b>  |

**PROPOSED AMENDMENT  
STATE FIRE PREVENTION REGULATIONS  
1997 EDITION  
PART III, CHAPTER 1  
OPERATION, MAINTENANCE AND TESTING  
OF FIRE PROTECTION SYSTEMS**

**ADD NEW SECTION 1-8**

**1-8 NOTIFICATION REQUIRED PRIOR TO ANY TESTING, INSPECTION, MAINTENANCE OR WORK ON SYSTEMS**

1-8.1 Prior to any Testing, Maintenance, Inspection or any work on the fire protection systems as found in this Chapter, the company performing such services must notify the 911 Center providing service for the location, where the fire protection systems are located, of the following:

(a) Prior to initiating or starting such work as referenced in Section 1-8.1 notify the 911 Center that such work is being performed, identifying the name of the facility, the address of the facility, the name of the company, and the License Number of the company providing the services.

(b) That any alarms received from the facility shall be verified by the 911 Center prior to any emergency services dispatch being made.

(c) That at the conclusion or finish of the work being performed on the systems, the 911 Center will be notified that the company has completed the work and that the alarm system is back in-service and any alarms from the facility shall represent an "alarm" condition, requiring the appropriate emergency services dispatch.

1-8.2 It is the responsibility of the company performing the Testing, Inspection, Maintenance or any work on the fire protection systems to identify the correct 911 Center or the correct emergency services dispatch center which serves the area in which the facility to have work performed is located.

1-8.3 The failure of the company performing the services as referenced in this Chapter to comply with the provisions of this Section, shall constitute a violation of the State Fire Prevention Regulations, and action will be taken pursuant to the provisions of the Delaware Code Title 16, Chapter 66 for such violations.

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF MASSAGE & BODYWORK  
Statutory Authority: 24 Delaware Code,  
Section 5306(1) (24 Del.C. 5306(1))**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions clarify the requirements of the 100 hour course required for certification as a massage technician; outline requirements for timely completion of applications; clarify that CPR

certification must be kept current for license renewal; and explain the calculation of credit hours for Continuing Education.

A public hearing will be held on the proposed Rules and Regulations on Thursday, December 7, 2000 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

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

- 1.0 Definitions
- 2.0 Filing of Application for Licensure as Massage/  
Bodywork Therapist
- 3.0 Examination
- 4.0 Application for Certification as Massage Technician.
- 5.0 Expired License or Certificate
- 6.0 Continuing Education
- 7.0 Scope of Practice
- 8.0 Voluntary Treatment Option for Chemically Dependent  
or Impaired Professionals

## 1.0 Definitions and General Definitions

1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** § 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.2.1 The 100 hour course must be a unified, introductory training program in massage and bodywork, including training in the subjects set forth in Rule 1.2. The entire 100 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

1.3 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

- Acupressure
- Chair Massage
- Craniosacral Therapy
- Deep Tissue Massage Therapy
- Healing Touch
- Joint Mobilization
- Lymph Drainage Therapy
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy
- Orthobionomy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.4 The practice of the following modalities does not constitute the "practice of massage and bodywork":

- Alexander Technique
- Aroma therapy
- Feldenkrais
- Hellerwork
- Polarity Therapy
- Reiki
- Shamanic Techniques
- Therapeutic Touch

## 3 DE Reg. 1516 (5/1/00)

## 2.0 Filing of Application for Licensure as Massage/ Bodywork Therapist

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a

massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 Del.C. §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

### **3.0 Examination**

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

### **4.0 Application for Certification as Massage Technician**

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate from a State certified cardiopulmonary resuscitation program as required by 24 Del.C. §5309(a)(2); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 Del.C. §5311.

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved

program of massage or bodywork therapy where the applicant completed the hours or study required by 24 Del.C. §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

#### **3 DE Reg. 1516 (5/1/00)**

4.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period.

### **5.0 Expired License or Certificate**

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within ninety (90) days after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation.

### **6.0 Continuing Education**

6.1 *Hours required.* For license or certification periods beginning September 1, 2000 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.1.1 Calculation of Hours. For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education

shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

6.2 *Proration.* Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

### 6.3 *Content.*

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

- 6.3.2.1 Courses in modalities other than massage/bodywork therapy
- 6.3.2.2 Personal growth and self-improvement courses
- 6.3.2.3 Business and management courses
- 6.3.2.4 Courses taught by correspondence or mail
- 6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

### 6.4 *Board approval.*

6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:

- 6.4.1.1 NCBTMB
- 6.4.1.2 American Massage Therapy Association
- 6.4.1.3 Association of Oriental Bodywork Therapists of America
- 6.4.1.4 Association of Bodywork and Massage Practitioners
- 6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 *Self-directed activity:* The Board may, upon request, review and approve credit for self-directed

activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course ). This provision remains subject to the limitations of Rule 6.3.2.

### 6.5 *Reporting.*

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 *Hardship.* A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior

to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

**3 DE Reg. 1516 (5/1/00)**

**7.0 Scope of Practice**

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

**8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

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

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

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

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

and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

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



services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

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

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

## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

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

The Commission will hold a public hearing on the proposed rule amendment on November 28, 2000 at 11:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover DE19901. The Commission will accept written comments from November 1, 2000 to November 30, 2000. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover DE19901.

### **6.0 Types of Races**

#### **6.1 Types of Races Permitted**

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

##### **6.1.1 Overnight events which include:**

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;

6.1.1.4 Schooling races; and

6.1.1.5 Matinee races

##### **6.1.2 Added money events which include:**

6.1.2.1 Stakes;

6.1.2.2 Futurities;

6.1.2.3 Early closing events; and

6.1.2.4 Late closing events

##### **6.1.3 Match races**

6.1.4 Qualifying Races (See Rule 7.0 --"Rules of the Race")

6.1.5 Delaware-owned or bred races as specified in 3 **Del. C.** §10032

#### **2 DE Reg. 1240 (01/01/99)**

#### **6.2 Overnight Events**

##### **6.2.1 General Provisions**

6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, schooling or matinee races or a combination thereof.

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein. At other meetings, conditions must be posted and available to participants at least 18 hours prior to closing declarations.

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition

books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.

6.2.1.5.2 Where races are divided in order to fill a program starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex.

6.2.1.5.3 However, where necessary to fill a card, not more than one race per day may be divided into not more than two divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

#### 6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;

6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;

6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

#### **2 DE Reg. 1243 (01/01/99)**

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;

6.2.2.1.7 the exclusion of schooling races;

or  
6.2.2.1.8 Delaware-owned or bred races as specified in 3 Del. C. §10032; or

#### **2 DE Reg. 1241 (01/01/99)**

6.2.2.1.9 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions

other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

#### **1 DE Reg. 503 (11/01/97)**

#### **2 DE Reg. 1243 (01/01/99)**

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances shall be given according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission. At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

### 6.3 Claiming Races

#### 6.3.1 General Provisions

6.3.1.1 No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who

shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

#### 6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges

within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

**1 DE Reg. 503 (01/11/97)**

6.3.2.8 No person shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

**4 DE Reg 336 (8/1/00)**

**6.3.3 Claiming Procedure**

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a

photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 ~~A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward of judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules.~~ The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

**3 DE Reg 1520 (5/1/00)**

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse

was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race the track where claimed for a period of 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary.

**2 DE Reg. 1765 (1/1/98)**

**3 DE Reg 1520 (5/1/00)**

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

**2 DE Reg. 1243 (01/01/99)**

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

**2 DE Reg. 1243 (01/01/99)**

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

## 6.4 Added Money Events

### 6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, futurities, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added

money events must comply with the rules and must submit to the Commission the conditions and other information pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

### 6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

### 6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.

6.4.3.3 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.4 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

**6.4.4 Nominations, Fees and Purses**

6.4.4.1 All nominations to added money events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date foreclosing of nominations to all other stakes shall fall on the fifteenth day of a month.

6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes and futurities will be raced must be announced as soon as determined but, in any event, such announcement must be

made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes or futurities must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall

be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse declared on the day before, the day of and the day following the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer unless otherwise approved by the Commission.

6.4.4.18 An association may elect to go with less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 In added money events conducted in eliminations, starters shall be divided by lot. Unless conditions provide otherwise, sixty percent of the total purse will be divided equally among the elimination heats. The final heat will be contested for 40 percent of the total purse. Unless the conditions provide otherwise, all elimination heats and the final heat must be raced on the same day. If the conditions provide otherwise, elimination heats must be contested not more than six days, excluding Sundays, prior to the date of the final heat. The winner of the final heat shall be the winner of the race.

6.4.4.23 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among those unoffending horses not finishing.

**1 DE Reg. 503 (01/01/97)**

6.4.4.24 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.25 Unless the conditions for the added

money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e. they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

6.4.4.26 In a two-in-three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two-year-old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.

**6.5 Cancellation of a Race**

In case of cancellation of races, see Rule 7.3 "Postponement and Cancellation."

**6.6 Delaware Owned or Bred Races**

6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United State Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry,

all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. section 10032.

6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

6.6.4.1 Payment of the purchase price over time beyond the date of registration;

6.6.4.2 Payment of the purchase price through earnings beyond the date of registration;

6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or

6.6.4.5 Leasing a horse to a non-resident of Delaware.

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

6.6.6.1 Where the person lives and has been living;

6.6.6.2 The location of the person's sources of income;

6.6.6.3 The address used by the person for payment of taxes, including federal, state and property taxes;

6.6.6.4 The state in which the person's personal automobiles are registered;

6.6.6.5 The state issuing the person's driver's license;

6.6.6.6 The state in which the person is registered to vote;

6.6.6.7 Ownership of property in Delaware or outside of Delaware;

6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever

is applicable;

6.6.6.9 The residence claimed by a person on a loan application or other similar document;

6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.

6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership



status, residency, or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may not participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 Del. C. §10144.

**2 DE Reg. 1241 (1/1/99)**

## DEPARTMENT OF EDUCATION

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

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

### 103 School Accountability for Academic Performance

#### A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the approval of the State Board of Education to adopt regulations on School Accountability for Academic Performance. The *Delaware Code* Title 14, 154, School Accountability for Academic Performance requires that the Department of Education develop regulations to implement the statewide program for school accountability. The regulations define an accountability school, the composite score, the performance criteria, the accreditation process and the appeals process.

#### C. IMPACT CRITERIA

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

The regulations have been developed to assist in improving student achievement as measured against state achievement standards.

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

The regulations have been developed for the school accountability program in Delaware which may have an effect on equity issues.

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

The regulations address a school's responsibility for student achievement, not health and safety issues.

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

The regulations address a school's responsibility for student achievement, not issues of students' rights.

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

The regulations do preserve the necessary authority and flexibility of decision makers at the local board and school level but will impose external planning requirements and sanctions if schools perform poorly on the Delaware Student Testing Program.

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

If schools do not perform well in the Delaware Student Testing Program additional planning and reporting requirements will be imposed.

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

If schools do not perform well in the Delaware Student Testing Program then the statute requires the state to take certain proscribed actions.

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

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

The statute requires that the Department of Education regulations to carry out the law.

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

There may be extra costs to the schools and the state for compliance with these regulations but additional funds have been approved for this purpose.

### **103 School Accountability for Academic Performance**

**1.0 Accountability School:** The school to which a student's performance is assigned shall be the Accountability School. Except as in 2.1.1, the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.

1.1 For students enrolled in intensive learning centers or in special schools operating as programs within existing school facilities the school facility in which the students are served shall be the Accountability School.

1.2 For students enrolled in schools that have a formal agreement to serve students from multiple districts that school shall be the Accountability School.

1.3 For students enrolled in alternative school programs pursuant to 14 Del.C., Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.

**2.0 Composite Score:** A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 Del. C., §154.(b)(1).

2.1 The School Composite Score shall include the collective performance of all students tested in each Standards Cluster as defined in section 2.5 and 2.6 below on the assessments administered pursuant to 14 Del.C., §151 (b) and (c).

2.1.1 For students who take a portion of the assessment more than once, only the results from the first

administration shall be included in the School Composite Score.

2.1.2 A student not assessed pursuant to 14 Del.C., §151 (b) and (c) or with alternate assessments shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.

2.1.3 A student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.4 A student who tests with non-aggregable conditions as defined in the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using a two-year average of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine accreditation shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for accreditation by comparing their average performance on the three measures defined in section 3.0 over a two-year measurement cycle.

2.5 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing. Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.5.1 Standards Clusters shall be defined as follows:

|                   |   |
|-------------------|---|
| Standards Cluster | Spring Assessments, Calendar Year<br>A    |
| Grades K-3        | Grade 3 reading, writing,<br>mathematics  |
| Grades 4-5        | Grade 5 reading, writing,<br>mathematics  |
| Grades 6-8        | Grade 8 reading, writing,<br>mathematics  |
| Grades 9-10       | Grade 10 reading, writing,<br>mathematics |

2.6 After the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 35% for reading, 35% for mathematics, 10% for writing, 10% for science and 10% for social studies.

2.6.1 Standards Clusters shall be defined as follows:

| Standards Cluster | Spring Assessments, Calendar Year A                            | Fall Assessments, Calendar Year A |
|-------------------|--|-----------------------------------|
| Grades K-3        | Grade 3 reading, writing, mathematics                          | Grade 4 science, social studies   |
| Grades 4-5        | Grade 5 reading, writing, mathematics                          | Grade 6 science, social studies   |
| Grades 6-8        | Grade 8 reading, writing, mathematics, science, social studies |                                   |
| Grades 9-10       | Grade 10 reading, writing, mathematics                         |                                   |
| Grades 9-11       | Grade 11 science, social studies                               |                                   |

**3.0 Performance Criteria:** The Department of Education shall determine the accreditation status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 **Del.C.**, §151 (b) and (c) measured using the School Composite Score.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a two-year measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education. The expected two-year improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the

number of measurement cycles the school has to reach the target School Composite Score. For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students by an amount determined by the Department of Education with the consent of the State Board of Education over a two-year measurement cycle. The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase. An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the School Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Targets shall be determined by the Department of Education with the consent of the State Board of Education.

**4.0 Accreditation:** Schools shall be accredited by the Department of Education based on the collective performance of their students on the assessments administered pursuant to the Delaware Student Testing Program. The accreditation status of each school shall be reported in School Profiles.

4.1 Superior Accredited: A school's performance is deemed excellent. Schools in this category shall have Absolute Performance at or above a threshold determined by the Department of Education with the consent of the State Board of Education and have met Improvement and Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall receive awards as defined in 14 **Del.C.**, §154(c).

4.2 Accredited: A school's performance is deemed acceptable. Schools in this category shall have Absolute Performance at or above a minimally required threshold determined by the Department of Education with the consent of the State Board of Education and have met Improvement and Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category may be eligible for awards if they meet Superior Improvement or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education.

4.3 Accreditation Watch: A school's performance is deemed unsatisfactory. Schools in this category have Absolute Performance below a minimally required threshold

determined by the Department of Education with the consent of the State Board of Education or have not met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del.C., § 154(d)(2). Schools in this category shall not be eligible for awards.

4.4 Non-Accredited: Schools on Accreditation Watch who have not met Absolute, Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education after two years shall be Non Accredited. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del.C., §154(d)(3). Schools in this category shall not be eligible for awards.

4.5 Schools required to develop a school improvement plan pursuant to 14 Del.C., §154(d)(2) and (3) shall include a plan to improve the performance of students in each low performing sub-population as defined by the Improving America's Schools Act, Title I, Part A.

**5.0 Appeals process:** A school may appeal its accreditation status to the Department of Education within 30 days of receiving notice of its classification status. The school must prove by clear and convincing evidence that the classification was contrary to law or regulation, not supported by substantial evidence, was arbitrary or capricious, or should be changed because of circumstances beyond the school's control.

---

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

**250 Procedures Related to the Collection, Maintenance  
and Disclosure of Student Data**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary of Education seeks the approval of the State Board of Education to amend Appendix C from the *Handbook for K-12 Education* entitled Procedures Related to the Collection, Maintenance and Disclosure of Student Data. The amendments change the format of the regulations to the DOE format and change the references to the State Board of Education to the Department of Education. All other aspects of the regulations remain the same.

**C. IMPACT CRITERIA**

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

The amended regulations address student data issues, not academic standards.

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

The amended regulations address student data issues, not equity issues.

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

The amended regulations address student data issues, not students' health and safety.

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

The amended regulations address student data issues and these issues include protecting students' legal rights.

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

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

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

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

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

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

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

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

The issues concerning student data must be regulated.

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

There is no additional cost to the state and to the local school boards of compliance with the amended regulations.

## Appendix C

### PROCEDURES FOR THE COLLECTION, MAINTENANCE AND DISCLOSURE OF STUDENT DATA

State Department of Public Instruction  
Dover, Delaware  
Revised September, 1994

#### TABLE OF CONTENTS

|   | Page |
|---|------|
| Section 1 Authority   | 1    |
| Legal basis upon which these procedures are promulgated   |      |
| Section 2 Applicability   | 1    |
| Establishes agencies for which these procedures are relevant  |      |
| Section 3 Purpose   | 1    |
| Purposes for which these procedures are promulgated   |      |
| Section 4 Definitions   | 2    |
| Terms which are used recurrently or in a manner needing clarification   |      |
| Section 5 Student Rights  | 4    |
| Clarification of the transfer of rights from the parent to student at 18  |      |
| Section 6 Formulation of Institutional Policies and Procedures  | 5    |
| Establishes general requirements to be included in official policies by educational agencies including treatment of personally identifiable information |      |
| Section 7 Annual Notification of Rights   | 6    |
| Establishes the requirements for notifying parents and students of their rights under these procedures  |      |
| Section 8 Limitations on Waivers  | 6    |
| Establishes conditions under which waivers of rights, regarding disclosure of certain data, may be obtained by the educational institution              |      |
| Section 9 Fees  | 7    |
| Establishes parameter under which fees may be charged for reproduction of education records   |      |
| Section 10 Right to Inspect and Review Education  |      |

|   |    |
|---|----|
| Records   | 7  |
| Sets forth conditions under which education records may be inspected by parents or eligible students  |    |
| Section 11 Limitations on Right to Inspect and Review Education Records   | 7  |
| Prohibits inspection of records of other students   |    |
| Section 12 Destruction of Education Records   | 7  |
| Established conditions under which education records may be destroyed or maintained (Handicapped students Section 12(a)(d))   |    |
| Section 13 Request to Amend Education Records   | 8  |
| Establishes rights of parents and students to challenge content of education records and have such records amended  |    |
| Section 14 Right to a Hearing   | 9  |
| Established the right to a hearing and possible results of such a hearing   |    |
| Section 15 Conduct of the Hearing   | 9  |
| Established conditions for hearing on student records   |    |
| Section 16 Prior Consent for Disclosure Required  | 10 |
| Sets forth requirements that consent be obtained from parent or eligible student prior to the release of personally identifiable data   |    |
| Section 17 Prior Consent to Disclosure Not Required   | 10 |
| Identified those conditions under which personally identifiable data can be released without the consent of parent or eligible student  |    |
| Section 18 Record of Requests and Disclosure Required to be Maintained  | 12 |
| Establishes that a record of disclosure of student education records must be maintained with the student education records  |    |
| Section 19 Limitation on Redisclosure   | 12 |
| Establishes that personally identifiable data which has been released to a second party cannot be released to other parties without the consent of the parent or eligible student |    |
| Section 20 Conditions for Disclosure to Officials of Other Schools and School Systems   | 13 |
| Establishes that student records may be forwarded to other schools and school systems and the conditions that apply to such disclosure  |    |
| Section 21 Disclosure to Certain Federal and State Officials for Federal Program Purposes   | 13 |
| Establishes that data may be released under certain conditions required by Federal and State Programs   |    |
| Section 22 Conditions for Disclosure in Health and Safety Emergencies   | 14 |
| Establishes conditions under which education records may be disclosed in case of health and safety emergencies.   |    |
| Section 23 Conditions for Disclosure of Directory Information   | 14 |

Establishes the condition under which information designated as director information may be released without consent of parent or eligible student

Section 24 Safeguards 15

Section 25 Destruction of Information 15

Section 26 Delaware Specific Requirements for Student Records 15

Section 27 State and Federal Review 18

Designates those responsible for review of complaints under these procedures

**DELAWARE DEPARTMENT OF PUBLIC  
INSTRUCTION**

**PROCEDURES RELATED TO THE COLLECTION,  
MAINTENANCE AND DISCLOSURE OF STUDENT  
DATA**

**SECTION 1—AUTHORITY**

Under the provisions of Section 122, Title 14, of the Delaware Code, the State Board of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations. Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 101-476 Individuals with Disabilities Education Act effective November 13, 1992, and their respective regulations.

**SECTION 2—APPLICABILITY**

(1) These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(2) These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph 1 of this section, if no funds under those programs are made available to the agency or institution itself.

(3) For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph 1 of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.)

(4) Except as otherwise specifically provided, these

procedures apply to education records of students who are, have been, or will be in attendance at the educational institution which collects, maintains, or discloses the records.

**SECTION 3—PURPOSE**

The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by agencies and institutions under the general supervision of the Delaware State Board of Education.

**SECTION 4—DEFINITIONS**

As used in these procedures:

“Attendance” at an agency or institution includes, but is not limited to: (a) attendance in person having homebound or correspondence instruction, and (b) the period during which a person is working under a work-study program.

“Consent” means that (1) the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; (2) the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (3) the parent or eligible student understands that the granting of consent is voluntary.

“Directory information” means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

“Disclosure” means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

“Educational institution” or “educational agency or institution” means any public or private agency or institution which is the recipient of the funds under any Federal program referenced in Section 2 of this document. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or

departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

“Education records” (a) means those records which: (1) are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution, (b) the term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a “substitute” means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition.

(ii) Maintained solely for law enforcement purposes, and:

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3) (i) Records relating to an individual who is employed by an educational agency or institution which (a) are made and maintained in the normal course of business; (b) relate exclusively to the individual available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, “treatment” does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the

development of the student's instructional program.

(5) Records of an educational agency or institution which contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

“Eligible Student” means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

“Financial Aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

“Student with Disability” means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the State Board of Education, requires special educational services in order to develop his or her capabilities.

“Institution of post-secondary education” means an institution which provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

“Parent” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

“Party” means an individual, agency, institution, or organization.

“Personally identifiable” means that the data or information includes (1) the name of the child, the child's parent, or other family member, (2) the address of the child, (3) a personal identifier, such as the child's social security number or student number, or

(4) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. {34 CFR 300.500 (c) (1) through (4)}.

“Records” means any information or data recorded in any

medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

“Secretary” means the Secretary of the U. S. Department of Education.

“Student” includes any individual with respect to whom an education agency or institution maintains educational records.

#### **SECTION 5 – STUDENT RIGHTS**

(1) For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student with disabilities who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in this document.

(2) The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (1) of this section.

(3) These procedures shall not be construed to preclude educational agencies or institutions from acceding students rights in addition to those accorded to parents of students.

#### **SECTION 6 – FORMULATION OF INSTITUTIONAL POLICIES AND PROCEDURES**

Each educational agency or institution shall formulate and adopt a policy of –

(1) Informing parents of students or eligible students of their rights under Section 7.

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with Section 10, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student.

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records.

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible

student, except as otherwise permitted by Section 17 and 23, the policy shall include, at least:

(i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under Section 17(1) and, if so, a specification of the criteria for determining which parties are “school officials” and what the educational agency or institution considers to be a “legitimate educational interest” and

(ii) A specification of the personally identifiable information to be designated as “directory information” under Section 23.

(4) Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by Section 18 and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in Section 14(3).

The policy required to be adopted by this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

#### **SECTION 7 – ANNUAL NOTIFICATION OF RIGHTS**

(1) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(a) Their rights under these procedures adopted under Section 6; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

(b) The right to file complaints under Section 24 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

(2) Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

#### **SECTION 8 – LIMITATIONS ON WAIVERS**

(1) Subject to the limitations in this section and Section 11, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(2) An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from



requesting such a waiver.

(3) An individual who is an applicant for admission to an institution of post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

(4) All waivers under paragraph (3) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(5) A waiver under this section may be made with respect to specified classes of (1) education records, and (2) persons or institutions.

(6) (a) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(b) A revocation under this paragraph must be in writing.

(c) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

#### SECTION 9 — FEES

(1) An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. {34 CFR 300.566(a)}

(2) An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. {34 CFR 300.566(b)}

#### SECTION 10 — RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

(1) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. {34 CFR 300.562(a)}

(2) The right to inspect and review education records under paragraph (1) of this section includes:

(a) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and {34 CFR 300.562(b)(2)}

(c) The right to have a representative of the parent inspect and review the records. {34 CFR 300.562(b)(3)}

(3) An education agency or institution may presume

that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

#### SECTION 11 — LIMITATIONS ON RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

#### SECTION 12 — DESTRUCTION OF EDUCATION RECORDS

(1) An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 10;

(b) Explanations placed in the education record under Section 14 shall be maintained as provided in Section 14(4);

(c) The record of access required under Section 18 shall be maintained for as long as the education record to which it pertains is maintained;

(d) Records of handicapped students shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They must be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information must be destroyed. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

(2) The following shall apply to the length of time and special consideration for the maintaining of all student records:

(a) Directory information may be maintained in perpetuity;

(b) Academic grades and attendance records may be maintained in perpetuity;

(c) Other personally identifiable data which is no longer needed to provide educational services for the child may be, but is not required to be destroyed, and may be retained permanently;

(d) Student records should be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school

~~or between other agencies providing educational programming;~~

~~(e) Records of students who are no longer in school should be duplicated and maintained in separate facilities.~~

#### ~~SECTION 13 — REQUEST TO AMEND EDUCATION RECORDS~~

~~(1) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.~~

~~(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.~~

~~(3) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. (34 CFR 300.567)~~

#### ~~SECTION 14 — RIGHT TO A HEARING~~

~~(1) A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Section 15.~~

~~(2) If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.~~

~~(3) If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.~~

~~(4) Any explanation places in the education records of the student under paragraph (3) of this section shall:~~

~~(a) Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and~~

~~(b) If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. (34 CFR~~

~~300.569)~~

#### ~~SECTION 15 — CONDUCT OF THE HEARING~~

~~The hearing required to be held by Section 14(1) shall be conducted according to procedures which shall include at least the following elements:~~

~~(1) The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;~~

~~(2) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;~~

~~(3) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Section 14, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;~~

~~(4) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and~~

~~(5) The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.~~

#### ~~SECTION 16 — PRIOR CONSENT FOR DISCLOSURE REQUIRED~~

~~(1) (a) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Section 17.~~

~~(b) Consent is not required under this section where the disclosure is to --~~

~~(i) The parent of a student who is not an eligible student, or~~

~~(ii) The student himself or herself.~~

~~(2) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.~~

~~(3) The written consent required by paragraph (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:~~

~~(a) A specification of the records to be disclosed;~~

~~(b) The purpose of the disclosure; and~~

(e) The party or class of parties to whom the disclosure may be made.

(4) When a disclosure is made pursuant to paragraph (1) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

#### SECTION 17 — PRIOR CONSENT FOR DISCLOSURE NOT REQUIRED

(1) An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is —

(a) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

(b) To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in Section 20.

(c) Subject to the conditions set forth in Section 21, to authorized representatives of:

(i) The Comptroller of the United States

(ii) The Secretary of Education

(iii) State and local educational authorities.

(d) In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid;

(ii) To determine the amount of the financial aid;

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms and conditions of the financial aid.

(e) To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

(f) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term

“organizations” includes, but is not limited to federal, state, and local agencies, and independent organizations.

(g) To accrediting organizations in order to carry out their accrediting functions.

(h) To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

(i) To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

(j) The appropriate parties in health or safety emergency subject to the conditions set forth in Section 22.

#### SECTION 18 — RECORD OF REQUESTS AND DISCLOSURE REQUIRED TO BE MAINTAINED

(1) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(a) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(b) The legitimate interests these parties had in requesting or obtaining the information.

(2) Paragraph (1) of this section does not apply:

(a) To requests by or disclosures to a parent of a student or an eligible student;

(b) To requests by or disclosures to school officials under 34 CFR §99.31(a)(1);

(c) If there is written consent of a parent of a student or an eligible student; or

(d) To requests for or disclosure of directory information under 34 CFR §99.37.

(3) The record of requests and disclosures may be inspected:

(a) By the parent of the student or the eligible student.

(b) By the school official and his or her assistants who are responsible for the custody of the records, and

(c) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

#### SECTION 19 — LIMITATION ON REDISCLOSURE

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is

disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

(2) Paragraph (1) of this section does not preclude an agency or institution from disclosing personally identifiable information under Section 17, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of Section 18 are met with respect to each of those parties.

(3) An educational agency or institution shall, except for the disclosure of directory information under Section 23, inform the party to whom a disclosure is made of the requirements set forth in paragraph (1) of this section.

#### ~~SECTION 20 — CONDITIONS FOR DISCLOSURE TO OFFICIALS OF OTHER SCHOOLS AND SCHOOL SYSTEMS~~

(1) An educational agency or institution transferring the education records of a student pursuant to Section 17(1)(b) shall:

(a) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice on its policies and procedures formulated under Section 6, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

(b) Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

(2) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of paragraph (1) of this section.

#### ~~SECTION 21 — DISCLOSURE TO CERTAIN FEDERAL AND STATE OFFICIALS FOR FEDERAL PROGRAM PURPOSES~~

(1) Nothing in these policies shall preclude authorized representatives of officials listed in Section 17(1)(c) from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in

connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

(2) Except when the consent of the parent of a student or an eligible student has been obtained under Section 16, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in Section 17(1)(c) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

#### ~~SECTION 22 — CONDITIONS FOR DISCLOSURE IN HEALTH AND SAFETY EMERGENCIES~~

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(2) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(a) The seriousness of the threat to the health or safety of the student or other individuals;

(b) The need for the information to meet the emergency;

(c) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(d) The extent to which time is of the essence in dealing with the emergency.

(3) Paragraph (1) of this section shall be strictly construed.

#### ~~SECTION 23 — CONDITIONS FOR DISCLOSURE OF DIRECTORY INFORMATION~~

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under paragraph (3) of this section.

(2) An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (3) of this section.

(3) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(a) The categories of personally identifiable information which the institution has designated as directory

information;

(b) The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(c) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

#### SECTION 24—SAFEGUARDS

(1) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and part 99 of this title.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (34 CFR 300.572)

#### SECTION 25—DESTRUCTION OF INFORMATION

(1) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(2) The information must be destroyed at the request of the parents. However, permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. (34 CFR 300.573)

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (2) of this section.

#### SECTION 26—DELAWARE SPECIFIC REQUIREMENT FOR STUDENT RECORDS

The following education records are required in Delaware

schools:

(1) Directory information for each student as defined in Section 4 of this document.

(2) A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized—intelligence, —achievement, —aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

(a) Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

- A School Health Record Card and Emergency Treatment Data Card for each student.

- A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each handicapped student.

The records of handicapped students shall be maintained in accordance with Section 12(1)(d) of this document.

The total cumulative record shall be disclosed only in accordance with Sections 16-22 of this document.

(3) Permanent maintenance is required of certain education records:

The following information shall be maintained in perpetuity for each student ever registered and/or in attendance:

(a) Names, address and telephone numbers of parents or guardians.

(b) Birthdate, sex and other identifying data of the student.

(c) Academic work completed.

(d) Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

(e) Attendance data.

(f) Transportation data.

(g) The reason for leaving school—graduated, transferred, dropped out, etc.

(4) Contracts for microfilming student records of graduates, for district storage, may be initiated between the school district and the State Department of Historical and Cultural Affairs. Two or more copies in separate sites are recommended to provide fire safe storage.

The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized:

A central storage file should be developed and

maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Public Instruction.)

In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

(5) Transfer is required of certain education records.

A file consisting of the complete up-to-date cumulative record including School Health Record Card shall follow each student transferred from one school to another. The file for each handicapped student transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in Sections 16-22.

(6) The "Student Folder Inspection Record" (Attachment B) shall be permanently kept with the file on each student, with all inspection and review transactions recorded in the spaces provided. The "Permission for Disclosure of Educational Records" form (Attachment A) shall be used in all cases requiring parental consent for disclosure of records.

(7) Transfer of Student Records in the Case of Placement for Adoption and Change of Name

In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by Delaware Code, Title 13, Chapter 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to

that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the Adoption Coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

(8) Transfer of Students

(a) When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form (Attachment C) will be available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to any of the institutions of the Divisions of Mental Health, Mental Retardation or Youth Rehabilitation Services shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

(b) When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

(c) In order for a transfer unit of credit to be valid in the school to which transfer is made, it must have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work must be repeated if credit is to be granted for that work.

(d) Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the Delaware statute and the regulations of the State Board of Education.

(e) In the case of students who transfer to a Delaware school from a foreign country, the transcripts may be forwarded to the Department of Public Instruction for appropriate evaluation.

SECTION 27 - STATE AND FEDERAL REVIEW

(1) The Secretary of the U. S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints which may be filed concerning

the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Educational Rights and Privacy Act Office (FERPA), 330 Independence Avenue, S. W., Washington, D.C. 20201.

(2) In the case of handicapped students the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Team Leader of Exceptional Children Team, Department of Public Instruction, Townsend Building, Box 1402, Dover, DE 19903.

ATTACHMENT A

PERMISSION FOR DISCLOSURE OF EDUCATIONAL RECORDS

NOTE: When submitted, this authorization will become a part of the student's permanent records in accordance with the Family Educational Rights and Privacy Act of 1974 and P. L. 94-142, Education for All Handicapped Children Act.

Name of Student (use legal last name): \_\_\_\_\_  
Birthdate: \_\_\_\_\_  
School/Agency Presently Attending: \_\_\_\_\_

Permission is granted to disclose the education records listed below: (Please check appropriate item(s).)

- a. Cumulative record (i.e., academic grades, attendance data, and group or individually administered test scores);
- b. Health data and/or medical reports;
- c. Diagnostic and evaluative data;
- d. Special program records;
- e. Other (be specific):

The record(s) indicated above is/are to be disclosed to:  
The purpose for this disclosure is:  
I hereby consent to the disclosure of the above record(s).

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Parent/guardian/student over 18 years)

School/Agency Use Only  
Date this Form Received: \_\_\_\_\_ Date Data Released: \_\_\_\_\_  
By: \_\_\_\_\_

A parent or an eligible student (18 years old) has the legal right to inspect and review education records. Guidelines governing the inspection, review, and amendment of educational records are available through this agency.

Consent means that (1) the parent (or eligible student) has been fully informed of the procedures related to the collection, maintenance, and disclosure of student data in his or her native language or other mode of communication unless it clearly is not feasible to do so; (2) the parent (or eligible student) understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (3) the parent (or eligible student) understands that the granting of consent is voluntary.

ATTACHMENT B

STUDENT FOLDER INSPECTION RECORD FOR

| Name of Student | Person Inspecting Record | Date | Reason for Record Inspection |
|-----------------|--------------------------|------|------------------------------|
|                 | 1.                       |      |                              |
|                 | 2.                       |      |                              |
|                 | 3.                       |      |                              |
|                 | 4.                       |      |                              |
|                 | 5.                       |      |                              |
|                 | 6.                       |      |                              |
|                 | 7.                       |      |                              |
|                 | 8.                       |      |                              |
|                 | 9.                       |      |                              |
|                 | 10.                      |      |                              |
|                 | 11.                      |      |                              |
|                 | 12.                      |      |                              |
|                 | 13.                      |      |                              |
|                 | 14.                      |      |                              |
|                 | 15.                      |      |                              |
|                 | 16.                      |      |                              |
|                 | 17.                      |      |                              |
|                 | 18.                      |      |                              |
|                 | 19.                      |      |                              |
|                 | 20.                      |      |                              |

This record must be permanently kept with the file of the student pursuant to Public Law 100-476 (I.D.E.A.) as amended.

ATTACHMENT C

DELAWARE STUDENT TRANSFER FORM

This form is to be filled out by school personnel when a student is transferred from a Delaware school to any other school district. The completed form will be given to the student's parents, guardians and/or the student on the last day of attendance and presented to the receiving school at the time the student is registered. Records will be sent to the receiving school upon the request of that school.

(Legal Last Name of Student) (First Name)  
(Middle Name)

Date of Birth: Year: Month: Day:  
No. of days school in session: Days attended:  
Date of last attendance: Grade Placement:  
Special Programs or Services Provided:  
Pertinent Medical Information:

**ELEMENTARY STUDENTS ONLY**

Instructional Reading Level: Reading Series or  
Text:  
Completed to:  
Comments:  
Instructional Math Level: Math Series or  
Text:  
Completed to:  
Comments:  
General Comments:  
School Teacher  
District Principal  
Date  
Address

**250 Procedures Related to the Collection, Maintenance  
and Disclosure of Student Data**

**1.0 Authority:** Under the provisions of Section 122, Title 14, of the *Delaware Code*, the Department of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations, Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 105-17 Individuals with Disabilities Education Act effective June 4, 1997, and their respective regulations.

**2.0 Applicability**

2.1 These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

2.2 These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in 1.0, if no funds under those programs are made available to the agency or institution.

2.3 For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs

referenced in 1.0, are provided to the agency or institution by grant, contract, sub-grant, or subcontract, or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.).

2.4 Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution that collects, maintains, or discloses the records.

**3.0 Purpose:** The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by agencies and institutions under the general supervision of the Department of Education.

**4.0 Definitions: as used in these procedures:**

4.1 "Attendance" at an agency or institution includes, but is not limited to: attendance in person having homebound or correspondence instruction, and the period during which a person is working under a work-study program.

4.2 "Consent" means that the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and the parent or eligible student understands that the granting of consent is voluntary.

4.3 "Directory information" means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

4.4 "Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

4.5 "Educational institution" or "educational agency or institution" means any public or private agency or institution that is the recipient of the funds under any Federal program



referenced in 2.0. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

4.6 "Education records" means those records that are directly related to a student, and are maintained by an educational agency or institution or by a party acting for the agency or institution, the term does not include:

4.6.1 Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

4.6.1.1 Are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

4.6.2 Records of a law enforcement unit of an educational agency or institution that are:

4.6.2.1 Maintained apart from the records described in 4.6.

4.6.2.2 Maintained solely for law enforcement purposes, and:

4.6.2.3 Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

4.6.3 Records relating to an individual who is employed by an educational agency or institution which are made and maintained in the normal course of business; relate exclusively to the individual available for use for any other purpose.

4.6.3.1 This paragraph does not apply to records relating to an individual in attendance at the agency or institution that is employed as a result of his or her status as a student.

4.6.4 Records relating to an eligible student that are:

4.6.4.1 Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

4.6.4.2 Created, maintained, or used only in connection with the provision of treatment to the student, and

4.6.4.3 Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial

educational activities, diagnostic and evaluative data, or other activities used in the development of the student's instructional program.

4.6.5 Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

4.7 "Eligible Student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

4.8 "Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

4.9 "Student with Disability" means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the Department of Education, requires special educational services in order to develop his or her capabilities.

4.10 "Institution of post-secondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

4.11 "Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

4.12 "Party" means an individual, agency, institution, or organization.

4.13 "Personally identifiable" means that the data or information includes the name of the child, the child's parent, or other family member, the address of the child, a personal identifier, such as the child's social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. {34 CFR 300.500 (c) (1) through (4)}.

4.14 "Records" means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

4.15 "Secretary" means the Secretary of the U. S. Department of Education.

4.16 "Student" includes any individual with respect to

whom an education agency or institution maintains educational records.

### **5.0 Student Rights**

5.1 For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student with disabilities who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in this document.

5.2 The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by 5.1.

5.3 These procedures shall not be construed to preclude educational agencies or institutions from according students rights in addition to those accorded to parents of students.

### **6.0 Formulation of Institutional Policies and Procedures**

6.1 Each educational agency or institution shall formulate and adopt a policy of informing parents of students or eligible students of their rights under 7.0, and permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0, including at least:

6.1.1 A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student.

6.1.2 With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records.

6.1.3 A schedule of fees for copies, and

6.1.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

6.2 Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, the policy shall include, at least:

6.2.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest" and

6.2.2 A specification of the personally identifiable information to be designated as "directory information" under 23.0.

6.3 Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.

6.4 Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.

6.5 The policy shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

### **7.0 Annual Notification of Rights**

7.1 Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

7.1.1 Their rights under these procedures adopted under 6.0; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

7.1.2 The right to file complaints under 24.0 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

7.2 Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

### **8.0 Limitations on Waivers**

8.1 Subject to the limitations in 8.0 and 11.0, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

8.2 An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

8.3 An individual who is an applicant for admission to a post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

8.4 All waivers must be executed by the individual, regardless of age, rather than by the parent of the individual.

8.5 A waiver under this section may be made with respect to specified classes of education records, and persons or institutions.

8.5.1 A waiver under this section may be revoked with respect to any actions occurring after the revocation.

8.5.2 A revocation under this paragraph must be in writing.

8.5.3 If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

## **9.0 Fees**

9.1 An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. {34 CFR 300.566(a)}

9.2 An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. {34 CFR 300.566(b)}

## **10.0 Right to Inspect and Review Educational records**

10.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. {34 CFR 300.562(a)}

10.2 The right to inspect and review education records under 10.1 include:

10.2.1 The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

10.2.2 The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and {34 CFR 300.562(b)(2)}

10.2.3 The right to have a representative of the parent inspect and review the records. {34 CFR 300.562(b)(3)}

10.3 An education agency or institution may presume that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

## **11.0 Limitations on the Right to Inspect and Review Records**

11.1 If the education records of a student contain information on more than one student, the parent of the

student or the eligible student may inspect and review or be informed of only the specific information that pertains to that student.

## **12.0 Destruction of Educational Records**

12.1 An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.1 The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them as in 10.0.

12.1.2 Explanations placed in the education record under 14.0 shall be maintained as provided in 14.4.

12.1.3 The record of access required under 18.0 shall be maintained for as long as the education record to which it pertains is maintained.

12.1.4 Records of children with disabilities shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They must be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information must be destroyed. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

12.2 The following shall apply to the length of time and special consideration for the maintaining of all student records:

12.2.1 Directory information may be maintained in perpetuity;

12.2.2 Academic grades and attendance records may be maintained in perpetuity;

12.2.3 Other personally identifiable data which is no longer needed to provide educational services for the child may be, but is not required to be destroyed, and may be retained permanently;

12.2.4 Student records should be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;

12.2.5 Records of students who are no longer in school should be duplicated and maintained in separate facilities.

## **13.0 Request to amend Educational Records**

13.1 A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency

that maintains the information to amend the information.

13.2 The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

13.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. {34 CFR 300.567}

#### **14.0 Right to a Hearing**

14.1 A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with 15.0.

14.2 If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3 If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

14.4 Any explanation placed in the education records of the student under 14.3 shall:

14.4.1 Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

14.4.2 If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. (34 CFR 300.569)

#### **15.0 Conduct of a Hearing**

15.1 The hearing required to be held by 14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.1 The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.2 The hearing may be conducted by any party,

including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

15.1.3 The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under 14.0, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.4 The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.5 The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

#### **16.0 Prior Consent for Disclosure Required**

16.1 An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in 17.0.

16.1.1 Consent is not required under this section where the disclosure is to the parent of a student who is not an eligible student, or the student himself or herself.

16.2 Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

16.3 The written consent must be signed and dated by the parent of the student or the eligible student giving the consent and shall include: a specification of the records to be disclosed; the purpose of the disclosure; and the party or class of parties to whom the disclosure may be made.

16.4 When a disclosure is made pursuant to 16.1, the educational agency or institution shall, upon request, provide a copy of the record that is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

#### **17.0 Prior Consent**

17.1 An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

17.1.1 To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

17.1.2 To officials of another school or school

system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in 20.0.

17.1.3 Subject to the conditions set forth in 21.0, to authorized representatives of the Comptroller of the United States, the Secretary of Education and state and local educational authorities.

17.1.4 In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as: to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms and conditions of the financial aid.

17.1.5 To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

17.1.6 To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

17.1.7 To accrediting organizations in order to carry out their accrediting functions.

17.1.8 To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

17.1.9 To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

17.1.10 The appropriate parties in health or safety emergency subject to the conditions set forth in 22.0.

## **18.0 Records of Requests and Disclosure Required to be Maintained**

18.1 An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

18.1.1 The parties who have requested or obtained personally identifiable information from the education

records of the student, and

18.1.2 The legitimate interests these parties had in requesting or obtaining the information.

18.1.3 18.1 does not apply: to requests by or disclosures to a parent of a student or an eligible student, to requests by or disclosures to school officials under 34 CFR §99.31(a)(1); if there is written consent of a parent of a student or an eligible student; or to requests for or disclosure of directory information under 34 CFR §99.37.

18.1.4 The record of requests and disclosures may be inspected:

18.1.4.1 By the parent of the student or the eligible student.

18.1.4.2 By the school official and his or her assistants who are responsible for the custody of the records, and

18.1.4.3 For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

## **19.0 Limitation on Rediscovery**

19.1 An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

19.2 Section 19.1 does not preclude an agency or institution from disclosing personally identifiable information under 17.0, with the understanding that the information will be rediscovered to other parties under that section; provided, that the recordkeeping requirements of 18.0 are met with respect to each of those parties.

19.3 An educational agency or institution shall, except for the disclosure of directory information under 23.0, inform the party to whom a disclosure is made of the requirements set forth in 19.1.

## **20.0 Conditions for Disclosure to Officials of Other Schools and School Systems**

20.1 An educational agency or institution transferring the education records of a student pursuant to 17.1.2 shall:

20.1.1 Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

20.1.1.1 When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

20.1.1.2 When the agency or institution includes a notice on its policies and procedures formulated under 6.0, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

20.1.2 Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

20.2 If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of 20.1.

### **21.0 Disclosure to Certain Federal and State Officials for Federal Program**

21.1 Nothing in these policies shall preclude authorized representatives of officials listed in 17.1.3 from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

21.2 Except when the consent of the parent of a student or an eligible student has been obtained under 16.0, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in 17.1.3 shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

### **22.0 Conditions for Disclosure in Health and Safety Emergencies**

22.1 An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2 The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following: the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

the extent to which time is of the essence in dealing with the emergency.

22.3 22.1 shall be strictly construed.

### **23.0 Conditions for Disclosure of Directory Information**

23.1 An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under 23.3.

23.2 An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under 23.3.0.

23.3 An educational agency or institution that wishes to designate directory information shall give public notice of the following:

23.3.1 The categories of personally identifiable information which the institution has designated as directory information;

23.3.2 The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

23.3.3 The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

### **24.0 Safeguards**

24.1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

24.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

24.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and part 99 of this title.

24.4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (34 CFR 300.572)

### **25.0 Destruction of Information**

25.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

25.2 The information must be destroyed at the request of the parents. However, permanent record of a student's

name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. (34 CFR 300.573)

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in 25.2.

### **26.0 Education Records Required in Delaware Schools:**

26.1 Directory information for each student as defined in 4.0.

26.2 A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized intelligence, achievement, aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

26.3 Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

26.3.1 A School Health Record Card and Emergency Treatment Data Card for each student.

26.3.2 A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each student with disabilities.

26.3.3 The records of students with disabilities shall be maintained in accordance with 12.1.4.

26.3.4 The total cumulative record shall be disclosed only in accordance with 16.0 to 22.0.

26.4 Permanent maintenance is required of certain education records and the following information shall be maintained in perpetuity for each student ever registered and/or in attendance:

26.4.1 Names, addresses and telephone numbers of parents or guardians.

26.4.2 Birthrate, sex and other identifying data of the student.

26.4.3 Academic work completed.

26.4.4 Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

26.4.5 Attendance data.

26.4.6 Transportation data.

26.4.7 The reason for leaving school--graduated, transferred or dropped out.

26.5 Contracts for microfilming student records of graduates, for district storage, may be initiated between the school district and the Delaware Public Archives. Two or more copies in separate sites are recommended to provide fire-safe storage.

26.6 The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized a central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Education.)

In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

26.7 Transfer is required of certain education records. A file consisting of the complete up-to-date cumulative record including the school health record card shall follow each student transferred from one school to another. The file for each student with disabilities transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in 16.0 through 22.0.

26.8 The "Student Folder Inspection Record" shall be permanently kept with the file on each student, with all inspection and review transactions recorded in the spaces provided. The "Permission for Disclosure of Educational Records" form shall be used in all cases requiring parental consent for disclosure of records.

26.9 Transfer of Student Records in the Case of Placement for Adoption and Change of Name

26.9.1 In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children,

Youth, and Their Families, Division of Child Protective Services, is the agency authorized by Delaware Code, Title 13, Chapter 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the adoption coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

#### 26.10 Transfer of Students

26.10.1 When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form shall be made available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to any of the institutions of the Divisions of Mental Health, Mental Retardation or Youth Rehabilitation Services shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

26.10.2 When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

26.10.3 In order for a transfer unit of credit to be valid in the school to which transfer is made, it shall have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work shall be repeated if credit is to be granted for that work.

26.10.4 Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the Delaware Code and the regulations of the Department of Education.

26.10.5 In the case of students who transfer to a Delaware school from a foreign country, the local school district or school is responsible for having the transcripts evaluated.

#### **27.0 State and Federal Review**

27.1 The Secretary of the U. S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints that may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Policy Compliance Office, Federal Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

27.2 In the case of students with disabilities the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Department of Education, Townsend Building, Box 1402, Dover, DE 19903-1402.

---

### **Educational Impact Analysis Pursuant To 14 Del. C., Section 122(d)**

#### **398 Degree Granting Institutions of Higher Education**

##### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation Policies, Standards and Procedures for Approving Degree Granting Institutions of Higher Education. The regulations have been reformatted to fit the style of DOE regulations and to remove language that repeats the **Del.C.** References to the State Board of Education have been changed to the Department of Education. The title has also been shortened to Degree Granting Institutions of Higher Education.

##### **C. IMPACT CRITERIA**

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

The amended regulations address approval of



postsecondary institutions, not student achievement.

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

The amended regulations address approval of postsecondary institutions, not equity issues.

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

The amended regulations address approval of postsecondary issues, not students' health and safety.

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

The amended regulations address approval of postsecondary institutions, not students' legal rights.

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

The amended regulations do not apply to public school districts or to local school boards.

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

The amended regulations do not apply to public school districts or to local school boards.

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

The decision making and accountability for addressing the subject to be regulated will move from the State Board of Education to the Department of Education.

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

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

These regulations are necessary to govern the approval of postsecondary institutions.

10. What is the cost to the state and to the local school

boards of compliance with the regulation?

There is no additional cost to the state and the regulation does not apply to the local school districts.

~~State Board of Education and Department of Education~~

~~POLICIES, STANDARDS AND PROCEDURES FOR APPROVING DEGREE GRANTING INSTITUTIONS OF HIGHER EDUCATION~~

~~State of Delaware  
Department of Education  
P.O. Box 1402  
Dover, DE 19903~~

~~POLICIES, STANDARDS AND PROCEDURES FOR APPROVING DEGREE GRANTING INSTITUTIONS OF HIGHER EDUCATION~~

Revised, February 1, 1998

For further information or explanation, please contact:

Dr. Catherine Gilbertson  
Education Associate,  
Program Approval, Evaluation and Certification  
Department of Education  
P.O. Box 1402  
Dover, DE 19903  
(302) 739-5622

## Table of Contents

Introduction 1

Part 1

~~Policy Statement Regarding Institutions of Higher Education Incorporated in Delaware and Institutions Located in Delaware Offering Training in Teacher Education.~~

Policies 4

Standards 5

Section 1 Purposes and Objectives 5

Section 2 Administrative Organization 6

Section 3 Financial Administration 7

Section 4 Student Personnel Program 7

Section 5 Admission Policies 8

Section 6 Faculty 9

Section 7 Program 10

Section 8 Graduation Requirements 11

Section 9 Facilities 11

Section 10 Library 11

Section 11 Outcomes 12

Section 12 Catalog and Announcements 13

Section 13 Detailed Procedures for Securing State Board Approval 13

Procedures 15

**Part II**

~~Policy Statement Regarding Non-Delaware Institutions of Higher Education~~

|   |  |               |
|---|--|---------------|
| <del>Section 1</del>                      | <del>Petition or Application from Institution</del>                  | <del>18</del> |
| <del>Section 2</del>                      | <del>Programs May be Approved for Periods of One to Five Years</del> | <del>19</del> |
| <del>Section 3</del>                      | <del>Continuing Approval</del>                                       | <del>19</del> |
| <del>Section 4</del>                      | <del>Obligations to Inform State Board of Education</del>            | <del>19</del> |
| <del>Section 5</del>                      | <del>Fees</del>  | <del>19</del> |
| <del>Section 6</del>                      | <del>Cost of Evaluation</del>  | <del>20</del> |
| <del>Section 7</del>                      | <del>Published List</del>  | <del>20</del> |
| <del>Section 8</del>                      | <del>Agents: Agent Permits Application</del>                         | <del>20</del> |
| <del>Contents Fees Separate Permits</del> |  | <del>20</del> |
| <del>Section 9</del>                      | <del>Enforcement/Penalties</del>                                     | <del>21</del> |

**Part III**

~~Policy statement regarding institutions of higher education, located in other states or territories and not offering programs in state, wishing to incorporate in Delaware~~

|                      |                                       |               |
|----------------------|---------------------------------------|---------------|
| <del>Section 1</del> | <del>Criteria for Approval</del>      | <del>22</del> |
| <del>Section 1</del> | <del>Authority of Administrator</del> | <del>22</del> |

**POLICIES, STANDARDS AND PROCEDURES FOR APPROVING DEGREE GRANTING INSTITUTIONS OF HIGHER EDUCATION**

**INTRODUCTION**

The authority for the State Board of Education to approve institutions of higher education incorporating in Delaware and non-Delaware institutions making offerings in Delaware are determined from the following sections of the Delaware Laws:

A. Institutions Incorporated in Delaware — Title 8, Delaware Code Annotated — General Corporation Laws Section 125 — Conferring academic or honorary degrees.

“No corporation [created under the provisions of this chapter] organized after April 18, 1945, shall have power to confer academic or honorary degrees unless the certificate of incorporation or an amendment thereof shall expressly so provide and unless the certificate of incorporation or an amendment thereof prior to its being filed in the office of the Secretary of State shall have endorsed thereon the approval of the State Board of Education of this State. No corporation created under this chapter before April 19, 1945, and provision in its certificate of incorporation to the contrary notwithstanding possess the power aforesaid without first filing in the office of the Secretary of State [in accordance with Section 242 of this title] a certificate of amendment expressly so providing, the filing of which certificate of amendment in the office of the Secretary of State shall be subject to prior approval of the State Board of Education, evidenced as herein above

provided. Approval shall be granted only when it appears to the reasonable satisfaction of the State Board of Education, that the corporation is engaged in conducting a bona fide institution of higher learning, giving instructions in arts and letters, science, or the professions, or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, requisite for the conduct of an institution of higher learning.”

B. Institutions Located in Delaware Offering Teacher Education Programs — Title 14, ~~Del. C.~~ — Education Section 122 — Rules and Regulations:

The Board shall prescribe Rules and Regulations:

“(7)(a) Governing the qualifications and certification of teachers in all of the public schools of the State.

(b) Providing that no individual public or private educational association, corporation or institution shall offer a course, or courses for the training of school teachers to be certified by the State Board of Education without having first procured the assent of the Board for the offering of such training courses.”

C. Non-Delaware Institutions Making Offerings in Delaware — Title 14 ~~Del. C.~~ — Education Section 121 — General Powers of the Board

“The Board shall exercise general control and supervision of the public schools of the State including:

(13) The determination of criteria to be met and procedures to be followed by institutions of postsecondary education that offer courses, programs of courses, or degrees within the State of Delaware but that are not institutions either incorporated in Delaware or located in Delaware, except for the purpose of offering the particular courses, programs of courses or degrees referred to above. The administration of the authority herein granted shall be carried out according to Rules and Regulations of the Board as authorized in §122 of this title.

§ 122(b), the Board shall prescribe Rules and Regulations:

(4)(a) Governing the issuance of certificates and diplomas from the public schools of the State, and

— (b) Determining the minimum requirements for presentation of any course or program of courses and for the issuing of academic, normal school, collegiate, professional, or university degrees of any level by such institutions as are not otherwise authorized by Delaware law to determine such requirements;

(7)(c) Providing for the licensing of any institution of higher education, public or private, which is not incorporated in the State of Delaware or which is not established according to Delaware state law, whether the main office of that institution is located within the State of Delaware or in any state of the United States or any nation of the world, if that institution offers any course, or program of courses, or degree at a location within the State of Delaware

or by correspondence, to residents of the State. Regulations on this subject shall include provisions for the identification and licensing of any agent of such institution who contacts persons within the state of Delaware in person or by correspondence for the purpose of soliciting enrollment by a permanent or temporary resident of the State of Delaware in any such course, program of courses, or degree."

As required by statutes in effect in 1972, the following STANDARDS were initially developed cooperatively by the State Department of Education and the President of the University of Delaware after review by attorneys for the University and approval of the Executive Committee of the Board of Trustees of the University and were adopted by the State Board of Education on June 14, 1972. The statutes in effect in 1972 were amended by House Bill 423 of the 130th General Assembly in 1979, and now appear as amendments of *Delaware Code*, Title 14, Sections 12 and 122. (See Also Volume 62, *Laws of Delaware*, chapter 18.)

## PART I

Policy statement regarding institutions of higher education incorporated in Delaware and institutions located in Delaware offering training in teacher education

## POLICIES

Those institutions not fully established but incorporating in Delaware are referred to Section 125 of Title 8 of the Delaware Corporation Laws (see page 1) where it states "or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, requisite for the conduct of an institution of higher learning." The material presented for review must follow the standards in this document and be comprehensive in nature, covering all the required courses of a projected program, and must specify what is proposed or estimated for program, staff, facilities, library and other resources on opening day. The institution should expect to be held to these commitments where feasible. If the material is acceptable to the committee and the recommendation is accepted by the State Board of Education, the institution shall be acknowledged as a Recognized Applicant. This status may be valid for one or more years according to the action of the State Board. The status may be extended yearly until Provisional Approval has been granted or it may be terminated. The status of Recognized Applicant does not provide the right to grant degrees.

Once the institution is in operation, however, it may petition for provisional Approval which shall be valid until such time as the first class has been graduated. In preparation for this second review, additional information will be required to bring the material up to date in line with the various standards as described in this document and with

the recommendations made at the time of the first review. This will include the section on outcomes and other sections throughout the document relative to the judgment of performance and shall be used as the basis for the on-site visitation.

For final approval status, another on-site visitation may or may not be required by the State Department of Education. See Section 13 of this report for more detailed information relative to making applications, visitations, subsequent reports, and possible actions of the State Board of Education.

Proposals or descriptions for graduate programs must be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

Nonprofit institutions must apply for regional accreditation within a minimum of two years from date of initial operation.

Proprietary institutions must seek accreditation from the appropriate national accrediting body or association within a minimum of two years from date of initial operation.

For Final Approval an institution must meet the minimum standards which are found in the following sections of this document. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the State Board of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two or four year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.

## STANDARDS

### Section 1 -- Purposes and Objectives

For the information of its prospective students and to provide a sound framework in which to operate, an institution must present a well-defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement should include the reasons for the existence of the institution in its particular community. In addition, the purposes should be reflected in

the types of students and sequence of the offerings of the college in general and in specific programs. Wherever possible, the specific objectives should be presented in behavioral terms and should be the basis for future student and program evaluation.

#### Section 2 -- Administrative Organization

The organizational pattern of the institution as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, should be clearly defined and should be related to the purposes of the institution.

The institution must present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and his administrative staff, and the faculty.

There should be evidence that the governing board is aware of the purposes of the institution and is working toward their fulfillment and is striving to anticipate the institution's future needs. The functions and responsibilities of the board should be clearly defined in the Bylaws. The board should be moderate in size (preferably between 9 and 25 members), represent different points of view and interests, be selected from persons interested in the institution and willing to give the time necessary for board matters, and be appointed or elected for regular and overlapping terms of office long enough to be of real service but not for indefinite tenure. The large majority of members should be other than the salaried administrators of the institution.

There should be evidence of established channels of communication between the governing board and the administration and faculty and of the means developed for cooperative planning and appraisal. The delegation of authority and responsibility to the administration and faculty should be clearly delineated.

There should be evidence that the administrative staff has the necessary time and assistance to enable the members to discharge their duties efficiently. The assignment of multiple functions to one individual, or the assignment of administrative work as extra duty with or without compensation to full-time members of the faculty without due consideration of the full teaching and administrative burden, is evidence of administrative inadequacy.

There should be evidence that the administrative staff is aware of its three major functions: selection, supervision, and support of the faculty; selection and supervision of the students; and operation of facilities for the benefit of faculty and students.

There should be definite policies and procedures concerning academic freedom, tenure, retirement, pensions, leaves of absence, sick leave, the determination of rank and

promotions, and the professional development of the faculty, administrative officers and professional staff.

#### Section 3 -- Financial Administration

The institution must demonstrate financial resources adequate for the effective accomplishment of its announced purposes. There should be a minimum of \$500,000 for an adequate reserve in unencumbered funds for a beginning private four-year institution. The income must be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

The financial statements for both beginning and continuing institutions should reflect clearly the sources of income, categories of expenditure, and the profit or nonprofit status of the institution. They should show the nature and amount of indebtedness, if any; how incurred; and the provision for amortization. They should indicate agreement or provide a surety company bond for the protection of the contractual rights of students.

The business management should be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

A continuing institution must present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

Information should be available on the annual surplus or deficit at the end of each of the past five fiscal years.

The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the American Council on Education in the current edition of *College and University Business Administration*.

#### Section 4 -- Student Personnel Program

An institution should provide evidence of an adequate student personnel program, including student activities and a counseling service, which demonstrates a concern for the total needs of the student as a citizen in a democratic society. The student personnel program should be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students. Depending upon the scope of the institution and whether it is to be residential or nonresidential in character, the student personnel program should be concerned with the living arrangements and health needs of students and with the development of a meaningful program of social, recreational and athletic, education, and cultural out of class activities. A counseling service should be provided which is staffed with professional personnel competent to assist students in resolving academic, personal and vocational problems.

Provision should be made in the counseling service for testing of students' abilities and interests as aids to student self-understanding, educational planning and career decisions. The counseling service should have a responsibility for analyzing causes of academic deficiency and reasons for dropping out. The advisement of students in the selection of courses to meet stated requirements for various degree programs may be a responsibility assigned to the counseling staff or to an academic dean and members of the teaching faculty.

#### Section 5 -- Admission Policies and Procedures

An admissions office must be adequately staffed to carry out the admissions policies and procedures.

The instruction should have a carefully stated selective admissions policy which is appropriate to the institution's purposes and organization. Admissions criteria should be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution must operate in compliance with announced admission policies and procedures.

For admission, the institution should require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test scores or the College Entrance Examination Board scores. The applicant's file should contain a complete transcript of his school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

The institution should be able to supply evidence such as correlation between admission credentials and freshman grades, academic attrition studies, objective test results, and others, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution is expected to admit students in accordance with its published criteria.

Institutions may at their discretion employ more flexible and experimental admissions standards. However, if applicants whose qualifications are marginal are accepted as "risks", there should be supporting information obtained through interviews, tests, and recommendations made by guidance officers or others qualified to judge these applicants' potential. The admission of marginal students should involve follow-up studies to evaluate whether these risks were justified and the effects of such admissions on other students.

#### Section 6 -- Faculty

The quality of education program is determined largely by the quality of the faculty. Therefore, any institution of higher education should have clearly defined criteria for faculty appointment, incentives for retention, and provisions for in-service growth and development.

A faculty member should be adequately prepared both by training and experience in the specific area of the teaching assignment. Academic preparation is one valid index of potential quality. It is recommended that, except for certain specialized courses, there should be several faculty members, particularly Department Chairmen, with doctoral degrees or the equivalent and all others with master's degrees or the equivalent from recognized graduate or professional programs. It will be expected that, except in unusual circumstances, they will have graduate course credits in the fields in which they teach, and the level of preparation will increase with the level of teaching assignment. Advanced study and scholarly and creative production are other significant indexes of educational stature.

In some junior colleges, especially in a single-purpose professional or technical program such as a business college, the academic requirements might be slightly lower. However, at least one-half of the faculty teaching second-year course work must have a master's degree, LLB, CPA or other professional equivalent.<sup>1</sup> It is recognized that no one terminal designation is appropriate for all faculty members.

Following the selection criteria, there should be a well planned incentive program designed for retention of faculty. Such a program should include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There should be a clear statement of criteria for each rank and the requirements for promotion.

There should be evidence that there is a faculty organization to carry out the respective educational responsibilities.

As contributing factors in the in-service professional development program for the faculty, there should be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

Normally, teaching loads should be no more than fifteen credit hours. Variations may be made when responsibilities for other college-related activities are assigned or in recognition of particularly significant professional endeavors. In the case of single courses offered, or weekend programs presented by non-Delaware institutions, the workload shall be evaluated to determine that it is compatible with any other assignment carried by the instructor and does not constitute a burden that might detract from the quality of the presentation.

If faculty members serve as advisors, they should be

1. The Accrediting Commission for Business Schools, Official Directory of Accredited Institutions and Operating Criteria (The Accrediting Commission for Business Schools, Detroit, Michigan, 1967) page 49.

fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

#### Section 7 -- Program

An institution's educational program includes the total impact of all the influences which the institution brings to bear upon the student such as what goes on in the classroom, laboratory, studio, library, the counseling program, student activities, playing fields, lounges, cafeterias and dining rooms, dormitories, lectures and exhibitions, and casual faculty contacts.

The curriculum and all other experiences should be designed to meet the specific purposes of the institution. A college should be concerned with the total growth of the student as an individual.

The number and variety of curricula should be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution. An institution is more likely to serve its clientele better by doing a few things well rather than by undertaking too many specialties. However, each curriculum design should be broad enough to allow for individual differences and interests.

Curricula in all fields must evidence recognition of the relationships between broad education and the acquisition of techniques and skills. Degree requirements for each curriculum should be clearly stated.

The means should exist for continuous evaluation of the curriculum by the faculty and for modifying it when necessary.

In a junior college, transfer and career programs should include a block of courses in liberal education. It is difficult and dangerous to try to match exactly a transfer program with the equivalent in a specific receiving college. It is important for a two-year institution to develop its program on the basis of stated objectives. However, degree-granting institutions are expected also to contribute to the overall development of the student as well as to prepare him for employment. The State Board of Education recommends a minimum of 40% of the total program in general or liberal education.

#### Section 8 -- Graduation Requirements

For authorization to grant an associate degree, an institution must: require no less than 60 semester hours of academic and pre-professional work or equivalent; must allow no credit for any course completed with a grade lower than the passing grade of the institution (D or its equivalent); and should require no less than an average of 2.0 or specify clearly what index is required for grade for graduation. Credit hours should be determined in line with nationally recognized standards.

For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours

for graduation and no less than a 2.0 overall average (on a 4.0 scale). The awarding of a large variety of degrees, especially by a small institution, will be questioned.

The above standards do not preclude the possibility by a college or professional school in experimenting with or using other means of evaluation or assessment of a student's progress and success in moving through the course or experience sequence required for graduation.

The graduation requirements need to be clearly delineated for any institution.

#### Section 9 -- Facilities

A physical plant in and of itself does not determine the quality and effectiveness of the educational program. However, good housing and equipment make better teaching possible and better enable the institution to accomplish its stated purposes.

The administrative and faculty facilities, classrooms, library, laboratories, and student activity centers should be suitable for their specific purposes, and convenience for advisement and scheduling, and should promote the highest standards of learning, health and personal welfare. As far as possible, faculty members should have separate offices.

Beginning institutions and those planning expansion programs should have well designed plans for appropriate building expansion.

#### Section 10 -- Library

The institution must provide library facilities adequate to the effective realization of its stated educational objectives. The library is the chief resource for both faculty and students. The nature and content of the collection will depend on the institution's program and objectives.

The physical facilities should be conducive to frequent and effective use of the collections. The accommodations should allow for seating from one-fourth to one-third of the student body. However, any situation will be affected by the availability of other facilities on campus. The program should be administered by a professionally trained library staff adequate in number for the size of the student body. According to the standards of the American Library Association<sup>1</sup> for a junior college is a minimum of 20,000 volumes for up to 1,000 students, and 50,000 volumes for a senior college of up to 600 students with 10,000 that an institutional collection shall be of the size and quality recommended by the American Library Association for degree-granting institutions or by the appropriate professional association.

Other factors to be considered are the sufficiency of

---

1. Hirsch, Feliz E. Standards for College Libraries, College and Research Libraries, Vol. 20, July 1949, pp. 274-80 page 5.

space set aside for quiet study and leisure time reading; the accessibility of materials for reference, collateral study, and general reading; the amount of the annual appropriation for new books; the methods by which new books are selected; the adequacy of the number of hours the library is open; and the efficiency of the system of organizing and cataloging the collections. In addition to books and periodicals, the library or other division of the institution should provide the other media (films, records, video and audio tape, and other instructional media) necessary to support the institution's objectives.

In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities are to be imported on a temporary basis or provided through contractual arrangements with other Delaware institutions so that the material available will provide adequate support to the courses offered.

### Section 11 — Outcomes

The institution must describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

Plans for the measurement of outcomes could include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

### Section 12 — Catalog and Announcements

The catalogs and all other announcements must give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons.

The catalog should include:

Identification data, such as volume number, and date of publication.

Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

A complete calendar for the academic year.

A statement of its accredited or approval status.

A statement of the origin and objectives of the institution.

Admission and graduation policies and requirements.

Detailed schedule of all fees and other charges as well as refund policies.

Information concerning scholarship funds.

Description of location of the institution; buildings, grounds and equipment.

List of degrees conferred and requirements for each degree.

Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions should indicate prerequisites, if any.

Number of weeks of instruction per semester and of class meetings per week.

### Section 13 — Detailed Procedures for Securing State Board Approval

As stated in the Policy on Procedures, the State Board of Education accepts three levels of recognition of an institution: 1) Recognized Applicant; 2) Provisional Approval; and 3) Full Approval for five years.

To become a Recognized Applicant, an institution must complete the questionnaire, "Application To Confer Academic and Honorary Degrees" required by the State Board of Education. This material presented in duplicate<sup>1</sup> will be reviewed by an evaluation team mutually acceptable to the institution and the State Board of Education through its administrative staff, the State Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution will be notified of Recognized Applicant, valid for one or more years. Recommendations will be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution should request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester.

Following the on-site visit, required for the second level of approval, the team shall recommend to the State Board of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter may not include the right to confer degrees.

An institution receiving Provisional Approval may incorporate under Section 125 of Title 8 of the Delaware Corporation Laws with the right to confer a degree. If the

1. Additional materials may be requested from the institution.

institution has previously incorporated without the right to confer a degree, the charter may be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated. Such an institution must seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.

If a Provisionally Approved institution does not receive Full Approval within four years after the first graduating class, the State Board of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the Charter for the institution which refers to the right to confer degrees is no longer valid. It shall be the responsibility of the State Board of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition.

Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the State Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the State Department of Education has a representative on the valuation team, the State Board of Education may accept the Regional Approval in lieu of a separate evaluation.

Provisionally Approved and Fully Approved institutions shall keep the State Board of Education informed of any changes in the facts as presented in their applications.

All expenses incurred by a visiting team, with the exception of personnel from publicly supported educational institutions, at any stage in the approval procedures must be born by the institution requesting approval. If an institution is located outside of the State of Delaware and is incorporating in Delaware, it must also pay the expenses of Delaware representative appointed by the State Board of Education if such a visit is deemed necessary.

#### PROCEDURES

##### ~~POLICY ON PROCEDURES TO BE FOLLOWED IN APPROVING DEGREE-GRANTING AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION<sup>1\*</sup>~~

The following procedures are established by the State Board of Education and are to be followed by any institution seeking approval to incorporate and to grant a degree under *Delaware Code*, Title 8, §125:

---

1. \*Approved by State Board of Education, October 21, 1971. Edited and approved by State Board of Education, June 14, 1972.

1. Authorities of the institution shall make formal request to the State Board of Education through its secretary, the State Superintendent of Public Instruction.

2. The State Board of Education shall acknowledge receipt of the request and authorize the State Superintendent of Public Instruction to assign personnel in the State Department of Education to execute the approval procedures.

3. The Applicant Institution shall complete detailed application questionnaires and submit data as requested.

4. An appropriate committee shall be appointed by the Superintendent of Public Instruction to serve as an evaluation committee to advise the State Board of Education and the Applicant Institution from the time of application through final approval. The committee shall be composed of persons from the State Department of Education, the University of Delaware and other persons with experience in the field of higher education. Careful attention is to be given in the appointment of committee personnel to such specialties as may be required by the particular curricular offering of the institution concerned. The "specialty assignments" will be particularly important in the case of professional schools.

5. Immediately upon receipt and review of the application materials, the committee shall prepare a report to the State Superintendent of Public Instruction with a recommendation to the State Board of Education. This recommendation shall be either to grant the institution status as a Recognized Applicant or to deny recognition. The status of "Recognized Applicant" does not carry authorization to confer degrees.

6. Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on-site visit to the institution in order to verify the contents of the report and evaluate progress to date. A written report of the committee's action is to be sent to the State Superintendent of Public Instruction with recommendation for action by the State Board of Education. The recommendation in this case shall be: (a) to withdraw approval; or (b) to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution; or (c) to grant new status of Provisional Approval, with the right to confer a degree.

7. At a time one or two years following the graduation of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate



specialized accrediting agency, it may be recommended to the State Board of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for Final Approval of the degree-granting authority of the institution.

8. The evaluation committee should be discharged.

9. If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the State Board of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.

10. Any costs incidental to the evaluation and approval of a college, except the salary of personnel from the publicly supported educational institutions in Delaware, shall be the responsibility of the Applicant Institution.

#### PART II

Policy statement regarding non-Delaware institutions of higher education that offer courses, programs of courses, or degrees within the State of Delaware<sup>1\*\*</sup>.

The State Board of Education by statutory mandate has a responsibility to review all petitions or applications from out-of-state institutions wishing to offer credit-bearing courses or degree programs in the State of Delaware. The Board will approve only those offerings that, in the opinion of the Board, meet minimum standards of quality and are financially sound.

#### Section 1 — Petition or Application from Institution

Out-of-state institutions wishing to offer credit-bearing courses, programs of courses, or degree programs in Delaware shall:

1. Make application to the State Board of Education through its secretary at least one academic year before the requested date of implementation.
2. Shall present final application forms with supporting documents to the State Board of Education at least six months prior to the requested date of implementation.

Institutions which are operating or which have made offerings in the State of Delaware at or prior to the time of adoption of this policy by the State Board of Education shall apply for recognition and licensure on or before January 1, 1980 for offerings to be made after June 1, 1980, but prior to June 1, 1981.

The application or request shall contain supportive evidence that the following are met or will be met according

1. <sup>\*\*</sup>Approved by State Board of Education, August 16, 1979.

to the STANDARDS set forth in this document. However, if the institution is accredited in its main campus location by the regional accrediting agency for that region and if that accreditation includes extension, satellite or other off-campus operations, the programs in Delaware will be licensed upon application and payment of the fee.

An accreditation agency designation of "Recognized Applicant" or any other less than full accreditation designation will not be accepted. Even though an institution is regionally accredited, the State Board of Education may at any time require that institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.

All applications, whether accredited or not, must show that:

1. The proposed site or facility is in compliance with Delaware and local ordinances pertaining to fire, health, zoning, safety, etc.
2. Degree programs conform to the minimum standards established by the State Board of Education for similar institutions operating within the State.
3. The Board of Trustees of the out-of-state institution must, by resolution, guarantee to the satisfaction of the State Board of Education that operations in the State of Delaware will be financially solvent.

#### Section 2 — Programs May Be Approved for Periods of One to Five Years

Initially, programs will not be approved for longer than a three-year period. In reference to requests to offer credit-bearing courses, but not a degree program, approval will be for a period of only one year.

#### Section 3 — Continuing Approval

After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Division of Certification and Personnel and usually with the assistance of a consultant(s) from an institution of higher education. This consultant(s) will have expertise in the program or course offered.

#### Section 4 — Obligations To Inform State Board of Education

The institution will be obligated to keep the State Board of Education informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program and/or course.

#### Section 5 — Fees

A license fee of \$100.00 per out-of-state institution will be required for each school year of operation. Program

duration of a shorter period, such as one semester or one quarter, will pay a minimum fee of \$50.00.

#### ~~Section 6 -- Cost of Evaluation~~

~~Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.~~

#### ~~Section 7 -- Published List~~

~~Each year the State Board of Education will publish a list of all programs and courses approved to operate in the State.~~

#### ~~Section 8 -- Agents: Agent Permits -- Application -- Contents -- Fees -- Separate Permits~~

~~Every agent representing an institution as herein defined, located outside the State of Delaware, shall make application for an agent's permit to the Board, in writing, upon forms prepared and furnished by the Board. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by him/her, and shall be accompanied by he recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Board, and there shall be an annual renewal fee determined by the Board. A separate permit shall be obtained for each school represented by an agent.~~

~~1. Each applicant for a permit to serve as an agent shall submit with his application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that he/she will represent. The fees required in this regulation shall be in addition to service fees charged by the Division of Motor Vehicles, Department of Public Safety.~~

~~2. Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.~~

~~3. The discontinuance of the certification of an institution for any cause shall make invalid all agent permits for that institution.~~

~~4. The discharge or resignation of any agent shall be reported immediately to the State Board of Education through its designated officer.~~

~~5. To the extent that any situation warrants the State Board of Education shall be responsible for publicizing the discontinuance of any certificate or permit.~~

~~6. In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.~~

~~7. The Board, upon approval of an application for or renewal of a permit, shall prepare and deliver to each agent a pocket card which, among other things, shall contain the name and address of the agent and of the employing school, and shall certify that the person, whose name appears thereon, is an authorized agent of the institution.~~

~~The pocket card shall be a card designed and issued by the State Department of Education for completion at one of the Inspection Lanes of Division of Motor Vehicles of the Department of Public Safety. The card will include a photo and the signature of the agent, and shall be secured in a laminated jacket card shall be paid by the agent at the Inspection Lane where the photograph will be made and the card completed.~~

#### ~~Section 9 -- Enforcement/Penalties~~

~~Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations.~~

#### ~~PART III~~

~~Policy statement regarding institutions of higher education, located in other states or territories and not offering programs in-state, wishing to incorporate in Delaware-~~

~~Pursuant to Section 125, Title 8 of the *Delaware Code Annotated*, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the State Board of Education for approval prior to incorporation.~~

~~With respect to these requests for incorporation, the State Board of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the State Board of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher~~

education incorporated in Delaware.

## POLICY

### Section 1 -- Criteria for Approval

As a matter of comity, the Delaware State Board of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as *Nationally Recognized Accrediting Associations*, by the Secretary of Education.

### Section 2 -- Authority of Administrator

The Administrator of Programs for Institutions of Higher Education may approve the incorporation of such institutions meeting the criteria described above on behalf of the State Board of Education.

## 398 Granting Institutions of Higher Education

### 1.0 Standards for Approval of Post Secondary Institutions

#### 1.1 Purposes and Objectives

1.1.1 An institution shall present a well-defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement shall include the reasons for the existence of the institution in its particular community. In addition, the purposes shall be reflected in the types of students and sequence of the offerings of the college in general and in specific programs.

1.1.1.1 The specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

#### 1.2 Administrative Organization

1.2.1 The organizational pattern of the institution as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, shall be clearly defined and shall be related to the purposes of the institution.

1.2.2 The institution shall present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and the administrative staff, and the faculty.

1.2.3 The functions and responsibilities of the

board shall be clearly defined in the Bylaws.

1.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members should be other than the salaried administrators of the institution.

1.2.5 There shall be evidence of established channels of communication between the governing board and the administration and faculty.

1.2.6 There shall be evidence that the administrative staff has the necessary time and assistance to enable members to discharge their duties efficiently.

1.2.7 There shall be evidence that the administrative staff is aware of its three major functions: selection, supervision and support of faculty; selection and supervision of the students and operation of the facilities for the benefit of faculty and students.

1.2.8 There shall be definite policies and procedures concerning academic freedom, tenure, retirement, pensions, leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

#### 1.3 Financial Administration

1.3.1 The institution shall demonstrate financial resources adequate for the effective accomplishment of its announced purposes. The income shall be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

1.3.2 The business management shall be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

1.3.3 A continuing institution shall present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

1.3.4 Information shall be available on the annual surplus or deficit at the end of each of the past five fiscal years.

1.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the American Council on Education in the current edition of *College and University Business Administration*.

#### 1.4 Student Personnel Program

1.4.1 An institution shall provide evidence of an adequate student personnel program, including student activities and a counseling service and shall be directed by a

professionally trained person whose responsibilities embrace the general welfare and discipline of the students.

1.4.2 Provision shall be made in the counseling service for testing of students' abilities and interests as aids to student self-understanding, educational planning and career decisions.

1.4.3 Depending on the scope of the institution and whether it is residential or nonresidential in character, the student personnel program shall be concerned with the living arrangements and health needs of students and with the development of a meaningful program of social, recreational and athletic, education and cultural out of class activities.

#### 1.5 Admission Policies and Procedures

1.5.1 The instruction shall have a carefully stated selective admissions policy that is appropriate to the institution's purposes and organization. Admission criteria shall be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution shall operate in compliance with announced admission policies and procedures.

1.5.2 The admissions office shall be adequately staffed to carry out the admissions policies and procedures.

1.5.3 For admission, the institution shall require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test scores or the College Entrance Examination Board scores. The applicant's file should contain a complete transcript of the school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

1.5.4 The institution shall supply evidence such as correlation between admission credentials and freshman grades, academic attrition studies, objective test results and others, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution shall admit students in accordance with its published criteria.

1.5.4.1 The institution may, at their discretion employ more flexible and experimental admissions standards but should document with supporting information the criteria used to judge these students for admission and evaluate these criteria based on experience.

#### 1.6 Faculty

1.6.1 The institution shall have clearly defined criteria for faculty appointment, incentives for retention, and provisions for in-service growth and development.

1.6.2 There shall be a well planned incentive program designed for retention of faculty. Such a program shall include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and

the requirements for promotion.

1.6.3 There shall be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

1.6.4 If faculty members serve as advisors, they shall be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

1.6.5 There shall be evidence that there is a faculty organization to carry out the respective educational responsibilities.

#### 1.7 Program

1.7.1 The number and variety of curricula shall be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution.

1.7.2 Curricula in all fields shall evidence recognition of the relationships between broad education and the acquisition of techniques and skills. Degree requirements for each curriculum shall be clearly stated.

1.7.3 Transfer and career programs in a junior college shall include a block of courses in liberal education.

#### 1.8 Graduation Requirements

1.8.1 For authorization to grant an associate degree, an institution shall require 60 semester hours of academic and pre-professional work or equivalent, give credit only for courses completed with a passing grade of the (D) or its Institutional equivalent and require an average of 2.0 or specify clearly what index is required for graduation.

1.8.2 For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale).

1.8.3 All graduation requirements shall be clearly delineated for any institution.

#### 1.9 Facilities

1.9.1 Administrative and faculty facilities, classrooms, library, laboratories, and student activity centers shall be suitable for their specific purposes, and convenience for advisement and scheduling, and shall promote the highest standards of learning, health and personal welfare.

1.9.2 Beginning institutions and those planning expansion programs shall have well designed plans for appropriate building expansion.

#### 1.10 Library

1.10.1 The institution shall provide library facilities adequate to the effective realization of its stated educational objectives.

1.10.2 The physical facilities shall be conducive to frequent and effective use of the collections.

1.10.3 The accommodations shall allow for seating from one-fourth to one-third of the student body and there shall be space set aside for quiet study and leisure time

reading.

1.10.4 The program shall be administered by a professionally trained library staff adequate in number for the size of the student body.

1.10.5 The collection of volumes shall meet the standards of the American Library Association.

1.10.6 In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements with other Delaware institutions so that the material available will provide adequate support to the courses offered.

#### 1.11 Outcomes

1.11.1 The institution shall describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

1.11.2 Plans for the measurement of outcomes shall include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

#### 1.12 Catalog and Announcements

1.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons and shall include specifically:

1.12.1.1 Identification data, such as volume number, and date of publication.

1.12.1.2 Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

1.12.1.3 A complete calendar for the academic year.

1.12.1.4 A statement of its accredited or approval status.

1.12.1.5 A statement of the origin and objectives of the institution.

1.12.1.6 Admission and graduation policies and requirements.

1.12.1.7 Detailed schedule of all fees and other charges as well as refund policies.

1.12.1.8 Information concerning scholarship funds.

1.12.1.9 Description of location of the institution; buildings, grounds and equipment.

1.12.1.10 List of degrees conferred and requirements for each degree.

1.12.1.11 Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.

1.12.1.12 Number of weeks of instruction per semester and of class meetings per week.

## **2.0 Procedures for Securing Approval**

2.1 Institutions may be granted one of three levels of recognition: Recognized Applicant, Provisional Approval or Full Approval for five years.

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester.

2.1.2 Provisional Approval: Following the on-site visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

2.1.2.1 An institution receiving Provisional Approval may incorporate under 8 **Del. C.** Section 125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated.

2.1.2.2 An institution shall seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.

2.1.2.3 If a Provisionally Approved institution

does not receive full approval within four years after the first graduating class, the Department of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.

2.1.2.4 It shall be the responsibility of the Department of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition.

2.1.2.5 For Final Approval an institution must meet the minimum standards which are found in the following sections of this document. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two or four year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.

2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.

2.1.3.1 Provisionally Approved and Fully Approved institutions shall keep the Department of Education informed of any changes in the facts as presented in their applications.

2.2 All expenses incurred by a visiting team, with the exception of personnel from publicly supported educational institutions, at any stage in the approval procedures shall be borne by the institution requesting approval. If an institution is located outside of the State of Delaware and is incorporating in Delaware, it must also pay the expenses of Delaware representative appointed by the State Department of Education if such a visit is deemed necessary.

2.3 Proposals or descriptions for graduate programs

must be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

### **3.0 Institutions of Higher Education Application for Degree Granting Authority**

3.1 The Applicant Institution shall complete detailed application questionnaires and submit data as requested.

3.2 The Secretary shall appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval.

3.2.1 The committee shall be composed of persons from the Department of Education, the University of Delaware and other persons with experience in the field of higher education and shall recommend to the Secretary of Education that the Institution receive status as a Recognized Applicant or deny recognition. The status of Recognized Applicant does not carry authorization to confer degrees.

3.3 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on-site visit to the institution in order to verify the contents of the report and evaluate progress to date.

3.3.1 A written report of the committee's action shall be sent to the Secretary of Education with a recommendation to withdraw approval, to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution or to grant new status of Provisional Approval, with the right to confer a degree.

3.4 At a time one or two years following the graduation of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate specialized accrediting agency, it may be recommended to the Secretary of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for final approval of the degree-granting authority of the institution.

3.5 If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the Department of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or

why temporary approval should be extended for a longer period of time.

3.6 Any costs incidental to the evaluation and approval of a college, except the salary of personnel from the publicly supported educational institutions in Delaware, shall be the responsibility of the Applicant Institution.

#### **4.0 Procedures for Approval of Non-Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware**

4.1 Out-of-state institutions wishing to offer credit-bearing courses, programs of courses, or degree programs in Delaware shall make application to the Secretary of Education at least one academic year before the requested date of implementation.

4.2 Final application forms with supporting documents shall be presented to the Secretary of Education at least six months prior to the requested date of implementation.

4.3 An accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.

4.4 Even though an institution is regionally accredited, the Department of Education may at any time require the institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.

4.5 The Institution shall prove that the proposed site or facility is in compliance with Delaware and local ordinances pertaining to fire, health, zoning, safety, etc.

4.6 The Institution shall prove that the degree programs conform to the minimum standards established by the Department of Education for similar institutions operating within the State.

4.7 The Institution shall guarantee, by resolution of their Board of Trustees, that their operations in the state of Delaware will be financially solvent.

4.8 Programs shall be approved for periods of one to five years but initially programs shall be approved for up to three years. Credit-bearing courses, but not degree programs shall be approved for only one year.

4.9 After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Department of Education and usually with the assistance of a consultant(s) from an institution of higher education with expertise in the program or course offered.

4.10 The institution shall be obligated to keep the Secretary of Education informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program and/or

course.

4.11 A license fee of \$100.00 per out-of-state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of \$50.00.

4.12 Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

4.13 Each year the Department of Education shall publish a list of all programs and courses approved to operate in the State.

4.14 Every agent representing an institution as herein defined, located outside the state of Delaware, shall make written application for an agent's permit to the Department on forms prepared and furnished by the Department. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by him/her, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Department and there shall be an annual renewal fee determined by the Department. A separate permit shall be obtained for each school represented by an agent.

4.14.1 Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that he/she will represent.

4.14.2 Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

4.14.3 The revocation of the certification of an institution for any cause shall make invalid all agent permits for that institution.

4.14.4 The discharge or resignation of any agent shall be reported immediately to the Department of Education.

4.14.5 To the extent that any situation warrants the Department of Education shall be responsible for publicizing

the discontinuance of any certificate or permit.

4.14.6 In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

4.15 Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations.

### **5.0 Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In-State**

5.1 Pursuant to 8 Del. C. Section 125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the Department of Education for approval prior to incorporation.

5.1.1 With respect to these requests for incorporation, the Department of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the Department of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.

5.1.2 As a matter of comity, the Department of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education.

---

## **DEPARTMENT OF FINANCE**

### **DIVISION OF REVENUE**

Statutory Authority: 29 Delaware Code,  
Section 6081(j) (29 Del.C. 6081(j))

### **TECHNICAL INFORMATION MEMORANDUM**

**2000-6**

**DATE: OCTOBER 17, 2000**

**SUBJECT: FORM 1801AC, APPLICATION AND  
COMPUTATION FOR DELAWARE  
LAND AND HISTORIC RESOURCE  
CONSERVATION CREDIT**

**CONTACT: Ronald A. Kaminski, (302) 577-8445,  
[rkaminski@state.de.us](mailto:rkaminski@state.de.us)**

Public Comment shall run from November 1, 2000 through November 30, 2000 and comments must be received by November 30, 2000. Comments shall be made in writing or electronic mail to Ronald A. Kaminski, whose address appears at the conclusion of this Memorandum.

The purpose of this regulation is to describe the filing requirements for making an Application and computing the Delaware Land and Historic Resource Conservation Credit under the provisions of Chapter 18 of Title 30 of the Delaware Code.

H.B. No. 413 added a new Chapter 18 to Title 30 of the Delaware Code. Beginning with taxable years that commence on or after January 1, 2000, there shall be allowed as a credit against the tax imposed by Chapter 11 and 19 of Title 30 of the Delaware Code, an amount equal to 40% of the fair market value of any land or interest in land located in Delaware which is conveyed for the purpose of open space, natural resource, and/or biodiversity conservation or historic preservation as an unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this Act shall be substantiated by a qualified appraisal prepared by a qualified appraiser as those terms are defined under applicable federal law and regulations governing charitable contributions.

The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000. In addition, in any one tax year, the credit used may not exceed the amount of individual or corporate income tax otherwise due. Any portion of the credit which is unused in any one tax year may be carried over for a maximum of five (5) consecutive years following the tax year in which the credit originated. Any qualified donation made in a tax year for which the Delaware Land and Historic Resource Conservation Tax Credit is claimed by a taxpayer, shall not also be eligible for treatment



# PROPOSED REGULATIONS

in the same tax year as a charitable contribution for state income tax deduction purposes in calculating Delaware income tax liability.

The Department of Natural Resources and Environmental Control, in conjunction with the Department of State, Division of Historical and Cultural Affairs, shall promulgate such rules and regulations as may be deemed necessary to certify eligible projects for treatment in fulfillment of the purposes of this Act. Upon receiving certification, the credit can be claimed and computed on Form 1801AC. Attached is a copy of Form 1801AC that will be used to register the applicant and compute the Delaware Land and Historic Resource Conservation Credit. Form 1801AC must be completed and submitted, along with certification and the qualified appraisal, on or before January 31<sup>st</sup> after the end of the calendar year during which the qualified land was conveyed to a qualified conservation agency.

For more information about these regulations, contact **Ronald A. Kaminski, Business Audit Bureau Manager, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801** or phone **(302) 577-8445**.

Patrick Carter, Acting Director of Revenue

STATE OF DELAWARE FORM 1801AC 0009  
DIVISION OF REVENUE  
820 North French St.  
P.O. Box 8911  
Wilm., DE 19899-8911

## APPLICATION & COMPUTATION SCHEDULE FOR CLAIMING DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS

FORM 1801AC MUST BE COMPLETED AND SUBMITTED ON OR BEFORE JANUARY 31<sup>ST</sup> AFTER THE END OF THE CALENDAR YEAR DURING WHICH THE QUALIFIED LAND WAS CONVEYED TO A QUALIFIED CONSERVATION AGENCY.

### PART A -- NAME AND ADDRESS OF APPLICANT

1. Enter Federal Employer Identification Number or Social Security Number  
Tax Period Ending Date (MM/DD/YY)

Federal Employer Identification Number:

1 --- -- -- -- -- -- -- -- -- -- -- --

Social Security Number:

2 --- -- -- -- -- -- -- -- -- -- -- --

2. Type of Entity  C Corporation  S Corporation

Partnership  Individual/Sole Proprietor  
 Estate/Trust  Decedent Estate

Other Pass-Through Entity: (Enter type of entity)

- 3. Name of Applicant
- 4. Address
- 5. Delaware Address (if different from above)
- 6. Contact Person Telephone Number Fax Number E-mail Address

### PART B - DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDIT COMPUTATION

- 1. Fair Market Value of Qualified Land Conveyed to a Qualified Conservation Agency (Please attach a copy of the formal appraisal) \$ \_\_\_\_\_
- 2. Multiply Line 1 by 40% \$ 40
- 3. Delaware Land & Historic Resource Conservation Tax Credit Before Limitation \$ \_\_\_\_\_
- 4. Maximum Amount of Credit \$ 50,000
- 5. Delaware Land & Historic Resource Conservation Credit. Enter the Smaller of Line 3 or Line 4. \$ \_\_\_\_\_

### STOP: IF THE TYPE OF ENTITY APPLYING FOR THE CREDIT IS:

- C CORPORATION - Enter the amount from Line 5 on Form 700, Delaware Income Tax Credit Schedule, Line 17(a).
- S CORPORATION - Multiply the amount on Line 5 by the percentage of stock owned by each shareholder. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line 17(b).
- PARTNERSHIP - Multiply the amount on Line 5 by the percentage ownership of each partner. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line 17(c).
- INDIVIDUAL & SOLE PROPRIETOR - Enter the amount from Line 5 on Form 700, Delaware Income Tax Credit Schedule, Line 17(d).
- RESIDENT & NONRESIDENT ESTATES & TRUSTS - Multiply the amount from Line 5 by the percentage share of each beneficiary. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line 17(e).
- RESIDENT & NONRESIDENT DECEDENT ESTATES - Enter the amount from Line 5 on Form 700, Delaware Income Tax Credit Schedule, Line 17(f).

THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DIRECTOR WITH RESPECT TO ALL APPLICANTS FOR THE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS SHALL NOT EXCEED \$1,000,000 IN ANY CALENDAR YEAR. IF THE AMOUNT OF DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS FOR WHICH ALL TAXPAYERS APPLIED IN ANY CALENDAR YEAR EXCEEDS \$1,000,000, THEN THE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS TO BE RECEIVED BY EACH APPLICANT SHALL BE THE PRODUCT OF \$1,000,000 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE ELIGIBLE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDIT APPLIED FOR BY THE APPLICANT AND THE DENOMINATOR IS THE TOTAL OF ALL ELIGIBLE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS APPLIED FOR BY ALL APPLICANTS.

---

| NAME | TITLE | DATE |
|------|-------|------|
|------|-------|------|

---

**GENERAL INSTRUCTIONS FOR COMPLETION OF  
FORM 1801AC 0009**

Title 30 of the Delaware Code has been amended to create a new chapter known as: Chapter 18 – Land and Historic Resource Tax Credit. Beginning with taxable years that commence on or after January 1, 2000, there shall be allowed as a credit against the tax imposed by Chapter 11 and 19 of Title 30 of the Delaware Code, as set forth in this title, an amount equal to 40% of the fair market value of any land or interest in land located in Delaware which is conveyed for the purpose of open space, natural resource, and/or biodiversity conservation or historic preservation as an unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this Act shall be substantiated by a “qualified appraisal” prepared by a “qualified appraiser” as those terms are defined under applicable Federal law and regulations governing charitable contributions. To claim the credit, Form 1801AC must be completed and submitted on or before January 31<sup>st</sup> after the end of the calendar year during which the qualified land was conveyed to a qualified conservation agency.

The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000. In addition, in any one tax year the credit used may not exceed the amount of individual or corporate income tax otherwise due. Any portion of the credit which is unused in any one tax year may be carried over for a maximum of five (5) consecutive years following the tax year in which the credit originated.

Any qualified donation made in a tax year for which the Delaware Land and Historic Resource Conservation tax credit is claimed by a taxpayer shall not also be eligible for treatment in the same tax year as a charitable contribution for state income tax deduction purposes in calculating Delaware income tax liability. **Contact Person: Ron Kaminski, (302) 577-8445, rkaminski@state.de.us.**

---

**SPECIFIC INSTRUCTIONS**

- Line 1 Enter the fair the market value of the qualified land conveyed to a qualified conservation agency. Please attach a copy of the formal appraisal of the qualified land. Please identify the qualified conservation agency to who the land is being conveyed.
- Line 2 The percentage of the fair market value of the qualified land to be tax deductible.
- Line 3 Multiply Line 1 by Line 2. This is the Delaware Land and Historic Resource Conservation tax credit before credit limitation.
- Line 4 Maximum amount of credit.
- Line 5 Enter the smaller of Line 3 or Line 4. This is the Delaware Land and Historic Resource Conservation tax credit after credit limitation.

**STOP: IF THE TYPE OF ENTITY APPLYING FOR THE CREDIT IS:**

- C CORPORATION – Enter the amount from Line 5 on Form 700, Delaware Income Tax Credit Schedule, Line 17(a).
- S CORPORATION – Multiply the amount on Line 5 by the percentage of stock owned by each shareholder. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line

- 17(b).
- PARTNERSHIP – Multiply the amount on Line 5 by the percentage ownership of each partner. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line 17(c).
- INDIVIDUAL/SOLE PROPRIETOR: Enter the amount from Line 5 on Form 700, Delaware Business Tax Credit Schedule, Line 17(d).
- RESIDENT & NONRESIDENT ESTATES & TRUSTS – Multiply the amount from Line 5 by the percentage share of each beneficiary. Enter the result on Form 700, Delaware Income Tax Credit Schedule, Line 17(e).
- RESIDENT & NONRESIDENT DECEDENT ESTATES – Enter the amount from Line 5 on Form 700, Delaware Income Tax Credit Schedule, Line 17(f).

---

*THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DIRECTOR WITH RESPECT TO ALL APPLICANTS FOR THE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS SHALL NOT EXCEED \$1,000,000 IN ANY CALENDAR YEAR. IF THE AMOUNT OF DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS FOR WHICH ALL TAXPAYERS APPLIED IN ANY CALENDAR YEAR EXCEEDS \$1,000,000, THEN THE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS TO BE RECEIVED BY EACH APPLICANT SHALL BE THE PRODUCT OF \$1,000,000 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE ELIGIBLE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDIT APPLIED FOR BY THE APPLICANT AND THE DENOMINATOR IS THE TOTAL OF ALL ELIGIBLE DELAWARE LAND & HISTORIC RESOURCE CONSERVATION TAX CREDITS APPLIED FOR BY ALL APPLICANTS.*

**\* PLEASE NOTE: THE ABOVE FORM HAS BEEN REFORMATTED TO FIT THIS PUBLICATION. TO OBTAIN A COPY OF THE FORM CONTACT THE DIVISION OF REVENUE OR THE REGISTRAR’S OFFICE.**

---

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

Statutory Authority: 16 Delaware Code,  
Section 122 (16 Del.C. 122)

The Delaware Health and Social Services, Division of Public Health will hold two public hearings to discuss proposed revisions to the “**State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems.**” The proposed changes will bring these regulations into compliance with US Environmental Protection Agency requirements. These regulations cover operators of all public water supply systems that are regulated under the Safe Drinking Water Act and the “State of Delaware Regulations Governing Public Drinking Water Systems.”

The public hearings will be held November 21, 2000 at 1:00 PM in the conference room at Artesian Water Company, 664 Churchmans Road, Newark, Delaware and

November 22, 2000 at 1:00 PM in Room 5ga, Blue Hen Corporate Center, 655 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
 Blue Hen Corporate Center, Suite 203  
 655 Bay Road  
 Dover, DE 19901  
 Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by November 17, 2000. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 1, 2000 to:

Dave Walton, Hearing Officer  
 Division of Public Health  
 PO Box 637  
 Dover, DE 19903

**SUMMARY OF PROPOSED REGULATIONS**

**STATE OF DELAWARE REGULATIONS FOR THE LICENSING AND REGISTRATION OF OPERATORS OF PUBLIC WATER SUPPLY SYSTEMS**

These regulations replace regulations previously adopted September 2, 1997. They are to be adopted in accordance with 16 Delaware Code, Section 122 (C)(3). They will supercede all previous regulations concerning drinking water operator certification adopted by the Secretary, Delaware Health and Social Services.

The regulations establish and define the conditions for the registration and certification of operators of public water supply systems. In order to meet new requirements established by the US Environmental Protection Agency, the Advisory Council for the Certification of Public Water System Operators has approved the following changes:

1. §2.114 - Definition of a Public Water system has been changed to comply with the new definition adopted in the "State of Delaware Regulations Governing Public Drinking Water Systems" as required by EPA.
2. §6.204 – This change limits the time period for operators to apply for a grandfathered license.
3. §6.205 – Makes the grandfathered license non-transferable. This is to comply with EPA requirements. Failure to make this change will lead to EPA denial of the program and loss of DWSRF money.
4. §7.106 – Requires that an applicant be employed at a water system in Delaware at the time of application. We

have had one instance where someone applied because he thought he might be moving to Delaware. He then used his Delaware license to apply for reciprocity in his home state.

5. §7.302 – Changes the continuing education requirements to specify 20 hours every two years for operators with endorsements and 12 hours every two years for operators with just the base level license. This simplifies the current requirement and is now consistent with what the Advisory Council had in mind.

**REGULATIONS FOR THE LICENSING AND REGISTRATION OF OPERATORS OF PUBLIC WATER SUPPLY SYSTEMS**

ADOPTED SEPTEMBER 2, 1997 BY THE SECRETARY, DELAWARE HEALTH AND SOCIAL SERVICES UNDER AUTHORITY OF 16 Delaware Code Section 122(3)(c), Revised \_\_\_\_\_, 2000

**TABLE OF CONTENTS**

|   |          |
|---|----------|
| SECTION 1-PURPOSE   | Page 1   |
| SECTION 2-DEFINITIONS   | Page 1-3 |
| SECTION 3- ADVISORY COUNCIL FOR CERTIFICATION OF PUBLIC WATER |          |
| SYSTEM OPERATORS  | Page 4-5 |
| 3.200 Membership  | Page 4   |
| 3.300 Responsibility and Authority                            | Page 5   |
| SECTION 4-LICENSE REQUIREMENTS FOR PUBLIC WATER SYSTEMS       | Page 6-8 |
| 4.100 Water Supply Treatment Facilities                       | Page 6   |
| 4.200 Water Supply Treatment Facility Operators               | Page 6   |
| 4.300 Water Supply Distribution Systems                       | Page 6   |
| 4.400 Water Supply Distribution System Operators              | Page 6   |
| 4.500 Combined Treatment/Distribution Supply Systems          | Page 6   |
| 4.600 Notification to Division of Public Health               | Page 7   |
| 4.700 Temporary Variance                                      | Page 7-8 |
| SECTION 5-CLASSIFICATION OF PUBLIC WATER SYSTEMS              | Page 8   |

|  |           |
|--|-----------|
| 5.200 Water Supply Facilities                                | Page 8    |
| SECTION 6-LICENSE CLASSIFICATION AND OPERATOR QUALIFICATIONS | Page 8-10 |
| 6.100 License Classifications                                | Page 8    |
| 6.200 Operator Qualifications                                | Page 9    |
| 6.201 Base Level Water Supply Operator                       | Page 9    |
| 6.202 Water Treatment Operator-in-training (OIT)             | Page 9    |
| 6.203 Circuit Rider  | Page 9    |
| 6.204 Grandfather Clause                                     | Page 9-10 |

|   |            |
|---|------------|
| SECTION 7-LICENSING PROCEDURES                                | Page 10-12 |
| 7.100 Examinations  | Page 10    |
| 7.102 Schedule  | Page 10    |
| 7.103 Applications  | Page 10    |
| 7.104 Application Review and Notification                     | Page 10    |
| 7.105 Fraudulent Applications                                 | Page 10-11 |
| 7.106 Eligibility   | Page 11    |
| 7.107 Appeal of Rejected Applications and Failed Examinations | Page 11    |
| 7.108 Re-Examination  | Page 11    |
| 7.200 Issuance of License                                     | Page 11    |
| 7.300 Renewal of License                                      | Page 11-12 |
| 7.400 Denial of Renewal, Suspension, Revocation of Licenses   | Page 12    |
| 7.500 Fees  | Page 12    |
| 7.600 Reciprocity   | Page 12    |
| SECTION 8-PREEMPTION  | Page 12-13 |
| SECTION 9-SEVERABILITY  | Page 13    |
| SECTION 10 - DISCIPLINARY PROCEDURES                          | Page 13-14 |
| 10.100 Grounds for Discipline                                 | Page 13    |
| 10.200 Disciplinary Procedures                                | Page 13-14 |
| 10.300 Disciplinary Sanctions                                 | Page 14    |

|                           |         |
|---------------------------|---------|
| SECTION 11-PENALTY CLAUSE | Page 14 |
| APPENDIX A                |         |

**\* PLEASE NOTE: THE PAGE NUMBERS IN THE ABOVE TABLE OF CONTENTS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.**

**SECTION 1 - PURPOSE**

1.100 It is the purpose of this regulation to protect the public health and to provide for the development and protection of the potable water supply systems of this State; to provide for the classification of public water systems; to require the licensing of operators of these systems; to provide procedures for such licensing and registration; to create an Advisory Council for Certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of this regulation.

**SECTION 2 - DEFINITIONS**

2.101 **Advisory Council:** Advisory Council for Certification of Public Water System Operators, as established by this regulation.

2.102 **Base Level License:** A water treatment and/or distribution license in which the following information is covered: general water system information; disinfection by hypochlorination; and distribution operation and maintenance for water supply systems having a flow of less than five hundred (500) gpm at twenty (20) psi.

2.103 **Circuit Rider:** A certified water operator who operates and/or is the direct-responsible-charge (DRC) for more than one (1) public water system.

2.104 **Combined Treatment/Distribution System:** Any water supply system which is composed of a water treatment facility as defined in 2.117 together with a water distribution system as defined in 2.113.

2.105 **Continuing Education Unit (CEU):** A measure of professional, educational training, where one (1) CEU is equal to ten (10) hours of classroom and/or laboratory training.

2.106 **Department:** Delaware Health and Social Services.

2.107 **Direct-Responsible-Charge (DRC):** Certified water system operator(s) assigned accountability for performance of active, on-site operational duties.

2.108 **Director:** Director of the Division of Public Health

2.109 **Division:** Division of Public Health.

2.110 **Educational Contact Hour:** The amount of time spent at a water operators or water distribution operators training course, after initial certification, not including travel time or lodging time. For purposes of these

Regulations, the initial base certification course does not qualify as educational contact hours and one (1) hour of time spent in a training course is equal to one (1) educational contact hour.

2.111 **Endorsement:** Any water treatment operation as listed in Section 5.201 which is over and above the base level license as defined in Section 2.102.

2.112 **Operator:** A licensed person who works in a water treatment facility and/or a water distribution system who may be a DRC or may work under a DRC.

2.113 **Person:** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, state commission, Advisory Council, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, or any other legal entity.

2.114 **Public Water System:** A water supply system for the provision to the public of ~~pip~~ed water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes for consumption in more than three dwelling units, or furnishes water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings, including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, camps of all types, day and boarding schools, clubhouses, hospitals and other institutions, or offers any water for sale for potable or domestic purposes. ~~For the purposes of this definition, consecutive water supplies as defined in the State of Delaware Regulations Governing Public Drinking Water Systems are excluded. Public water systems are classified as follows:~~

A. "Community Water System (CWS)" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents;

B. "Non-Transient Non-Community Water System (NTNCWS)" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year;

C. "Non-Community Water System (NCWS)" means a public water system which has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year;

D. "Miscellaneous Public Water System (MPWS)" means a public water system that is neither community, non-community nor non-transient non-community.

2.115 **Secretary, Delaware Health and Social Services:** The Administrator of the Department of Health and Social Services of the State of Delaware.

2.116 **Water Distribution System:** That portion of the water supply system in which water is stored and conveyed from a water treatment plant, groundwater well, or other supply point to the free-flowing outlet of the ultimate consumer.

2.117 **Water Supplier:** Any person who owns, operates, or manages a public water system.

2.118 **Water Supply System:** Includes the work and auxiliaries for collection, treatment, storage, and distribution of water from the source of supply to the free-flowing outlet of the ultimate consumer.

2.119 **Water Treatment:** Any process which is meant to alter the physical, chemical or bacteriological quality of the water.

2.120 **Water Treatment Facility:** That portion of the water supply system which is meant to alter the physical, chemical, or bacteriological quality of the water being treated.

### SECTION 3 - ADVISORY COUNCIL FOR CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS

3.100 An Advisory Council for Certification of Public Water System Operators shall be appointed by the Secretary, Delaware Health and Social Services to advise and assist the Secretary in the administration of this regulation. The Advisory Council shall hold at least quarterly meetings each calendar year and such special meetings as it deems necessary.

3.200 Membership:

3.201 The Advisory Council will consist of a minimum of nine (9) members and with the following representation:

A. one (1) member representing the Division of Public Health who shall serve as Advisory Council Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the Advisory Council.

B. three (3) members representing the general public

C. two (2) representatives from local government agencies with managerial responsibility for water treatment and/or water distribution in a public water system with the following representation:

(1) one (1) member representing a local government agency having a population greater than or equal to 10,001 and;

(2) one (1) member representing a local government agency having a population less than or equal to 10,000

D. one (1) member representing business or industry

E. one (1) member representing a public water utility.

F. one (1) member holding a valid water operator's

license, or who is eligible to be licensed under this regulation.

3.202 Advisory Council members will serve a five (5) year term with the right to resign at their request or until such time as a re-appointment or a replacement appointment is made.

A. Initially one (1) member will be appointed for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and two (2) for a term of five (5) years.

B. The Division representative will serve an unlimited term at the discretion of the Secretary.

3.203 Advisory Council appointees shall represent all counties of the State, with at least one (1) member each from New Castle, Kent and Sussex Counties.

3.204 The Secretary may remove any member of the Advisory Council for misconduct, incapacity, or neglect of duty, and shall be the sole judge of the sufficiency of the case for removal.

3.205 The Secretary shall fill any vacancy. Such an interim appointment shall be for the duration of the term.

#### 3.300 Responsibility and Authority:

3.301 The Advisory Council, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation. These procedures and guidelines shall include but not be limited to the following:

A. procedures for examination of candidates and the granting of licenses;

B. procedures for the renewal of licenses;

C. procedures for the suspension, revocation and failure to renew licenses;

D. guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;

E. guidelines for evaluating equivalency of other licensing and certification programs for the purpose of according reciprocal treatment.

F. procedures for the collection and disbursement of fees.

3.302 The Advisory Council shall possess the necessary authority as delegated by the Secretary to carry out all activities required for the proper administration of this regulation. Such authority includes:

A. the development of rules and regulations, to be adopted by the Secretary, concerning the licensing of operators of public water systems;

B. establishing the method of examination for each license applicant, including preparation, administration, and grading of examinations;

C. the recommendation to the Secretary regarding the issuance and renewal of licenses;

D. the recommendation of disciplinary sanctions to the Secretary on operators who violate Section 10 of this

regulation.

## **SECTION 4 - LICENSE REQUIREMENTS FOR PUBLIC SUPPLY WATER SYSTEMS**

### 4.100 Water Supply Treatment Facilities

Two years following the effective date of this regulation, any public water supply system treatment facility must be under the direct-responsible-charge of a person possessing a valid base level water operator's license, defined in Section 2.102 of these regulations, and all applicable endorsements, if any, for the treatment facility to be operated.

### 4.200 Water Supply Treatment Facility Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible-charge (DRC) and/or operate any public water supply system treatment facility unless said person possesses a valid base level water operator's license and applicable endorsements, if any, for the treatment facility to be operated.

### 4.300 Water Supply Distribution Systems

Two years following the effective date of this regulation, any public water distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

### 4.400 Water Supply Distribution System Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible charge (DRC) and/or operate any public water supply distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), unless said person possesses a valid base level water operator's license and, at a minimum, a distribution endorsement.

### 4.500 Combined Treatment/Distribution Supply Systems

4.501 The license requirements stipulated in 4.100 and 4.300 apply separately and equally to both the water supply treatment facility operator and the water supply distribution facility operator of a combined treatment/distribution supply system.

4.502 Any water supply treatment facility which is part of a combined public water treatment/distribution system must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and all applicable endorsements, as defined by the Division, if any, for the treatment facility to be operated.

4.503 Any water supply distribution system which is part of a combined public water treatment/distribution system and is capable of producing greater than five hundred (500) gpm at twenty (20) psi must be under the direct-

responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.504 The requirement of a distribution endorsement as stated in Section 4.503 may be waived if the owner can demonstrate to the Division that all distribution system operation and maintenance is contracted out to another licensed operator.

#### 4.600 Notification to Division of Public Health

Within twenty-six (26) months of the effective date of this regulation, any owner of a public water supply system treatment facility, distribution system, or combined treatment/distribution system must provide to the Division a list of all persons in direct-responsible-charge and all operators who have been duly licensed under these regulations. Further, the owner must notify the Division in writing of any additions, deletions, or other change in the number of licensed direct-responsible-charges or operators within thirty (30) days of such change.

#### 4.700 Temporary Variance

4.701 A temporary variance from the license requirements provided in Sections 4.100, 4.300 and 4.500 of this regulation may be granted by the Secretary, upon recommendation by the Advisory Council, to the owner of a public water system treatment facility, distribution system, or combined treatment/distribution system, when it is demonstrated to the satisfaction of the Advisory Council that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such temporary variance may be issued with any special conditions or requirements deemed necessary to assure the protection of the public health.

4.702 Notification of the unexpected loss of a licensed operator must be sent to the Advisory Council by the owner within thirty (30) days pursuant to 4.600 of this regulation. Application for a temporary variance must be made to the Advisory Council on forms provided by the Advisory Council no later than thirty (30) days following such initial notification. After thorough review of the application and any other information required by the Advisory Council as being pertinent to the issuance of a temporary variance, the Advisory Council shall make a recommendation to the Secretary. The Secretary ~~notify~~ notifies the applicant in writing of his/her decision to approve or deny the temporary variance.

4.703 A temporary variance shall be valid only for that facility or system for which issued, and for a period of time as specified by the Secretary, but which shall not exceed six (6) months.

#### 4.704 Extension of Temporary Variance

When it is demonstrated to the satisfaction of the Secretary that the owner holding a temporary variance has continued to act in good faith in attempting to hire a licensed operator but is unable to do so, one (1) extension of the

original variance may be granted at the discretion of the Secretary, upon recommendation by the Advisory Council, for a period of time not to exceed six (6) months. Requests for an extension of a temporary variance must be made to the Advisory Council in writing no later than one (1) month prior to the expiration date of the original variance.

## SECTION 5 - CLASSIFICATION OF PUBLIC WATER SYSTEMS

5.100 The Division of Public Health shall classify all public water systems in accordance with the criteria hereby established.

### 5.200 Water Supply Facilities

5.201 Public water system supply facilities shall be classified according to the treatment process(es) it operates. General treatment processes shall be grouped into categories hereby called endorsements. Within each endorsement shall be specific unit processes, hereby called endorsement sub-categories, see appendix A for a list of these sub-categories. The Division will specify which endorsements and endorsement sub-categories a public water system needs based upon the most recent sanitary survey conducted by the Division. The list of endorsements ~~are~~ is as follows:

- A. Disinfection
- B. Chemical Feed
- C. Filtration
- D. Surface Water Operations
- E. Other Specified Treatment
- F. Distribution

5.202 The Advisory Council shall amend Appendix A as is necessitated by the creation of new treatment technologies.

5.203 In the event of an emergency, such as source water contamination, in which a treatment process is required to protect the public's immediate health and which the DRC and/or operator is currently not licensed for, an emergency endorsement may be added to the DRC's and/or operator's license provided that prior approval, by the Division, is granted. This emergency endorsement shall be issued for a period not to exceed one (1) year, without the express written consent of the Secretary.

## SECTION 6 - LICENSE CLASSIFICATION AND OPERATOR QUALIFICATIONS

### 6.100 License Classification

6.101 One (1) regular water supply operator license class is hereby established:

Base Level Water Supply Operator with all applicable endorsements as stated in Section 5.201.

6.102 Three (3) specialty class licenses are also established:

- A. Water Supply Operator-in-Training (OIT)
- B. Circuit Rider
- C. Grandfather Clause

**6.200 Operator Qualifications****6.201 Base Level Water Supply Operator**

A. High School Diploma or equivalent and one (1) year of acceptable operating experience, or;

B. Three (3) years of acceptable operating experience, and;

C. Successful completion of the base level written examination;

**6.202 Water Treatment Operator-In-Training (OIT)**

An operator who lacks either the education or experience requirements for a base level license may, with the approval of the Secretary, upon recommendation by the Advisory Council, and after successful completion of the base level written examination, receive an interim Operator-in-Training (OIT) license, for a maximum of three (3) years, pending fulfillment of the regular license requirements.

**6.203 Circuit Rider**

To be classified as a circuit rider, an operator must be able to meet the following criteria:

A. Must be certified for all endorsements required for the water systems for which he/she is in direct-responsible-charge and/or operates.

B. Spend a recommended number of three (3) visits each week at each water system ~~which that~~ he/she is in direct-responsible-charge. This number may be adjusted by the Advisory Council based upon a yearly review.

1. The number of visits spent each week at each water system must be documented on forms, provided by the Division, and submitted upon request.

C. The distances between each water system shall be such that, in the event of an emergency, the circuit rider will be able to reach the water system within two (2) hours of first being notified of the emergency.

**6.204 Grandfather Clause:** A valid, base level license and any applicable endorsements shall be issued by the Secretary, upon recommendation by the Advisory Council, to the individual(s) certified by the governing body or owner of a public water system to have been in responsible charge and/or operated a water facility on the effective date of this regulation, under the following criteria:

the individual(s) can provide documentation to the Advisory Council attesting to the fact they have been in a position of Direct-Responsible-Charge and/or operated a water facility for at least five (5) years prior to the adoption date of these Regulations; and

any application for a license pursuant to this section must be submitted on or before January 1, 2001.

~~6.205 A license and endorsement(s) granted under Section 6.204 of these Regulations shall not be transferable to another water system, provided that the endorsement(s) necessary to operate the new water system are the same as the endorsement(s) for the water system in which the grandfathered license was originally issued.~~

**SECTION 7 - LICENSING PROCEDURES****7.100 Examinations**

7.101 The Advisory Council or its authorized designee ~~shall~~ may enter into a contract with third party to prepare, administer and grade written examinations required for each category and classification of license. A minimum score of seventy percent (70%) shall be required to pass the examination. Examinations are confidential and remain the property of the Advisory Council. Due to unusual and extenuating circumstances, the Advisory Council may waive the requirements for the written examination, in which case an oral recorded examination shall be conducted and retained by the Advisory Council.

**7.102 Schedule**

Examinations shall be held at places and times designated by the Advisory Council, and shall be held at least semiannually. Advance public announcement shall be made by the Advisory Council at least two (2) months prior to the scheduled examination date.

**7.103 Applications**

Candidates wishing to take any license examination must submit an application to the Advisory Council at least thirty (30) days prior to the announced date of the examination on forms provided by the Advisory Council. No application form shall require a picture of the applicant, require information relating to citizenship, place of birth, or length of State residency, nor shall it require personal references

**7.104 Application Review and Notification**

The Advisory Council shall review all applications submitted and determine the eligibility of each candidate to sit for the particular examination applied for. Each candidate approved for examination shall be notified in writing by the Advisory Council of the time and place of the next examination for which the candidate is eligible. Such notification shall be given at least two (2) weeks prior to the examination date.

**7.105 Fraudulent Applications**

Where the Council has found to its satisfaction that an application has been fraudulent, or that false information has been intentionally supplied, it shall report its finding to the Attorney General for further action.

**7.106 Eligibility**

Approved applications for examination shall remain valid for one (1) year. Any approved candidate who fails to appear for an examination during the one (1) year period following the first notification of eligibility must submit a new application for examination to the Advisory Council. Applicants must be employed by and working at a water system in Delaware at the time of application.

**7.107 Appeal of Rejected Applications and Failed Examinations**

Where the application of a person has been refused or rejected, the applicant may appeal in writing, via certified



mail, to the Secretary within thirty (30) days. Any applicant who failed the examination has the right to appeal before the Advisory Council.

#### 7.108 Re-Examination

Any candidate who fails to pass an examination may apply for re-examination upon subsequent scheduled examination dates. Candidates are permitted to sit for the same examination two (2) times per year. If both examinations are failed, the candidate must wait one (1) year prior to re-examination.

#### 7.200 Issuance of License

On satisfactory fulfillment of the requirements provided in this regulation, the candidate shall be issued a suitable license by the Secretary, upon recommendation by the Advisory Council. The license shall indicate all endorsements for which the operator is qualified and the date of issuance.

#### 7.300 Renewal of License

7.301 Licenses shall be renewed every two (2) years unless suspended, revoked for cause, or invalidated under 7.400. The deadline renewal date shall be the month and day of the original license issuance. Application for renewal must be submitted to the Advisory Council on forms provided by the Advisory Council at least sixty (60) days prior to the deadline renewal date.

7.302 In addition to Section 7.301, all operators, including grandfathered operators, must receive an additional amount of training, as approved by the Advisory Council, every two (2) years in order to renew their licenses, as shown below.

A. ~~Twelve (12)~~ Twenty (20) educational contact hours ~~and one and one half (1.5) CEUs~~ every two (2) years; for operators who have endorsements on their licenses, systems whose distribution system is capable of producing a flow of greater than 500 gpm at 20 psi.

B. Twelve (12) educational contact hours every two (2) years; for operators with a base level license, systems whose distribution system is not capable of producing a flow of greater than 500 gpm at 20 psi.

7.303 Any license ~~which that~~ has not been renewed in accordance with 7.301 and 7.302 shall be automatically invalidated. Such expired license may be revalidated without examination upon payment of the appropriate fee within one (1) year from the expiration date. Licenses not reinstated within one (1) year shall submit a new application to the Advisory Council and may be required to sit for the appropriate written examination.

#### 7.400 Denial of Renewal, Suspension, or Revocation of Licenses and Placement on Probation

The Secretary may suspend or revoke the license of an operator, after considering the recommendations of the Advisory Council, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in

the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. Said recommendations to the Secretary by the Advisory Council shall be made upon the Advisory Council conducting a hearing in accordance with provisions established under these regulations. Examples of actions which may result in denial of renewal, suspension or revocation of a license or placement on probation include, but are not limited to; failure to notify the Division of chemical overfeeds and other emergencies, failure to respond to an emergency, etc..

#### 7.500 Fees

7.501 The fee schedule as authorized by 16 Delaware Code Section 122(3)(c) and set forth below shall take effect on the effective date of this regulation.

A. Application for Initial Annual License .... \$50.00

B. Application for Renewal of Annual License... \$50.00

7.502 All application fees are payable upon application. ~~All fees are non-refundable.~~

#### 7.600 Reciprocity

A license of comparable classification may be issued without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country, if in the judgment of the Secretary, the requirements under which the certification or license was issued do not conflict with the provisions of this regulation or any rules promulgated hereunder, and are of a standard not lower than that specified by this regulation.

### SECTION 8 - PREEMPTION

8.100 The provisions of these regulations preempt existing regulations of this State insofar as they relate to or conflict with the provisions of this regulation.

### SECTION 9 - SEVERABILITY

9.100 Each Section of this regulation and every part of each Section is an independent Section and part of a Section, and the holding of any Section or part thereof to be unconstitutional, void, or invalid for any cause does not affect the validity or constitutionality of any other Section or part thereof which shall continue valid and effective.

### SECTION 10 - DISCIPLINARY PROCEDURES

#### 10.100 Grounds for Discipline

The conditions and actions of an applicant or licensed operator which may result in disciplinary action as set forth in 10.300 of this Section includes, but is not limited to, the following list. If after following the Disciplinary Procedures as stated in Section 10.200, the Council finds that, after conducting an investigation and hearing an applicant or licensed operator:

A. Has acted fraudulently or with material deception in order to be certified; or

B. Has engaged in illegal, incompetent or negligent conduct in the provision of water system operation; or

C. Has as an operator or otherwise, in the practice of his or her profession, knowingly engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

D. Has violated a lawful provision of this Section or any lawful rule or regulation established here under.

**10.200 Disciplinary Procedures**

10.201 Notice of Violation: Whenever the Director has reason to believe that a violation of any of these Regulations has occurred or is occurring, the Director shall notify the alleged violator and the Secretary. Such notice shall be in writing, may be sent by Certified Mail, or hand delivered, shall cite the Regulation or Regulations that are allegedly being violated, and shall state the facts which form the basis for believing that the violation has occurred or is occurring.

10.202 Investigation: Whenever the Director issues a Notice of Violation, an investigation shall be conducted to determine if the alleged violations have occurred or are occurring. One member of the Advisory Council shall act as the investigator and shall report the findings of the investigation to the Advisory Council. Upon review of all the facts concerning the alleged violation(s), the Advisory Council will vote on recommended disciplinary sanction(s), as listed in Section 10.300. The investigative member of the Advisory Council will not vote on the recommended disciplinary actions. The Advisory Council shall report to the Secretary and the Director with the findings of fact and recommendations for disciplinary action.

10.203 Hearing Request: Any operator who has received a Notice of Violation may submit a request for a hearing to the Director within 30 days via certified mail. A hearing will be held within 180 days.

**10.300 Disciplinary Sanctions**

Persons regulated under this Section who have been determined to be in violation of this Section may be subject to the following disciplinary actions:

- A. Issuance of a letter of reprimand
- B. Placement on probationary status
- C. Imposition of a fine not to exceed \$1,000 for each offense
- D. Suspension of License
- E. Revocation of License

**SECTION 11 - PENALTY CLAUSE**

11.100 Any person who neglects or fails to comply with this regulation shall be subject to penalty as provided in 16 Delaware Code 107.

**APPENDIX A**

Listed below are the general endorsement categories.

Under each general category is a list of the endorsement sub-categories (unit processes) associated with each general category.

- A. Disinfection
  - 1. Hypochlorination (Calcium or Sodium), powder or liquid
  - 2. Gas Chlorination
  - 3. Ozonation
  - 4. Bromination
  - 5. Iodine
  - 6. Chloramines
  - 7. Chlorine Dioxide
  - 8. Ultraviolet Light
- B. Chemical Feed
  - 1. Lime - Soda Ash Addition
  - 2. pH Adjustment
  - 3. Inhibitor bimetallic phosphate, hexametaphosphate, orthophosphate, polyphosphate
  - 4. Sequestering
  - 5. Permanganate
  - 6. Peroxide
  - 7. Fluoridation
- C. Filtration
  - 1. Activated Carbon, powder or granulated
  - 2. Sand - Pressure, Rapid, Slow
  - 3. Reverse Osmosis
  - 4. Greensand
  - 5. Activated Alumina
  - 6. Ion Exchange
  - 7. Cartridge
  - 8. ~~Diatomaceous~~ Diatomaceous Earth
  - 9. Ultrafiltration
  - 10. Microfiltration
- D. Surface Water Operations
  - 1. Algae Control
  - 2. Coagulation
  - 3. Flocculation
  - 4. Rapid Mix
  - 5. Sedimentation
  - 6. Sludge Treatment
- E. Other Specified Treatment
  - 1. Aeration - Cascade, Diffused, Packed Tower, Slat Tray or Spray
  - 2. Dechlorination - using reducing agents, sodium bisulfate, sodium sulfide, or sulfur dioxide
  - 3. Distillation
  - 4. Bone Char
  - 5. Electrodialysis
- F. Distribution
  - 1. Flow less than 500 gpm at 20 psi
  - 2. Flow greater than 500 gpm at 20 psi

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its policy regarding the Delaware Prescription Assistance Program (DPAP).

#### SUMMARY OF INFORMATION SUBMITTED:

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July, 2000 Delaware Register of Regulations (4 DE Reg. 95 (7/1/00)) requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2000. Several comments were received on the proposed regulations. As such, the Delaware Prescription Assistance Program policy has been amended to clarify the budgeting methodology to comply with the language in the statute and to clarify that a fair hearing will be held in accordance with the principles of due process, subject to the provisions in policy at DSSM 5000 - 5607. Due to these significant changes, the regulation is being re-published.

#### 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, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 2000.

### DELAWARE PRESCRIPTION ASSISTANCE PROGRAM

- 30000 Delaware Prescription Assistance Program
- 30100 Definitions
- 30200 General Application Information
- 30201 Disposition of Applications
- 30202 Timely Determination of Eligibility
- 30203 Reporting Changes in Circumstances
- 30300 Technical Eligibility
- 30301 Citizenship and Alienage
- 30302 State Residency
- 30303 Social Security Number

- 30304 Aged or Disabled Requirement
- 30305 No Other Prescription Drug Coverage
- 30305.1 Exceptions to No Other Prescription Drug Coverage
- 30306 Inmate of a Public Institution
- 30400 Financial Eligibility
- 30401 Countable Income
- 30402 Excluded Income
- 30403 Eligibility Determination
- 30404 Effective Date of Coverage
- 30405 Redetermination of Eligibility
- 30500 Benefits
- 30501 Limitations on Benefits
- 30502 Co-payment Requirement
- 30503 Waiver of Co-payment for Good Cause
- 30600 Confidentiality
- 30601 Release of Information to DPAP Providers
- 30602 Release of Information to Others
- 30700 Fair Hearings

### 30000 DELAWARE PRESCRIPTION ASSISTANCE PROGRAM

The 140<sup>th</sup> General Assembly amended Title 16, Delaware Code, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs to low-income senior and disabled individuals who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is implemented January 1, 2000, with benefits beginning January 14, 2000.

#### 30100 Definitions

Contractor: the agent who is under contract with the State to administer the DPAP.

Department: the Department of Health and Social Services or DHSS

Division: the Division of Social Services or DSS

#### 30200 General Application Information

The application for DPAP must be made in writing on the prescribed DSS form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with his knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DSS office.

DPAP will consider an application without regard to

race, color, age, sex, disability, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

### **30201 Disposition of Applications**

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

- a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming his decision;
- b) there is a supporting entry in the case record that the applicant has died; or
- c) there is a supporting entry in the case record that the applicant cannot be located.
- d) Certain factors of eligibility must be verified. If all information requested is not received, the Contractor cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility.

All applicants will receive a notice of acceptance or denial.

### **30202 Timely Determination of Eligibility**

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

### **30203 Reporting Changes in Circumstances**

At time of application and redetermination, each individual household must be informed that he is responsible for notifying the Contractor of all changes in his circumstances, which could potentially affect his eligibility for DPAP.

### **30300 Technical Eligibility**

The following requirements are factors of eligibility specific to DPAP.

### **30301 Citizenship and Alienage**

The individual must be a U.S. citizen or a lawfully admitted alien.

### **30302 State Residency**

The individual must be living in the State of Delaware.

### **30303 Social Security Number**

Each individual applying for DPAP must furnish his or her Social Security number.

### **30304 Aged or Disabled Requirement**

The individual must meet one of the following requirements:

- a) be age 65 or over, or
- b) be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

### **30305 No Other Prescription Drug Coverage**

The individual must not have or be ineligible for, prescription drug benefits or coverage through federal, state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or be ineligible for:

- a) Medicaid prescription benefits
- b) prescription drug benefits through a Medicare supplemental policy
- c) prescription drug benefits through a third party payer
- d) the Nemours Health Clinic Pharmaceutical benefit as defined on 1/1/99

### **30305.1 Exceptions to No Other Prescription Drug Coverage**

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

- a) individuals eligible for Medicaid as Family Planning Only
- b) individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs
- c) individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)
- d) individuals eligible for drug coverage through the

Division of Vocational Rehabilitation

e) individuals eligible for drug coverage through the Division of Alcoholism, Drug Abuse, and Mental Health.

**30306 Inmate of a Public Institution**

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

**30400 Financial Eligibility**

Income is any type of money payment that is of gain or benefit to a family—an individual. Income is either counted or excluded for the eligibility determination.

**30401 Countable Income**

Countable income includes but is not limited to:

1. Social Security benefits – as paid after deduction for Medicare premium
2. Pension – as paid
3. Veterans Administration Pension – as paid
4. U.S. Railroad Retirement Benefits – as paid
5. Wages – net amount after deductions for taxes and FICA
6. Senior Community Service Employment – net amount after deductions for taxes and FICA
7. Interest/Dividends – gross amount
8. Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
9. Credit Life or Credit Disability Insurance Payments – as paid
10. Alimony – as paid
11. Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
12. Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
13. Self Employment – countable income as reported to Internal Revenue Service (IRS)
14. Unemployment Compensation - as paid

**30402 Excluded Income**

Excluded income includes but is not limited to:

1. Annuity payments
2. Individual Retirement Account (IRA) distributions
3. Payments from reverse mortgages
4. Capital gains from the sale of principal place of residence
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit)

6. Income tax refunds

7. Earned Income Tax Credit (EITC)

8. Vendor payments (bills paid directly to a third party on behalf of the individual)

9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

10. Loan payments received by individual

11. Proceeds of a loan

12. Foster care payments made on behalf of foster children living in the home

13. Retired Senior Volunteer Program (RSVP)

14. Veterans Administration Aid and Attendance payments

15. Victim Compensation payments

16. German reparation payments

17. Agent Orange settlement payments

18. Radiation Exposure Compensation Trust Fund payments

19. Japanese-American, Japanese-Canadian, and Aleutian restitution payments

20. Payments from long term care insurance or for inpatient care paid directly to the individual

**30403 Eligibility Determination**

To be eligible for DPAP:

(a) the individual must have countable income that is less than 200% of the Federal Poverty Level, or

(b) the individual has countable income that is equal to or greater than 200% of the Federal Poverty Level and the individual has prescription drug expenses that exceed 40% of his countable income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standard based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued.

**30404 Effective Date of Coverage**

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

**30405 Redetermination of Eligibility**

A redetermination of eligibility must be completed by July of each year. If an individual's initial coverage begins in April, May, or June, a redetermination will not be required until July of the following year.

**30500 Benefits**

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide

manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

**30501 Limitations on Benefits**

Payment assistance to each eligible individual shall not exceed \$2,500.00 per State fiscal year. Individuals will receive a notice when 75% of the \$2,500.00 cap has been expended.

**30502 Co-payment Requirement**

There is a co-payment of \$5.00 or 25% of the cost of the prescription whichever is greater. The pharmacy will not dispense or provide the prescription until the co-payment is collected.

**30503 Waiver of Co-payment for Good Cause**

At the written request of the individual, the co-pay requirement may be waived for good cause.

Good cause for waiver of the co-payment is:

The individual has experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of the individual or his immediate family.

The written request must explain the circumstances that led to the request. Verification of the circumstances is required in the form of collateral evidence that may include, but is not limited to, repair bills and police or insurance reports. The DPAP will provide written notification to the individual regarding the good cause decision. If good cause is granted, the co-payments will be waived for the remainder of the fiscal year.

**30600 Confidentiality**

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;

2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

**30601 Release of Information to DPAP Providers**

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

- a. a DPAP identification number, or
  - b. two of the following identifying factors: individual's full name, date of birth, Social Security number;
- AND
- c. the date of service.

Providers who supply the above identifying factors may be given the following information:

- a. correct spelling of the recipient's name;
  - b. DPAP number;
  - c. date of birth;
  - d. an indication whether the individual is eligible for the date of service given or for a range of dates given.
- Providers may not be given all periods of eligibility.

**30602 Release of Information to Others**

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information concerning applicants and recipients with:

- a. DHSS employees;
- b. Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD);
- c. contracted service providers

Information may be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

**30700 Fair Hearings**

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM 5000 - 5607.

## DEPARTMENT OF LABOR

### OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 29 Delaware Code,  
Section 8503(7) (29 Del.C. §8503(7))

Pursuant to the authority granted to the Department of Labor under 29 Del.C. 8503(7), the Department is proposing an amendment to regulations under 29 Del.C. 6960, "Prevailing Wage Requirements".

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Wednesday, November 29, 2000  
Department of Labor  
4425 North Market Street  
Wilmington, Delaware 19802  
Third Floor, Industrial Affairs Conference Room,  
Room 203

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8209.

### III. CONCEPTS AND DEFINITIONS

This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

A. Activity Covered. 29 Del.C. §6960 applies to every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting or decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

**See 1 DE Reg. 519 (11/1/97)**

B. "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting,

excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

C. Laborers and Mechanics. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "laborers" and "mechanics" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

- Asbestos Workers
- Boilermakers
- Bricklayers
- Carpenters
- Cement Finishers
- Electricians
- Elevator Constructors
- Glaziers
- Iron Workers
- Laborers
- Millwrights
- Painters
- Plasterers
- Plumbers/Pipefitters/Steamfitters
- Power Equipment Operators
- Roofers
- Sheet Metal Workers
- Soft Floor Layers
- Sprinkler Fitters
- Terrazzo/Marble/Tile Setters
- Terrazzo/Marble/Tile Finishers
- Truck Drivers

~~Definitions for each classification are contained in a separate document entitled "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers performing tasks not listed in the Department's definitions (but performed by mechanics and laborers on public projects) shall be classified by the Department. The Department will utilize the U.S. Department of Labor's~~

~~Dictionary of Occupational Titles (Fourth Edition, Revised 1991) to determine the correct classifications of workers, as those definitions relate to the classifications recognized by the Department. In cases of conflicts or voids in the Dictionary of Occupational Titles, the Department may utilize additional sources including, but not limited to, the U.S. Department of Labor, employer organizations, employee organizations, or other government agencies involved in classifying workers. Classification determinations shall be recorded by the Department as they are made and shall be published annually. Definitions for each classification are contained in a separate document entitled, "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers shall be classified by the Department of Labor with the advice of the Prevailing Wage Advisory Council members. Classification determinations shall be recorded by the Department as they are made and shall be published annually.~~

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

D. Apprentices and Supportive Service Program Trainees.

1. Definitions. As used in this section:

a. The term "apprentice" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with the Delaware Department of Labor.

b. The term "apprenticeship agreement" means a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee which contains the terms and conditions of the employment and training of the apprentice.

c. The term "apprenticeship program" means a complete plan of terms and conditions for the employment and training of apprentices.

d. The term "Joint apprenticeship committee" means a local committee equally representative of employers and employees which has been established by a group of employers with a bona fide bargaining agent or agents to direct the training of apprentices with whom it has made agreements.

e. The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service Program" mandated by the Federal Highway Administration for federally aided state highway projects.

f. The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor,

Employment and Training Administration.

2. Employment of Apprentices and SSP Trainees on State Projects.

a. Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of \$100,000 for new construction or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

b. The mechanic's rate on all such State contracts is that rate determined by the Department of Labor. The percentage of the mechanic's rate that the registered apprentice or SSP Trainee receives will be the percentage that the apprentice or trainee qualifies for under the terms of the individual's formal Apprenticeship/Trainee agreement.

c. Any person employed at an apprentice or trainee wage rate who is not registered as above, shall be paid the wage rate determined by the Department of Labor for the classification of work (s)he actually performed.

d. The ratio of apprentices to mechanics on the site of any work covered by 29 Del.C. §6960 in any craft classification may not be greater than the ratio permitted to the contractor for the entire workforce under the registered apprenticeship program. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the wage rate that the applicable wage determination specifies for the work (s)he actually performs. Entitlement to mechanic's wages shall be based upon seniority in the apprenticeship program or (in the case of equal seniority) seniority on the job site.

**See 1 DE Reg. 519 (11/1/97)**

3. Records.

a. Every employer who employs an apprentice or SSP trainee under this part must keep the records required by Title 19, Delaware Code, Chapters 9 and 11, including designation of apprentices or trainees on the payroll. In addition, every employer who employs apprentices or SSP trainees shall preserve the agreements under which the individuals were employed.

b. Every joint apprenticeship committee or SSP Program sponsor shall keep a record of the cumulative amount of work experience gained by the apprentice or trainee.

c. Every joint apprenticeship committee shall keep a list of the employers to whom the apprentice was assigned and the period of time (s)he worked for each. Every SSP Program sponsor shall keep a list of the projects to which the trainee was assigned and the period of time (s)he worked on each.

d. The records required by paragraphs (a), (b), and (c) of this section shall be maintained and preserved for at least three (3) years from the termination of the apprenticeship or training period. Such records shall be kept safe and accessible at the place or places of employment or



at a central location where such records are customarily maintained. All records shall be available at any time for inspection and copying by the Department of Labor.

E. Working Foremen. 29 Del.C. §6960 does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent and data will be collected for the hours spent as laborers or mechanics.

**See 1 DE Reg. 519 (11/1/97)**

F. Helpers. Helper classifications are not recognized by the Department of Labor. All laborers and mechanics are to be paid the appropriate wage rate for the classification of work actually performed, without regard to skill.

G. Construction Projects. In the wage determination process, the term "project" refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in the purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project.

1. Character Similar. 29 Del.C. §6960 requires the predetermination of wage rates which are prevailing on projects of a "character similar to the construction work." As a general rule, the Department identifies projects by end use type and classifies them into three major categories:

**See 1 DE Reg. 519 (11/1/97)**

a. Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings;

Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

b. Heavy Construction. Heavy projects are those that are not properly classified as either "building" or "highway". Unlike these classifications, heavy construction is not a homogeneous classification. Examples of Heavy construction: Antenna towers; Bridges (major bridges designed for commercial navigation); Breakwaters; Caissons (other than building or highway); Canals; Channels; Channel cut-offs; Chemical complexes or facilities (other than buildings); Cofferdams; Coke ovens; Dams; Demolition (not incidental to construction); Dikes; Docks; Drainage projects; Dredging projects; Electrification projects (outdoor); Flood control projects; Industrial incinerators (other than building); Irrigation projects; Jetties; Kilns; Land drainage (not incidental to other construction); Land leveling (not incidental to other construction); Land reclamation; Levees; Locks, Waterways; oil refineries; Pipe lines; Ponds; Pumping stations (pre-fabricated drop-in units); Railroad construction; Reservoirs; Revetments; Sewage collection and disposal lines; Sewers (sanitary, storm, etc.); Shoreline maintenance; Ski tows; Storage tanks; swimming pools (outdoor); Subways (other than buildings); Tipples; Tunnels; Unsheltered piers and wharves; Viaducts (other than highway); Water mains; Waterway construction; Water supply lines (not incidental to building); Water and sewage treatment plants (other than buildings); Wells.

c. Highway Construction. Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

d. Multiple Categories. In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

2. Site of Work. A basic characteristic of the construction industry is the continual shift in the site of employment. 29 Del.C. §6960 provides that prevailing wages are to be paid to "...all mechanics and laborers employed directly upon the site of the work ..." (emphasis added). The site of the work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

**See 1 DE Reg. 519 (11/1/97)**

H. Prevailing Wage Rates. Every contract and the specifications for every contract to which section 6960 applies are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Department of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the county in which the work is to be performed, as reported in the Department's annual prevailing wage survey.

**See 1 DE Reg. 519 (11/1/97)**

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department's annual prevailing wage survey or, in the absence of a majority, the weighted average wage paid to all employees reported.

I. Wages. The term "wages" means the basic hourly rate of pay plus fringe benefits as defined below.

J. Fringe Benefits. Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits.

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits.

The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

K. Peak Week. In determining prevailing wages, the Department utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects for each classification, the payroll period during which the greatest number of workers in each classification are used on a project. The survey solicits the number of employees and wages paid at each given rate during the peak week. The contractor or reporting organization selects the week (between July 1 to December 31 of the previous year) during which the greatest number of each classification of laborers and mechanics was working. Peak weeks may be different for each classification of worker.

L. Wage Determinations. A "wage determination" is the listing of wages (including fringe benefits) for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given county and type of construction. Wage determinations are issued annually.

M. Maintenance Work. To "maintain" means to preserve or keep in an existing state or condition to prevent a decline, lapse, or cessation from that state or condition. Wages paid to workers performing maintenance work shall not be used in determining prevailing wage rates.

N. Area. The term "area" in determining wage rates under 29 Del.C. §6960 shall mean the county of the State in which the work is to be performed. The term "area" in determining classifications of workers under 29 Del.C. §6960 shall mean the State of Delaware.

**See 1 DE Reg. 519 (11/1/97)**

O. Secretary. "Secretary" means the Secretary of Labor for the State of Delaware.

P. Administrator. "Administrator" means the Administrator of the Office of Labor Law Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

Q. Department. "Department" means the Delaware Department of Labor.

**COUNCIL ON APPRENTICESHIP & TRAINING**

Statutory Authority: 19 Delaware Code,  
Section 202(a) (19 Del.C. §202(a))

PLEASE TAKE NOTICE, pursuant to 19 Del.C. §202(a), the Department of Labor, with the advice of the **Council on Apprenticeship and Training**, has made proposed modifications to Sections 106.9 and 106.10 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the process for deregistration of a sponsor.

A public hearing will be held on the Proposed changes on December 12, 2000 at 10:00 a.m. at the Buena Vista State Conference Center, 661 South DuPont Highway, New Castle, Delaware 19720. The Council will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will consider its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

**Sec. 106.9 DEREGISTRATION OF STATE REGISTERED PROGRAM**

~~(A) Deregistration proceedings shall be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;~~

~~(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;~~

~~(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);~~

~~(D) It is declared to be the policy to this State to:~~

~~(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and~~

~~(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and~~

~~regulations;~~

~~(3) deregister a Program either upon the voluntary action of the Registrant by a Request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;~~

~~(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:~~

~~(a) that the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.~~

~~(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation, the effective date, and that such Cancellation automatically deprives the Apprentice of his/her individual Registration.~~

~~(E) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three violations in any give twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council.~~

~~The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.~~

~~(F) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating that deficiencies for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an additional thirty (30) day period.~~

~~(G) If the required action is not taken with the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:~~

~~(1) this notice is sent pursuant to this subsection;~~

~~(2) that certain deficiencies were called to the Registrant's attention and remedial action requested;~~

~~(3) based upon the stated cause and failure of remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;~~

(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.

(H) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual Registration.

(A) It is the policy of this State to discourage violations of the law or these rules and regulations by limiting or revoking the privilege to operate programs when Sponsors demonstrate an indifference to these requirements.

(B) Where it appears that a program is not being operated in accordance with federal or state law or these rules and regulations, the Administrator shall so notify the Sponsor in writing stating the deficiency and providing a period for corrective action not to exceed 30 days. Such notice shall be sent by certified mail, return receipt requested. The Sponsor shall respond in writing to the letter within 15 days of receipt.

(C) Deregistration proceedings may be undertaken when the Program is not conducted, operated or administered in accordance with federal or state law, or the requirements of these rules and regulations.

1. Voluntary deregistration is available to a Sponsor upon written request to the Administrator. Within fifteen (15) working days of the effective date of deregistration demonstrated by the acknowledgment of the Administrator, the Sponsor must notify all Apprentices of such deregistration, the effective date, and that the deregistration automatically deprives the apprentice of his/her individual registration.

2. Involuntary deregistration is initiated by the Administrator as follows:

(a) If the Sponsor fails to respond to the notice of deficiency, the Administrator shall advise the Sponsor by certified mail, return receipt requested, that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(b) If the response by the Sponsor to the notice is insufficient to correct the deficiency, the Administrator shall so advise the sponsor by certified mail, return receipt requested. Said letter shall advise the Sponsor that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(c) If no hearing is timely requested, the Administrator will recommend deregistration to the Secretary. The decision of the Secretary is final and no further appeal is provided. The sponsor will be notified of the effective date of deregistration. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program

#### SEC. 106.10. HEARING

(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her designee, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:

(1) the time and place of the hearing;

(2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;

(3) a statement of the cause for which the Program may be deregistered and the purpose of the hearing.

(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing, which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.

(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record before him and an investigation, if necessary. The Administrator shall notify, in writing, all parties of his decisions. If any party is dissatisfied with or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and Council shall make a determination on the basis of the record and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.

(A) A deregistration hearing will be scheduled before the Council on Apprenticeship and Training within 45 days of receipt of a timely request by the Sponsor.

(B) Notice shall be in accord with the provisions the Administrative Procedures Act.

(C) Each party shall have the right to present evidence, to be represented by counsel, and to cross-examine witnesses.

(D) A record from which a *verbatim* transcript can be prepared shall be made of the hearing. A party may request a transcript at his or her expense.

(E) At the conclusion of the hearing, the Council will determine, by a majority of the quorum, its recommendation to the Secretary.

(F) The Council shall submit its recommended findings of fact, conclusions of law, and decision to the Secretary. Said recommendations may be authenticated by the chairperson.

(G) The decision of the Secretary is final and no further appeal is provided. The decision will be sent by certified mail to the Sponsor. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**  
Statutory Authority: 24 Delaware Code,  
Section 2905 (24 Del.C. §2905)

**ORDER**

WHEREAS, pursuant to 24 Del.C. §2905, the Delaware Real Estate Commission (the "Commission") proposed to adopt amendments to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, pursuant to 29 Del.C. §10115, notice was given to the public that a hearing would be held on October 12, 2000 at 9:00 a.m. in Dover, Delaware to consider the proposed amendments; and

WHEREAS, the notice invited the public to submit comments orally or in writing regarding the proposed amendments; and

WHEREAS, a hearing was held on October 12, 2000 at which a quorum of the Commission was present; and

WHEREAS, there were no written or oral comments from the public; and

WHEREAS, the Commission finds the proposed amendments serve to clarify its rules and regulations and to ensure that its rules and regulations are in compliance with

the Commission's enabling statute.

NOW, THEREFORE, based on the Commission's authority to adopt and revise rules and regulations pursuant to 24 Del. C. §2905, it is the decision of the Commission to adopt the proposed amendments to its rules and regulations, a copy of which are attached hereto as Exhibit "B" and incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this 12<sup>th</sup> day of October, 2000.

**DELAWARE REAL ESTATE COMMISSION**

Anne K. Baker, Chair  
Herbert W. Dayton, Member  
Marvin R. Sachs, Member  
James D. McGinnis, Member  
John R. Giles, Member  
Marcia Shihadeh, Member  
Mary B. Parker, Member  
Judy L. Bennett, Member

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts

- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

## **1.0 Introduction**

### **1.1 Authority**

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

### **1.2 Applicability**

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

### **1.3 Responsibility**

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.3.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

## **2.0 Requirements for Obtaining a Salesperson's License**

The Commission shall consider any applicant who has successfully completed the following:

### **2.1 Course**

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

### **2.2 Examination**

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

### **2.3 Ability to conduct business**

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

## 2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

## 3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

### 3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

### 3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

### 3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

### 3.4 Ability to conduct business

3.4.1 The Commission reserves the right to reject

an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

### 3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

### 3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

## 4.0 Reciprocal Licenses

### 4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident broker's license under 24 Del.C. §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

## 5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is

postdated.

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

## **6.0 Transfer of Broker or Salesperson**

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

## **7.0 Business Transactions and Practices**

### **7.1 Written Listing Agreements**

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

### **7.2 Copy of agreements**

7.2.1 Every party to a listing agreement, agreement

of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

### **7.3 Advertising**

7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

7.3.3 Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

7.3.4 All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

### **7.4 Separate Office**

7.4.1 Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

### **7.5 Compensation**

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

### **7.6 Duty to Cooperate**

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the



obligation to share commissions or to otherwise compensate another broker or salesperson.

## 8.0 Renewal of Licenses

### 8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

### 8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

### 8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the

Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

## 9.0 Availability of Rules and Regulations

### 9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

## 10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to

respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

### **11.0 Hearings**

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

### **12.0 Inducements**

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing,

to his or her principal of any rebate or discount that may be made to the buyer.

### **13.0 Necessity of License**

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

### **14.0 Out of State Land Sales Applications**

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material

changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

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

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

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

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

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

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

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

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

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

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

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's

chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

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

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

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

## **DEPARTMENT OF EDUCATION**

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

### **Before the Department of Education of the State of Delaware Regulatory Implementing Order**

#### **311 Bilingual Teacher (Spanish) Primary/Middle Level and 312 Bilingual Teacher (Spanish) Secondary**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the approval of the State Board of Education to amend the regulations for certification as a Bilingual Teacher (Spanish) Primary/Middle Level and as a Bilingual Teacher (Spanish) Secondary. The purpose of the amendment is to allow persons who are native Spanish speakers to become candidates for certification. Sections 2.1.1.2 and 2.1.2 reflect these changes. The regulation was also changed to fit the revised format of Department of Education regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 25, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### **II. Findings of Facts**

The Secretary finds that it is necessary to amend these regulations because there is an increasing need to provide schools with teachers who are certified as bilingual teachers and it provides native Spanish speakers the opportunity to become certified.

#### **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. Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del.C. Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### **IV. Text and Citation**

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of*

*Education.*

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, in open session at the said Board's regularly scheduled meeting on October 19, 2000. 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 19th day of October 2000.

#### DEPARTMENT OF EDUCATION

Valerie A Woodruff, Secretary of Education

Approved this 19th day of October, 2000.

#### STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
 Jean W. Allen, Vice President  
 Mary B. Graham, Esquire  
 John W. Jardine, Jr.  
 Dr. Joseph A. Pika  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

### 311 Bilingual Teacher (Spanish) Primary/Middle Level

1.0 To qualify for a Standard License to teach in K-8 Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in elementary, primary or middle level (grade configurations K-8) bilingual education in the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program in elementary, primary or middle level (grade configurations K-8) regular education plus provide the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and

Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II

Test Modules as follows:

159 on Spanish: Content and Knowledge (0191) and

165 on Spanish: Productive Language (0192); and

2.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or

3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course in Spanish culture; or

Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades K-8; or

Upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a primary, intermediate, or middle level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from a regionally accredited college and be eligible to hold an elementary, primary or middle level certificate (K-8 configuration) in regular education.

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I (0192) Test Module(s) within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

### **312 Bilingual Teacher (Spanish) Secondary**

1.0 To qualify for a Standard License to teach in Secondary Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in bilingual education at the secondary level (grades 7-12) in the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program at the secondary level (grades 7-12) in a content area such as biology, English or special education plus the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and

Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:

159 on Spanish: Content and Knowledge (0191) and

165 on Spanish: Productive Language (0192); and

2.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or

3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course

in Spanish culture; or

Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades 7-12; or

Upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a secondary level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from a regionally accredited college and be eligible to hold a secondary certificate in the content area to which they are assigned to teach bilingual students (math, science, special education, social studies, etc.)

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I Test Module #0192 within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

---

## **Before the Department of Education of the State of Delaware Regulatory Implementing Order**

### **501 State Content Standards**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation, 501 State Content Standards, found in the *Regulations of the Department of Education* by adding the content standards for health and wellness education entitled *Delaware Health Education Curriculum Framework and Assessment* as recommended for approval by the Secretary and approved at the State Board of Education's meeting on August 17, 2000. In addition to adding the tenth set of content standards to this regulation, the words "each charter school" were added to

1.1 and 1.5. The change in 1.1 requires charter schools to align their instructional programs in English Language Arts, mathematics, science and social studies with the state content standards in these areas. In 1.5 the change requires charter schools to provide instructional programs for students for whom a functional life skills curriculum is appropriate and align the instructional program with the document *Standards for Functional Life Skills Curriculum*. Notice of the proposed regulation was published in the News Journal on August 25, 2000 and the Delaware State News on August 26, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. Findings of Facts

The Secretary finds that it is necessary to amend these regulations because the Health Education Standards need to be included in this regulation and there was also a need to clarify that the curriculum of the charter schools be aligned with the state content standards.

## 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.* Section. 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, in open session at the said Board's regularly scheduled meeting on October 19, 2000. 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 19th day of October 2000.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of October 2000.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## 501 State Content Standards

### 1.0 State Content Standards

1.1 Each local school district and each charter school shall provide instructional programs in mathematics, English language arts, science and social studies for all students in grades K-12, except for those students for whom a functional life skills curriculum is appropriate. The instructional programs shall be in alignment with the documents *Mathematics Curriculum Framework*, *English Language Arts Curriculum Framework*, *Science Curriculum Framework* and *Social Studies Curriculum Framework* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.2 Each local school district shall provide instructional programs in the visual and performing arts for all students in grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Each local school district shall provide instructional programs in health and wellness education for all students in grades K-12. The instructional programs shall be in alignment with the document *Delaware Health Education Curriculum Framework and Assessment* as the same may from time to time be amended with the approval of the Secretary and the State Board of Education.

~~1.4~~ 1.5 Each local school district and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of



Education.

1.6 Each local school district that provides additional instructional programs for students in any area of agriscience, business finance and marketing education, foreign language, visual and performing arts and technology education shall align these areas with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Visual and Performing Arts Content Standards*, and the *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.7 Each local school district shall provide for the integration of content areas within and across the curricula.

1.8 Each local school district shall keep instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

**Revision Of The Regulations  
Of Delaware's General  
Assistance Program**

#### Nature Of The Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Delaware's General Assistance Program initiated proceedings to amend policies related to the Division of Social Services Manual Sections 4004.6 and 4004.7. These changes arise from aligning the rules for cash assistance programs by excluding the earnings of minors in determining eligibility and benefit amounts in the General Assistance Program. 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 July, 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public

concerning the proposed regulations to be produced by July 31, 2000 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 July, 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of Delaware's General Assistance Program are adopted and shall be final effective November 10, 2000.

Gregg C. Sylvester, M.D., Secretary  
10/16/00

#### 4004.6 Minor Student Earned Income – ABC and GA

Disregard, without time limits, earnings of dependent children, regardless of student status, in determining the family's eligibility and the amount of A BETTER CHANCE WELFARE REFORM PROGRAM or General Assistance benefits.

#### ~~4004.7 Minor Student Earned Income – GA~~

~~The earned income of a minor student is counted in all financial eligibility determinations and grant calculations unless the student is a participant in a JTPA or a Department of Education sponsored employment program. Earned income from JTPA and Department of Education sponsored employment programs are disregarded for students under 18 years of age.~~

---

## DIVISION OF SOCIAL SERVICES

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

**Revision of the Regulations  
Of the Food Stamp  
Employment & Training  
Regulations**

#### Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department")/ Division of Social Services (DSSM) initiated proceedings to delete policies governing the Food Stamp Employment and Training portion of the DSSM Policy Manual. 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.

#### Summary of Final Regulation:

To align Food Stamp Employment and Training policies with Food Stamp Policy Section 9021 by eliminating conciliation and setting minimum sanction periods. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 mandated these changes.

#### Comment Period:

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July, 2000 Delaware Register of Regulations (pages 90 through 91), requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2000 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 set forth in the July, 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations to align Food Stamp Employment and Training policies with Food Stamp Policy at Section 9021 are adopted and shall be final effective November 10, 2000.

Gregg C. Sylvester, M.D., Secretary,  
10/16/00

#### ~~10004.3 Conciliation~~

~~The Division's conciliation process is as follows:~~

~~A. Step 1: The conciliation process begins the day following the date the Case Manager learns of the non-compliance. This can be:~~

- ~~1. the day after a registrant misses the initial or any subsequent interview with the Case manager,~~
- ~~2. the day after a contractor notifies the Case manager that the registrant missed an interview or a component session, or~~
- ~~3. the day after the Case Manager learns that the registrant failed to complete the number of job search contacts.~~

~~The conciliation process continues for a period not to exceed 30 calendar days.~~

~~B. Step 2: Within five days of learning of the non-compliance, contact the registrant by letter. This letter will do the following:~~

- ~~1. notify the non-complying household member of the potential loss of benefits,~~
- ~~2. tell the non-complying household member to call the Case Manager if there is good reason for not complying,—~~
- ~~3. tell the non-complying household member of the requirements of the First Step – Food Stamps program, and~~
- ~~4. tell the non-complying household member what must be done and by what time it must be done to avoid a notice of adverse action.~~

~~C. Step 3: Determine Good Cause. If the non-complying household member **contacts the Case Manager with** a good reason for not complying, determine if this reason meets good cause conditions. The good cause determination leads to either:~~

- ~~1. a finding of good cause, in which case the Case Manager reschedules the activity, or~~
- ~~2. a finding that good cause does not exist, in which case the Case Manager tells the non-complying household member what must be done to comply.~~

~~D. Step 4: Give the non-complying household member a definite date by which compliance is to take place. This date should be within 10 to 15 working days from the date the original letter was sent. In addition, tell the non-complying household member of the actions necessary to achieve compliance and what specifically must be done to avoid the notice of adverse action. The action must be a verifiable act of compliance, such as attending a job search activity. Verbal commitments by the household member are not sufficient, unless the member is prevented from complying by circumstances beyond the control of the household member.~~

~~E. Step 5: If the household member does not respond to the original letter or does not perform a verifiable act of compliance, the Case Manager will issue a notice of adverse action. This notice indicates that a sanction is to take place. This NOAA is to be issued no later than the last day of the conciliation period. (The opportunity to sanction is lost if the NOAA is issued after the 30 day time period).~~

~~F. Step 6: The Case Manager informs the financial services worker assigned to the Food Stamp case about the NOAA through a DCIS message.~~

~~As the above steps note, the Case Manager is responsible for sending the NOAA to the non-complying registrant. This assures that the Case Manager can complete both the conciliation and sanctioning process within the required 30 day time period. The Case Manager notifies the financial~~

~~services worker assigned to the Food Stamp case of the NOAA through a DCIS message.~~

#### ~~10004.4 Sanction Period and Penalty~~

#### ~~10004.3 Sanction Period and Penalty~~

~~See Section 9021 of Food Stamp Policy for appropriate sanctions and penalties.~~

~~The sanction period begins with the first month following the expiration of the notice period, unless a fair hearing is requested. The sanction continues for two months unless the participant complies by participating in the First Step Food Stamps activity or becomes exempt from the work registration requirement.~~

~~The penalty for non-compliance is as follows:~~

- ~~A. If non-compliance is by the head of household, the entire household is ineligible;~~
- ~~B. If non-compliance is by any other household member, including the primary wage earner who is not the head of household, remove the individual from the household and treat the individual as an ineligible household member.~~

#### ~~10004.4.1 Information Coordination~~

#### ~~10004.3.1 Information Coordination~~

~~The First Step Food Stamps Case Manager coordinates information with both the Financial Services Worker and service providers.~~

##### ~~A. Registration in DCIS:~~

~~Non-exempt Food Stamp recipients are registered for work at the time of application.~~

##### ~~B. Case Manager Assignment:~~

~~The registration indicator on the input document to DCIS produces an automatic referral to the First Step - Food Stamps Program, which informs the Case Manager of a work registration referral.~~

##### ~~C. Referral to Components and Service Providers:~~

~~Case Managers assign those registrants who keep their assessment interview to an employment and training component, or they determine that the registrant is individually exempt. Case Managers can assign registrants to a continuation of the Independent Job Search component or a component provided by JTPA or a contracted service provider.~~

~~Case Managers use the E & T MIS to refer registrants to contracted service provider programs. Case Managers also make referrals to JTPA programs.~~

##### ~~D. Conciliation and Sanction:~~

~~Case Managers send letters to those registrants who fail to comply with component requirements, which begins the conciliation process. The letter warns registrants of a~~

~~potential sanction, why the registrant is facing sanction, and what the registrant needs to do to avoid the sanction.~~

~~If within the 30 day conciliation time period registrants fail to make a verifiable act of compliance, Case Managers issue a Notice of Adverse Action (NOAA) through a DCIS client notice system generated letter. Using assigned reason codes, Case Managers can generate a letter tailored to the specific action of the registrant. The letters detail the specific action that initiated the sanction, the length of the sanction, what the registrant needs to do to have benefits reinstated, the right of the registrant to request a fair hearing and, who is taking this action. Case Managers also inform the financial services worker assigned to the Food Stamp case about the NOAA by through a DCIS message. Finally, the DCIS provides a management report which details those individual registrants or registrant households sanctioned for non-compliance.~~

##### ~~D E. Change in Exemption Status:~~

~~It is the responsibility of the service providers to notify Case Managers of any circumstances which may cause registrants to fall into exempt categories. This is particularly important where the situation of the registrant has changed since assignment to the component. The Case Managers review this information and determine if the participant is exempt. In turn, Case Managers notify service providers of significant interim changes, such as address, participation status, and so forth.~~

---

## **DIVISION OF SOCIAL SERVICES**

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

**Revision Of The Regulations  
Of The Medicaid/medical  
Assistance Program Contained  
In Dssm 16100.1.2 And 16250**

### **Nature Of The Proceedings:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update Medicaid policies related to the Federal Poverty Income Level for Pregnant Women and Infants. 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, 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2000 at which time the

Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

One comment was received relating to this proposed rule.

**Summary Of Information Submitted:**

The State Council for Person with Disabilities (SCPD) offered the following comment on the proposed rule and regulation: "SCPD endorses the amendment to the regulations because access to adequate medical care can prevent or reduce prospects for long-term disabilities and the proposal increases access to Medicaid".

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the September, 2000 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, 2000.

Gregg C. Sylvester, M.D., Secretary  
10/16/00

**16100.1.2 Initial Eligibility Determination**

The two criteria for finding an applicant presumptively eligible are: a medically verified pregnancy and effective no later than November 1, 2000 self-reported family income at or below ~~185%~~ 200% of the Federal Poverty Level. Countable family income is determined using the rules in this section including the \$90 earned income deduction and any self-reported child care expenses. State residency is established for presumptive eligibility by the applicant writing a home address on the application that is a Delaware residence.

Note: Women who are nonqualified aliens or illegally residing in the U.S. are not eligible for presumptive Medicaid.

Verifications of all other factors of eligibility are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. Under unusual circumstances, the deadline date for postponed verifications may be extended. The reason for the extension must be documented in the case record. The verifications that were postponed are required to determine final eligibility for Medicaid benefits. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility under the presumptive period ends.

Pregnant women who are determined presumptively eligible are required to enroll in the Diamond State Health

Plan unless otherwise exempt.

**16250 Eligibility Determination**

After applying appropriate disregards to income, compare the countable family income to the income eligibility standard for the budget unit size.

Pregnant women and children up to age 1 must have family income effective no later than November 1, 2000 at or below ~~185%~~ 200% of poverty. Pregnant women count as 2 family members.

Children age 1 and up to age 6 must have family income at or below 133% of poverty.

Children age 6 and up to age 19 must have family income at or below 100% of poverty.

Uninsured adults must have family income at or below 100% of poverty.

Women eligible for family planning must have family income at or below 300% of poverty during the second year of the extension.

| Family Size | Annual Income | Monthly Income                     | Monthly Income         | Monthly Income  | Monthly Income                                       |
|-------------|---------------|------------------------------------|------------------------|---|--|
|             | 100% FPL      | 100% FPL<br>Ages 6 – 18,<br>Adults | 133% FPL<br>Ages 1 – 5 | <del>185% FPL</del><br>Pregnant<br>Women and<br>Infants | <u>200% FPL</u><br>Pregnant<br>Women and<br>Infants* |
| 1           | \$8,240       | \$687                              | \$914                  | <del>\$1,271</del>                                      | <u>\$1,374</u>                                       |
| 2           | 11,060        | 922                                | 1,206                  | <del>1,706</del>  | <u>\$1,844</u>                                       |
| 3           | 13,880        | 1,157                              | 1,539                  | <del>2,140</del>  | <u>2,314</u>   |
| 4           | 16,700        | 1,392                              | 1,851                  | <del>2,575</del>  | <u>2,784</u>   |
| 5           | 19,520        | 1,627                              | 2,164                  | <del>3,010</del>  | <u>3,254</u>   |
| 6           | 22,340        | 1,862                              | 2,477                  | <del>3,445</del>  | <u>3,724</u>   |
| 7           | 25,160        | 2,097                              | 2,789                  | <del>3,879</del>  | <u>4,194</u>   |
| 8           | 27,980        | 2,332                              | 3,102                  | <del>4,314</del>  | <u>4,604</u>   |
| 9           | 30,800        | 2,567                              | 3,414                  | <del>4,747</del>  | <u>5,134</u>   |
| 10          | 33,620        | 2,802                              | 3,727                  | <del>5,184</del>  | <u>5,604</u>   |

\*Effective no later than November 1, 2000.

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**Revision Of The Regulations  
Of The Medicaid/medical  
Assistance Program Contained  
In Dssm 14300, 14320.1, 14320.3,  
14330.2, 14380, 14400, 14410, 15120.1.2,  
And 18100.3**

## Nature Of The Proceedings:

## REVISION

The Delaware Department of Health and Social Services ("Department") initiated proceedings to amend its Division of Social Services Manual to clarify the following policies: status of noncitizen applicants for state-funded benefits; American Indians born in Mexico are qualified aliens; citizenship documentation; medical support requirement for Medicaid-only applicants and recipients; and, fair hearings for applicants and recipients of the Delaware Healthy Children Program. 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 July, 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2000 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### Summary Of Evidence And Information Submitted:

In response to public comment, a correction to DSSM 18100.3, Fair Hearings was published in the Errata section of the September, 2000 Issue of the Delaware Register of Regulations. The language should have been stricken through to indicate the entire text was being deleted to show that Delaware Healthy Children Program applicants and recipients will now receive an opportunity for a fair hearing.

Another correction was published in the Errata section of the September, 2000 Issue of the Delaware Register of Regulations relating to DSSM 14380, Documentation of Citizenship or Alien Status. The fourth paragraph did not have certain language with references to citizenship stricken to show that documentation of citizenship is no longer required.

### Findings Of Fact:

The Department finds that the proposed changes as set forth in the July, 2000 Register of Regulations and the corrections as set forth in the September, 2000 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, 2000.

Gregg C. Sylvester, M.D., Secretary,  
10/16/00

### 14300 Citizenship and Alienage

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated STATE ONLY FUNDS to ~~restore~~ provide coverage of full Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid. For example, enrollment in a managed care organization is a technical eligibility requirement for adults in the expanded population under the Diamond State Health Plan demonstration waiver. A nonqualified alien or a qualified alien who is subject to the 5 year PRWORA bar cannot be found eligible in the expanded population. This is because the state funded benefits are provided on a FEE FOR SERVICE basis. An individual cannot be found eligible under the expanded population for emergency services only because those benefits are provided on a fee for service basis. Adults in the expanded population are required to enroll in MANAGED CARE to receive benefits.

### 14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found

eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits.

The Delaware legislature appropriated state only funds to ~~restore~~ provide full Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 were subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the 5 year PRWORA bar, is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

### **14320.3 Medicaid Eligibility Not Based on Date of Entry into U.S.**

The following qualified aliens may be found eligible for Medicaid regardless of their date of entry into the U.S.:

- Refugees (§207 of INA)
- Asylees (§208 of INA)
- Aliens who have had deportation withheld under §243(h) or §241(b)(3) of the INA
- Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman.
- Cuban and Haitian entrants
- Amerasians
- American Indian born in Canada or Mexico or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

In addition, title IVE Foster Children and Adoption Assistance children may be found eligible for Medicaid regardless of date of entry provided the foster or adoptive parent of the child is also a qualified alien or a citizen. The IVE agency is responsible for making that determination about the parent. If a IVE payment is being made on behalf of the child, then the child is deemed eligible for Medicaid.

### **14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)**

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The Delaware legislature appropriated state only funds to ~~restore~~ provide full coverage of Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of state funds.

In the event such state funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1.

### **14380 Documentation of Citizenship or Alien Status**

Applicants must provide documentation of ~~citizenship~~ qualified alien status or lawful alien status. All noncitizens who declare they are qualified aliens or in lawful alien status, must provide INS documents to establish immigration status. Examples of acceptable documentation for ~~U.S. citizens~~, qualified aliens and lawful alien status are given in this section.

If the applicant will not provide evidence of ~~citizenship~~ or alien status and does not allege qualified or lawful alien status, the application is not denied, but an eligibility determination is completed for coverage of labor and delivery and emergency services only.

As required by §1137(d)(4) of the Social Security Act, Medicaid will be provided to individuals who meet all other nonimmigration Medicaid eligibility requirements, pending verification of immigration status. We will provide Medicaid to an otherwise eligible individual who has presented INS documents showing qualified or lawful alien status, pending verification of the document.

For noncitizen applicants who declare they are qualified ~~or lawful aliens or for individuals who declare citizenship~~ but have no documentation, we must allow the individual a reasonable opportunity to produce evidence of immigration ~~or citizenship~~ status. We will give the individual 30 days from the date of the receipt of application to produce an INS document ~~or documentation of citizenship~~. If the individual meets all other eligibility requirements except for this documentation, we will provide Medicaid during this 30 day period.

If the applicant provides an expired INS document or has no documentation regarding his or her immigration status, refer the individual to the local INS district office to obtain evidence of status. As noted previously, Medicaid coverage is provided for a 30 day period pending verification of alien status. If the applicant can provide an alien



registration number, follow the secondary verification procedures outlined below under Section 14390 - "Verification of Immigration Alien Status".

### 14400 Acceptable Evidence of U.S. Citizenship

The following are examples of acceptable documentation of U.S. citizenship for Medicaid applicants:

- Birth certificate
- Religious record of birth recorded in the U.S. or its territories within 3 months of birth, which indicates a U.S. place of birth. The document must show either the date of birth or individual's age at the time the record was made.
- Hospital record of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam (on or after April 10, 1899), the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)
- U.S. passport (not time limited passports, which are issued for periods of less than 5 years)
- Report of Birth Abroad of a Citizen of the U.S. (INS Form FS-240)
- TPQY from Social Security Administration showing citizen code "A" or "C"
- Certification of Birth (INS Form FS-545)
- U. S. Citizen I.D. Card (INS Form I-197)
- Naturalization Certificate (INS Form N-550 or N-570)
- Certificate of Citizenship (INS Form N-560 or N-561)
- Northern Mariana Identification Card (issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986)
- American Indian Card with a classification code "KIC" and a statement on the back (issued by the INS to identify U.S. citizen members of the Texas Band of Kickapooos living near the U.S./Mexican border)
- Other alternative documentation that is determined to be acceptable by the State

### 14410 Acceptable Evidence of Qualified Alien Status

Acceptable documentation of qualified alien status is listed below. The card should show the date of admission or date of entry into the United States.

#### A. Lawful Permanent Residents

INS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.

NOTE: INS has replaced Forms I-151, AR-3 and AR-3a. If a lawful permanent resident presents one of these old INS

forms as evidence of status, contact INS using a G-845S and attach the old card.

#### B. Refugees

INS Form I-94 annotated with stamp showing entry as refugee under §207 of the Immigration and Naturalization Act (INA) and date of entry to the United States; INS Form I-688B annotated 274a.12(a)(3); I-766 annotated A3; or Form I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the U.S. However, for purposes of eligibility, the individual is still considered a refugee and it is important to check the coding on Form I-551 for codes RE-6, RE-7, RE-8, or RE-9.

#### C. Asylees

INS Form I-94 annotated with stamp showing grant of asylum under §208 of the INA; a grant letter from the Asylum Office of the INS; Form I-688B annotated 274a.12(a)(5); I-766 annotated A5; or an order of an Immigration Judge granting asylum. If the applicant provides a court order contact INS using a G-845S and attach a copy of the court order.

#### D. Alien who has had deportation withheld under §243(h) of the INA

Order of an Immigration Judge showing deportation withheld under §243(h) or §241(b)(3) and date of the grant; Form I-688B annotated 274a.12(a)(10); or I-766 annotated A10. If applicant provides a court order contact INS using G-845S and attach copy of court order.

#### E. Parolees

INS Form I-94 annotated with stamp showing grant of parole under §212(d)(5) of the INA and a date showing granting of parole for at least 1 year. INS Form I-688B annotated 274a.12(a)(4) or 274a.12(c)(11) or I-766 annotated A4 or C11 indicates status as a parolee but does not reflect the length of the parole period.

#### F. Conditional Entrant

INS Form I-94 annotated with stamp showing admission under §203(a)(7) of the INA, refugee-conditional entry; Forms I-688B annotated 274a.12(a)(3); or I-766 annotated A-3.

#### G. Evidence of Honorable Discharge or Active Duty Status

- Discharge - a copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member. (Department of Defense Form 214)
- Active Duty Military - a copy of the applicant's current orders showing the individual is on full-time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or an active military identification card, DD Form 2. Full time National Guard duty is excluded.

- A self declaration under penalty may be accepted pending receipt of acceptable documentation. The individual is given 30 days to produce evidence; and, if the individual is otherwise eligible, Medicaid is provided during this 30 day period.

#### H. Cuban and Haitian entrants

I-551 annotated CH6, CNP, CU6, CU7; I-688B annotated 274a.12(a)(4); I-94 annotated 212(d)(5)

#### I. Amerasian

I-94 annotated AM1, AM2, AM3; I-551 annotated AM1, AM2, AM3.

#### J. Battered Immigrant

In order to be a qualified alien based on battery or extreme cruelty, the alien must meet the following requirements:

1. the alien must not now be residing in the same household as the individual responsible for the battery or extreme cruelty

2. the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty

3. there is substantial connection between the battery or extreme cruelty and the need for the public benefit sought. There is a substantial connection under any one or more of the following circumstances:

a) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

b) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

c) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

d) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to the battery or cruelty (such as child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

e) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

f) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g. inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

g) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

h) Where the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of or relationship with the alien or his or her child; and/or to care for any resulting children; or

i) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

4. the alien or alien's child must have a petition approved by or pending with INS under one of several subsections of the INA that sets forth a prima facie case for the status.

#### K. American Indian born in Canada or Mexico under section 289 of the INA or member of Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

INS Form I-551 with the code S13; unexpired temporary I-551 stamp with code S13 in a Canadian passport or on Form I-94; satisfactory evidence of birth in Canada and a document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation or a record issued by the tribe; a membership card or other tribal document showing membership in the tribe that is on the list of recognized Indian tribes published annually by the Bureau of Indian Affairs in the Federal Register.

#### **15120.1.2 Child Support Cooperation**

Deprivation is not an eligibility requirement for this group. If the child is deprived of parental support, a referral to the Division of Child Support Enforcement for medical support is required.

#### **~~18100.3 Fair Hearings~~**

~~Applicants and recipients do not maintain a right to a fair hearing. The rules at DSSM 5000 Fair Hearing Practice and Procedures do not apply to DHCP.~~

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Sections 314 and 3403 (18 **Del.C.** §§314, 3403)

In the Matter of: |  
The Amendment of Insurance | Docket Number:  
Department Regulation No. 41 |

**ORDER**

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders, pursuant to 29 *Del.C.* §10113(b)(4) & (5), that Regulation No. 41 be amended informally to make technical corrections and to make the regulation consistent with changes in federal law as follows:

1. To insure conformity with the Balanced Budget Refinement Act (BBRA) and Ticket to Work and Work Incentives Improvement Act (TWWIA) of Section 1882(b)(1)(B) of the Social Security Act. These changes are for the protection and benefit of current state enrollees in Medicare HMOs who lose coverage when Medicare managed care plans withdraw from the Medicare program or reduce their service area; and

2. To incorporate the current federal Medicare deductibles in the various plans available.

NOW THEREFORE, I Order that Regulation No. 41 be amended as referenced herein, effective October 9, 2000.

SO ORDERED this 3rd day of October 2000.

Donna Lee Williams, Insurance Commissioner  
State of Delaware

**PLEASE NOTE THAT DUE TO THE LENGTH OF REGULATION 41, THE TEXT IS NOT BEING REPRINTED IN THE REGISTER. TO OBTAIN A COPY CONTACT EITHER THE THE REGISTRAR OR THE DEPARTMENT OF INSURANCE.**

---

**DEPARTMENT OF LABOR**

**OFFICE OF LABOR LAW ENFORCEMENT**

Statutory Authority: 29 Delaware Code,  
Section 8503(7) (29 **Del.C.** §8503(7))

**In RE** | Nature of the Proceedings  
**Adoption of Amendments to** | Summary of the Evidence  
**Prevailing Wage Regulations** | Finding of Fact  
| Conclusions of Law  
| Decision to Withdraw

**Nature of the Proceedings**

1. Pursuant to notice in accordance with 29 *Del. C.* § 10115, the Department of Labor proposed an amendment to the Prevailing Wage Regulations. The Prevailing Wage Regulations implement the provisions of Delaware's Prevailing Wage Law, 29 *Del. C.* §6960, "Prevailing wage requirements." A copy of the amendment is attached as Exhibit "A".

2. Public hearings were held at 9:00 a.m. on Thursday, September 21, 2000, in Conference Room 049 of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, and at 1:30 p.m. in the Hearing Room of the Department of Labor Office, 13 S.W. Front Street, Milford, Delaware, the times and places designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Lisa Blunt-Bradley, Susan S. Anders, Administrator of the Office of Labor Law Enforcement, was present to receive testimony and evidence at the 9:00 a.m. September 21, 2000 hearing in Wilmington, Delaware. As designated by the Secretary of Labor, Lisa Blunt-Bradley, William O'Brien, Hearing Officer, Office of Workers' Compensation, was present to receive testimony and evidence at the 1:30 p.m. September 21, 2000 hearing in Milford, Delaware.

**Summary of the Evidence**

4. The individual testifying at the September 21, 2000 in Wilmington, Delaware, and a summary of said testimony is as follows:

5. Mr. Richard H. Harvey, Executive Director of the Roofing Contractors Association/Industry Fund, stated that the Roofing Contractors Association Industry/Fund could not support the amendment as written. He further stated that the amendment as written would have the effect of "...solidifying inaccurate definitions for worker classifications previously made by the Department thereby closing the door to future corrections by the Department."

Mr. Harvey also stated that, "...As currently written, the amendment restricts worker classifications by the Department ... to only those workers performing tasks **not** listed in the Department's definitions and appears to adopt without review classifications already in place."

Further, according to Mr. Harvey's testimony, his organization believes that, "By striking language in the current regulations ... without offering new language to assist the Department in [determining worker classifications] ... the amendment forces the Department to either rely solely on the advice of the Advisory Council members or to make its own arbitrary determinations."

Finally, Mr. Harvey testified that his organization would be willing to support amendment language that, "...would allow the Department to consider the U.S. Dictionary of



Occupational Titles and other additional sources, including but not limited to, the advice of the members of the Prevailing Wage Advisory Council..."

Mr. Harvey submitted a copy of his comments which is made a part of the record and is attached as Exhibit "B".

6. There was no other testimony. Ms. Anders stated that the record would be held open for a period of thirty (30) days following the hearing in order to receive further written submissions.

7. There was no testimony offered at the September 21, 2000 hearing in Milford, Delaware. Mr. O'Brien stated that the record would be held open for a period of thirty (30) days following the hearing in order to receive further written submissions.

8. No further written submissions were received.

#### Findings of Fact

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written documentation received. The Department of Labor's findings regarding the issues raised at the hearing are as follows:

9. Based upon the oral testimony and written submission from the hearing, the Department of Labor wishes to withdraw its proposal to amend the Prevailing Wage Regulations.

#### Conclusions of Law

10. The Department of Labor proposed the amendments to the Prevailing Wage Regulations pursuant to its authority granted in 29 Del. C. § 8503.

#### Decision To Withdraw

11. It is the decision and order of the Department of Labor that the proposed amendment to the Prevailing Wage Regulations, a true and correct copy of which is attached hereto as Exhibit "A" is hereby **WITHDRAWN**.

SO ORDERED, this 13<sup>th</sup> day of October, 2000.  
Lisa Blunt-Bradley, Secretary of Labor

#### Delaware Prevailing Wage Regulation III.C.

~~Definitions for each classification are contained in a separate document entitled, "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers performing tasks not listed in the Department's definitions (but performed by mechanics and laborers on public projects) shall be classified by the Department of Labor with the advice of the Prevailing Wage Advisory~~

~~Council members. Classification determinations shall be recorded by the Department as they are made and shall be published annually.]~~

## DEPARTMENT OF PUBLIC SAFETY BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code,  
Section 1304(b)(3) (24 Del.C. §1304(b)(3))

#### Proposed Amendment Of Promulgated Rules And Regulations

Pursuant to the Guidelines in 29 Del. C., §10118(a) (1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing held on July 19, 2000 on the proposed amendment of promulgated rules and regulations 11/04/94-9 - Private Investigators, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed amendment.
2. The Board expressed its desire to amend the rule to clarify the definition of law enforcement employment.

#### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of the rule. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the amendment of this rule will clarify the definition of law enforcement employment.
5. The Board finds that the amendment will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to amend the rule to clarify the definition of law enforcement employment.

#### Conclusion

7. The proposed rule amendment was promulgated by the Board in accord with the statutory duties and authority as set forth in 24 Del. C. §1304 et. seq. and, in particular, 24 Del. C. §1304 (b)(3).
8. The Board deems this amendment necessary and

expedient to the full and official performance of its duties under 24 *Del. C.* §1304 et. seq.

9. The Board concludes that the amendment of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment of this rule pursuant to 24 *Del. C.* §1304 (b)(3) and guidelines of 29 *Del. C.* §10118 of the Administrative Procedures Act. See Strauss v. Silverman, Del. Supr. 399 A.2d 192 (1979).

11. This amended rule replaces 11/04/1994-9 (A), in its entirety, any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be July 19, 2000.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 19<sup>th</sup> day of July, 2000.

Colonel Gerald R. Pepper, Jr., Chairman  
September 8, 2000

Approved As To Form:  
Rosemary Killian  
Deputy Attorney General

#### RULE AMENDED 7/19/00 - PRIVATE INVESTIGATORS

A. A Private Investigator must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

B. At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

C. A licensed Private Investigator may only be employed by one licensed Private Investigative Agency at a time.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER EIGHTY-TWO**

**TO: Heads Of All State Departments, Agencies, and Authorities, and All Political Subdivisions and Governmental Units Of The State Of Delaware**

**RE: Recycling**

WHEREAS, the average Delawarean produces 1,200 pounds of solid waste annually and much of that waste can and should be recycled;

WHEREAS, recycling saves energy, conserves natural resources and preserves our limited landfill space;

WHEREAS, the Department of Natural Resources and Environmental Control (DNREC), the Delaware Solid Waste Authority (DSWA), and the Delaware Economic Development Office (DEDO) all promote varying aspects of municipal solid waste recycling in the State of Delaware;

WHEREAS, increasing Delaware's recycling efforts will benefit the environment and is in the public interest;

WHEREAS, increasing our recycling efforts over the long-term will require a strong commitment on the part of Delaware's youth;

WHEREAS, communities, schools, counties, municipalities and cities are the entities most able to increase recycling within their borders and need assistance to provide the tools necessary to start recycling programs; and

WHEREAS, while the majority of Delawareans think that recycling is important and are interested in doing more recycling, many Delawareans are unaware of current recycling opportunities.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and Order as follows:

1. It shall be the goal of this State to achieve a thirty (30) percent diversion rate for recyclables from Delaware's residential solid waste stream.

2. The DNREC, Division of Air and Waste Management, in concert with the DSWA and the Recycling Public Advisory Council created herein, shall:

a. Monitor the state's recycling initiatives and measure Delaware's achievements toward attainment of the thirty percent recycling goal;

b. Implement a grant program for use by communities, municipalities, counties and cities in reaching the statewide thirty (30) percent recycling goal specified herein;

c. Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities;

d. Implement a public school recycling initiative whereby our school systems are able to participate in and benefit from increased recycling opportunities;

e. Provide technical assistance to local entities to assist them in increasing their recycling rates;

f. Provide administrative support to the Recycling Public Advisory Council; and

g. Promote any other measures identified by the Council to support the achievement of the thirty (30) percent-recycling goal.

3. The DNREC shall make matching grants available to communities and local governments to implement programs to reduce the amount of residential solid waste disposed of in Delaware. Grants may be used for implementing or expanding recycling programs, encouraging composting of yard waste, implementing "pay-as-you-throw" programs or any other activity that supports the achievement of the thirty (30) percent recycling goal. The DNREC, in conjunction with the Recycling Public Advisory Council, will develop criteria for the grants program by March 31, 2001. The criteria shall include, but shall not be limited to, the terms and conditions for obtaining a grant, grant selection criteria, match requirements, reporting requirements, and applicant eligibility. Match requirements for the grant program shall not be less than 25% local match. The availability of grant money shall be subject to annual appropriations by the General Assembly.

4. There is hereby established a Recycling Public Advisory Council. The Council shall be composed of nine members who shall be appointed by the Governor as follows:

a. One member each from the DNREC, the DSWA, and the DEDO;

b. One member representing county governments with such member being recommended by the Delaware Association of Counties;

c. One member representing municipal governments with such member being recommended by the Delaware League of Local Governments;

d. One member representing the recycling industry;

e. One member representing the waste hauling industry; and

f. Two members representing environmental or citizens' groups.

5. Members of the Council shall serve 3-year terms and may be re-appointed. Members shall be appointed for staggered terms so that no more than 3 appointments shall expire in any one calendar year. For the initial appointments, 3 members shall be appointed for 1 years, 3 members shall be appointed for 2 years and 3 members shall be appointed for 3 years. Thereafter, all terms are three years. Members may not serve more than 2 consecutive 3-year terms. Members may be reimbursed for travel to and from meetings. The Governor shall appoint a Chairman from among the nine members. Actions of the Council shall be approved by a majority vote of the Council.

6. The Recycling Public Advisory Council shall:

a. Advise the DNREC and the DSWA on all aspects of recycling;

b. Advise the DNREC in developing grant criteria, including local match requirements, and selection of applications;

c. Develop, in conjunction with the DNREC and the DSWA, a methodology for measuring recycling rates;

d. Advise the DNREC and the DSWA on possible outreach activities designed to achieve greater recycling rates; and

e. Report to the Governor and the General Assembly annually by December 1<sup>st</sup> of each year on the status of recycling activities in Delaware. The report shall include, but is not limited to the following: (1) status of attainment of the thirty (30) percent recycling goal; (2) an accounting of the matching grants program authorized herein and any recommendations for future funding of the grants program; (3) an assessment of the activities of both the DNREC and the DSWA in achieving the thirty(30) percent recycling goal; and (4) such other recommendations as the Council shall deem appropriate.

Approved this 14<sup>th</sup> day of September, 2000

Thomas R. Carper, Governor

Attest

Edward J. Freel, Secretary of State

---

**GOVERNOR'S APPOINTMENTS**

| <b>BOARD/COMMISSION<br/>OFFICE</b>                 | <b>APPOINTEE</b>                          | <b>TERM OF<br/>OFFICE</b>   |
|--|---|-----------------------------|
| Diamond State Port Corporation Advisory Board      | Mr. Michael Harkins<br>Ms. Mary A. Thomas | 10/04/02<br>10/04/02        |
| Dover Civic Center Corporation, Board of Directors | Mr. William M. Remington                  | Pleasure of the<br>Governor |
| State Board of Accountancy                         | Ms. Rita M. Paige<br>Mr. William Winters  | 09/26/03<br>09/26/03        |

**DEPARTMENT OF EDUCATION**

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

The State Board of Education will consider adopting the following new Hearing Procedures and Rules at its regular meeting on December 21, 2000. As rules of practice and procedure, these Rules may be adopted informally and are exempt from the procedural requirements of the *Administrative Procedures Act, 29 Del. C.*, Chapter 101.

The State Board offers a draft of the new Rules for public review and notice. Comments and suggestions about the draft may be directed to the State Board at P. O. Box 1402, Dover, DE 19903. The State Board reserves the right to alter and amend the draft before adoption of the Rules. The final Hearing Procedures and Rules will be published in the General Notices section of the *Delaware Register* once adopted by the Board.

**DRAFT  
October 2000**

**STATE BOARD OF EDUCATION  
HEARING PROCEDURES AND RULES**

- 1.0 Scope and Purpose of Rules
- 2.0 General Provisions
- 3.0 De Novo and Other Evidentiary Hearings
- 4.0 Appeals
- 5.0 Public Hearings on Regulations

**1.0 SCOPE AND PURPOSE OF RULES**

The State Board of Education (“the State Board”) is authorized by several sections of the Education Code (Title 14 of the *Delaware Code*) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the *Administrative Procedures Act* (Chapter 101 of Title 29 of the *Delaware Code*), except where specifically exempted by other law.

These Hearing Procedures and Rules (“Rules”) shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

**2.0 GENERAL PROVISIONS**

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board’s statutory responsibilities and with the *Administrative Procedures Act*.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary

hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party’s designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct prehearing conferences and teleconferences to clarify issues, specify procedures and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board (“Executive Secretary”) of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Requests for postponements of any matter shall be submitted to the Executive Secretary in writing at least three (3) days before the date scheduled for the proceeding. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other participants in the proceeding. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

**3.0 DE NOVO AND OTHER EVIDENTIARY HEARINGS**

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a *de novo* hearing before the State Board to decide a specific controversy or dispute.

3.2 *Petitions for Hearing*

3.2.1 A party may initiate a hearing on matters within the State Board's jurisdiction by filing a petition for hearing with the Executive Secretary. The petition shall be in writing, shall be signed by the party making the request (or by the party's authorized representative), and shall be sent to the Executive Secretary by registered or certified mail. It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be sent by registered or certified mail to all other parties to the proceeding when it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board shall, at the time of filing, also be provided to all other parties to the proceeding.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the *Administrative Procedures Act*) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

### 3.3 *Record of Prior Proceedings*

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

### 3.4 *Record Review*

3.4.1 If a hearing was previously held on the

matters complained of in the petition, the parties to the proceeding before the State Board may agree to rest on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to rest on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to rest on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with five (5) minutes for rebuttal.

3.4.4 If the parties agree to rest on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

### 3.5 *Evidentiary hearings*

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, or when the parties do not agree to rest on the existing record.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

### 3.6 *Evidence*

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

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the *Administrative Procedures Act*.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing

unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

### 3.7 *Creation of Record before State Board*

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the conclusion of the hearing.

### 3.8 *State Board Decision*

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is submitted to the State Board to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties's submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

## **4.0 APPEALS**

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal a decision which resolved a specific controversy or dispute to the State Board. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 *Del.C.* §1058), and appeals of decisions of the Delaware Secondary School Athletic Association

(DSSAA).

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the school board of a dispute involving the application of rules and regulations of the board in a particular factual context. Certain decisions involving the application of rules and regulations are not be appealed to the State Board. Those exceptions include:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or nonrenewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

### 4.4 *Notice of appeal*

4.4.1 A party may initiate an appeal by filing a notice of appeal with the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative), and shall be delivered to the Executive Secretary by registered or certified mail.

4.4.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.4.3 The notice of appeal must be postmarked within thirty (30) days of the receipt of the written notice of the decision from which the appeal is taken.

4.4.4 A copy of the notice of appeal shall be sent to the agency which made the decision, by registered or certified mail, when the original notice of appeal is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the time of filing.

4.4.5 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a



decision of the Delaware Secondary School Athletic Association (DSSAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.4.6 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DSSAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

#### 4.5 *The record on appeal*

4.5.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.5.2 The record shall include the agency's written decision, a certified copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a certified, verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

4.5.3 If a certified transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

#### 4.6 *Proceedings on appeal*

4.6.1 The State Board of Education or its hearing officer shall establish and notify the parties of the consideration date for the appeal. The parties shall be given at least twenty (20) days notice of the consideration date.

4.6.2 Written statements of position and legal briefs or memoranda may be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement.

4.6.3 The written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

#### 4.6.4 Oral argument

4.6.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.6.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five minutes for rebuttal.

4.6.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the conclusion of the appeal.

4.6.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) days of the oral argument.

#### 4.7 *Standard and Scope of Review*

4.7.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.7.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

#### 4.8 *State Board Decision*

4.8.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and

the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.8.3 The parties shall have twenty (20) days from the date the proposed order is submitted to the State Board to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

4.8.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

#### 4.9 *Student Discipline Appeals*

4.9.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.9.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the *Administrative Manual for Special Education Services*. Failure to provide such evidence will result in the case being remanded to the agency.

4.9.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the *Administrative Manual for Special Education Services*. The State Board of Education will not review such determinations.

## 5.0 PUBLIC REGULATORY HEARINGS

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. *See Note 1.*

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the *Administrative Procedures Act*. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

#### 5.3 *Creation of record of public hearing*

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the

reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the conclusion of the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

#### 5.4 *Subpoenas*

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing.

#### 5.5 *Documents*

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

#### 5.6 *Witnesses*

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious proof.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the *Administrative Procedures Act*. The Board's order shall be rendered within a reasonable time after the public hearing.

Note 1: The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 **Del.C.** §105(b).

## DEPARTMENT OF PUBLIC SAFETY

### BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Ch. 27  
(10 **Del.C.** Ch. 27)

#### Promulgated Rules and Regulations

- 1.0 Experience
- 2.0 Appeal
- 3.0 Law Enforcement Exemption
- 4.0 Employment

#### 1.0 Experience

1.1 A constable must meet the minimum training standards for a full-time police officer as established by the Council on Police Training.

Adopted 09/10/86 Amended 05/16/00

#### 2.0 Appeal

2.1 Any applicant who is rejected for a commission as a constable may, within 20 days of such notice of rejection, submit a written notice of appeal.

2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.

2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 20).

2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

#### 3.0 Law Enforcement Exemption

3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.

3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite

training where the deficiency was noted.

Adopted 10/16/96 Amended 05/16/00

#### 4.0 Employment

4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.

4.2 All applicants must submit to an MMPI (Minnesota Multiphasic Personality Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.

4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.

4.4 No full-time police officer may apply for a commission as a constable.

4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.

4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

Adopted 05/16/00

## DEPARTMENT OF TRANSPORTATION

Statutory Authority: 29 Delaware Code,  
Section 8404(8) (29 **Del.C.** §8404(8))

**Request for Policy Implement  
State of Delaware  
Department of Transportation  
P.I. NUMBER: C-07  
English Standards**

#### INDEX FILING CODES

References: 29 **Del.C.** §8404(8)

Issued: 10/16/00

Effective: 11/15/00

#### Table of Contents Title of Policy

- I. Purpose
- II. Policy
- III. Authority
- IV. Approval \*\*\*
- V. Responsibility \*\*\*

**VI. Effective Date \*\*\*****I. Purpose**

The purpose of these regulations is to establish the English Standard(s), as defined herein, as the official standard of measurement for the Department and to establish the procedures and policies which the Department shall follow with regard to the use of the English Standard(s) and the Metric Standard(s) for the various purposes for which the English and Metric Standards might be used within the Department for purposes of weights and measures: including but not limited to contract plans and specifications, design standards, traffic control standards and devices, material specifications and testing procedures, and other such materials, documents etc., requiring the use of weights and measures.

**II. Policy****Scope**

These regulations will apply to all sections of the Department on Transportation

**Definition**

“Department”- Means the Department of Transportation

“English Standard(s)” or “English System”- Means the traditional units of weights and measures used throughout the United States ie: miles, yards, feet, tons, pounds, ounces.

“Metric Standard(s)” or “Metric System”- The standard of weights and measures used through out many other parts of the world ie: kilometer, meter, centimeter, liter.

**Issue**

Pursuant to federal law, policy and mandates; including the Metric Conversion Act of 1975 (15 U.S.C. 2056), the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), Executive Order 12770 issued on July 25, 1991, the U.S. DOT Metric Conversion Planning Guidelines issued on May 8, 1990 and the Federal Highway Administration Metric Conversion Plan approved on October 31, 1991; the Department was required to convert from the English Standard(s) to the Metric Standard(s) by certain specified dates. This conversion included all laws and regulations; all weights and measures; all signs, manuals, plans, documents, manuals, data collection and reporting; related to and including all federal aid contracts. Pursuant to subsequent legislation; the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21, P. L. 105-178), Congress removed the requirements for English to Metric conversion and left it to the states to determine if, when and to what degree each state would convert to metric.

The Department has recognized the tremendous

logistical, financial and other problems associated with total conversion to the Metric Standard(s) and has determined, that as a result of the Transportation Equity Act for the 21<sup>st</sup> Century and removal of an unfunded federal mandate to convert to metric, that the English Standard(s) shall serve as the official standard of measurement for the Department. Nevertheless, the Department has spent considerable time, money and effort in making a conversion of some items to the Metric Standard(s). As a result of the foregoing federal mandates and Departmental effort, the Department has converted to the Metric Standard(s) in various applications including design manuals, specifications and construction details for various types of projects.

Because of the recognized difficulty and cost involved, the Department has determined not to revert all current Metric Standard(s) back to the English Standard(s). The Department has also determined that in light of the global economy and the world market in which we all must operate, that conversion to metric may be the proper course of action in some instances and that those standards previously converted to Metric shall remain as such unless and until such time as a determination is made that it is necessary to convert back to the English Standard(s). Because of the recognized difficulty and cost involved, the Department will not require county and local governments to convert to metric in any case.

Whenever and wherever possible and feasible, the Department will utilize both standards, recognizing that the English Standard takes precedence. The Department will continue to convert as many processes as possible to the English Standard(s), as permitted by available resources. At the same time, because of the problems associated with the conversion process, there are projects which should continue to use Metric Standard(s) and to some extent: depending upon the type of project; the difficulty and practicality or cost of conversion; or when the total conversion to either system would be very labor intensive and expensive; we have continued to use either the English Standard(s) or a combination of the English Standard(s) and the Metric Standard(s) in those instances in which the continued dual use of these systems cause minimal amounts of difficulty.

**Procedure**

The Department has determined that the English Standard(s) will remain the standard of measurement to be used by this agency and will pursue conversion of all appropriate weights and measures to the English Standard(s), as shall be reasonable and practicable. The English Standard(s) shall be the predominant unit for weights and measures in the Department’s materials and documents; however, in the case in which the Metric Standard equivalent shall be known, it shall be included as a reference. In the case in which a Metric Standard(s) manual

or portions thereof have been produced, it shall also be retained as a reference.

The Department will continue to use English Standard(s) or Metric standard(s) of weights and measures for all projects for which it has now customarily adopted such standards. At the same time it will continue to use the English Standards of weights and measures for those projects which have not been converted to metric and for programs and projects that customarily utilize the English Standards, to the extent that such standards are utilized.

With regard to its interface with the public, the Department shall utilize the English Standard(s) for such signs as mandated by federal and state law, rules or regulations. Any plans, designs, drawings or the like presented to the public for public review which may be in the Metric Standard(s) shall also contain the English Standard(s) equivalence for better public understanding.

### **III. Authority**

The Secretary of the Department of Transportation pursuant to 29 **Del.C** 8404 (8) has the authority to "...establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State...."

### **IV. Approval by Policy Committee**

This policy was reviewed and approved by the Department's Policy Committee on October 16, 2000.

### **V. Responsibility**

The Division of Preconstruction shall have primary responsibility for implementation of this policy. Implementation shall also include an annual review of the effectiveness of the policy and a recommendation to the Policy Committee whether the policy should be amended or retained without change.

### **VI. Effective Date**

This policy shall become effective thirty days after signature by the Secretary, or, if applicable, upon compliance with the regulatory process required by the Administrative Procedures Act (29 **Del.C.** Ch. 101).

---

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

The **Delaware State Fire Prevention Commission** will hold a hearing pursuant to 16 **Del. C.** §6603 and 29 **Del.C.** 101 on Tuesday, November 21, 2000, at 1:00 p.m. and 7:00 p.m. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations. 1997 Edition Part I, Annex A, 1997 Edition Part I, Annex B and 1997 Edition Part III, Chapter 1, Operation, Maintenance and Testing of Fire Protection Systems.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or the Administrative Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located in the First Federal Plaza Building, 704 King Street, Suite 200, Wilmington, Delaware, 19801, and Road 321, Georgetown, Delaware, 19947.

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF MASSAGE & BODYWORK**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions clarify the requirements of the 100 hour course required for certification as a massage technician; outline requirements for timely completion of applications; clarify that CPR certification must be kept current for license renewal; and explain the calculation of credit hours for Continuing Education.

A public hearing will be held on the proposed Rules and Regulations on Thursday, December 7, 2000 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the

proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

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

---

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

The Commission will hold a public hearing on the proposed rule amendment on November 28, 2000 at 11:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover DE19901. The Commission will accept written comments from November 1, 2000 to November 30, 2000. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover DE19901.

---

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Tuesday, November 16, 2000 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

**DEPARTMENT OF EDUCATION**

The State Board of Education will consider adopting new Hearing Procedures and Rules at its regular meeting on December 21, 2000. As rules of practice and procedure, these Rules may be adopted informally and are exempt from the procedural requirements of the *Administrative Procedures Act*, 29 **Del. C.**, Chapter 101.

The State Board offers a draft of the new Rules for public review and notice. Comments and suggestions about the draft may be directed to the State Board at P. O. Box 1402, Dover, DE 19903. The State Board reserves the right to alter and amend the draft before adoption of the Rules. The final Hearing Procedures and Rules will be published in the General Notices section of the *Delaware Register* once adopted by the Board.

**DEPARTMENT OF FINANCE**
**DIVISION OF REVENUE**
**TECHNICAL INFORMATION MEMORANDUM**
**2000-6**

**CONTACT: Ronald A. Kaminski, (302) 577-8445,**  
[rkaminski@state.de.us](mailto:rkaminski@state.de.us)

Public Comment shall run from November 1, 2000 through November 30, 2000 and comments must be received by November 30, 2000. Comments shall be made in writing or electronic mail to Ronald A. Kaminski, whose address appears at the conclusion of this Memorandum.

The purpose of this regulation is to describe the filing requirements for making an Application and computing the Delaware Land and Historic Resource Conservation Credit under the provisions of Chapter 18 of Title 30 of the Delaware Code.

H.B. No. 413 added a new Chapter 18 to Title 30 of the Delaware Code. Beginning with taxable years that commence on or after January 1, 2000, there shall be allowed as a credit against the tax imposed by Chapter 11 and 19 of Title 30 of the Delaware Code, an amount equal to 40% of the fair market value of any land or interest in land located in Delaware which is conveyed for the purpose of open space, natural resource, and/or biodiversity conservation or historic preservation as an unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this Act shall be substantiated by a qualified appraisal prepared by a qualified appraiser as those terms are defined under applicable federal law and regulations governing charitable contributions.

The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000. In addition, in any one tax year, the credit used may not exceed the amount of individual or corporate income tax otherwise due. Any portion of the credit which is unused in any one tax year may be carried over for a maximum of five (5) consecutive years following the tax year in which the credit originated. Any qualified donation made in a tax year for which the Delaware Land and Historic Resource Conservation Tax Credit is claimed by a taxpayer, shall not also be eligible for treatment in the same tax year as a charitable contribution for state income tax deduction purposes in calculating Delaware income tax liability.

The Department of Natural Resources and Environmental Control, in conjunction with the Department of State, Division of Historical and Cultural Affairs, shall promulgate such rules and regulations as may be deemed

necessary to certify eligible projects for treatment in fulfillment of the purposes of this Act. Upon receiving certification, the credit can be claimed and computed on Form 1801AC. Attached is a copy of Form 1801AC that will be used to register the applicant and compute the Delaware Land and Historic Resource Conservation Credit. Form 1801AC must be completed and submitted, along with certification and the qualified appraisal, on or before January 31<sup>st</sup> after the end of the calendar year during which the qualified land was conveyed to a qualified conservation agency.

For more information about these regulations, contact **Ronald A. Kaminski, Business Audit Bureau Manager, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801** or phone **(302) 577-8445**.

Patrick Carter, Acting Director of Revenue

---

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

The Delaware Health and Social Services, Division of Public Health will hold two public hearings to discuss proposed revisions to the **“State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems.”** The proposed changes will bring these regulations into compliance with US Environmental Protection Agency requirements. These regulations cover operators of all public water supply systems that are regulated under the Safe Drinking Water Act and the “State of Delaware Regulations Governing Public Drinking Water Systems.”

The public hearings will be held November 21, 2000 at 1:00 PM in the conference room at Artesian Water Company, 664 Churchmans Road, Newark, Delaware and November 22, 2000 at 1:00 PM in Room 5ga, Blue Hen Corporate Center, 655 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
 Blue Hen Corporate Center, Suite 203  
 655 Bay Road  
 Dover, DE 19901  
 Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by November 17, 2000. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 1,



2000 to:

Dave Walton, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

---

**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its policy regarding the Delaware Prescription Assistance Program (DPAP).

**SUMMARY OF INFORMATION SUBMITTED:**

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July, 2000 Delaware Register of Regulations (4 **DE Reg.** 95 (7/1/00)) requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2000. Several comments were received on the proposed regulations. As such, the Delaware Prescription Assistance Program policy has been amended to clarify the budgeting methodology to comply with the language in the statute and to clarify that a fair hearing will be held in accordance with the principles of due process, subject to the provisions in policy at DSSM 5000 - 5607. Due to these significant changes, the regulation is being re-published.

**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, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 2000.

---

**DEPARTMENT OF LABOR**

**OFFICE OF LABOR LAW ENFORCEMENT**

Pursuant to the authority granted to the Department of Labor under 29 **Del.C.** 8503(7), the Department is proposing an amendment to regulations under 29 **Del.C.** 6960, "Prevailing Wage Requirements".

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Wednesday, November 29, 2000  
Department of Labor  
4425 North Market Street  
Wilmington, Delaware 19802  
Third Floor, Industrial Affairs Conference Room,  
Room 203

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8209.

---

**COUNCIL ON APPRENTICESHIP & TRAINING**

PLEASE TAKE NOTICE, pursuant to 19 **Del.C.** §202(a), the Department of Labor, with the advice of the Council on Apprenticeship and Training, has made proposed modifications to Sections 106.9 and 106.10 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the process for deregistration of a sponsor.

A public hearing will be held on the Proposed changes on December 12, 2000 at 10:00 a.m. at the Buena Vista State Conference Center, 661 South DuPont Highway, New Castle, Delaware 19720. The Council will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will consider its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

---

**DELAWARE RIVER BASIN**

**COMMISSION**

**P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Wednesday, November 15, 2000, in West Trenton, New Jersey. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.

---



---

---

# **SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS**

## **THE DELAWARE REGISTER OF REGULATIONS**



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public

hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$120.00 PER YEAR**

---

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$120/YEAR

**You will be billed upon receipt of your order.** Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$10 per issue. Back issues are available at \$12 per issue. Subscription fees are non-refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

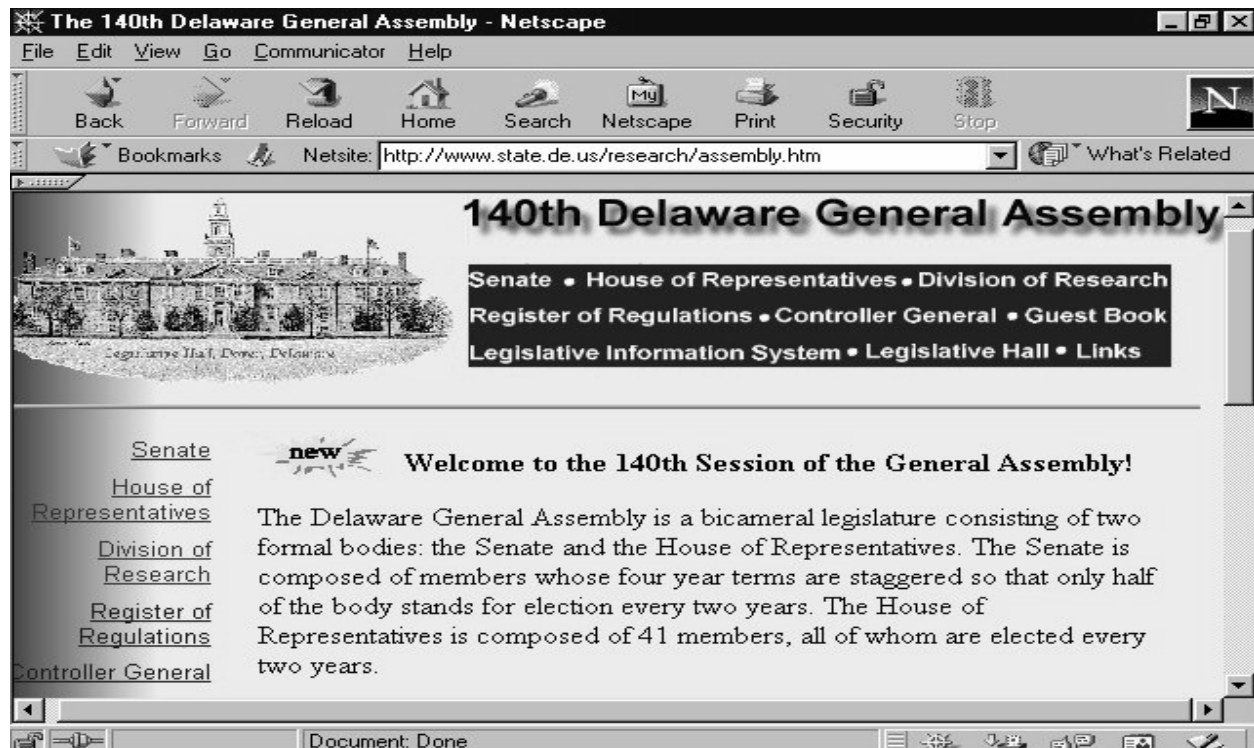
ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

---

---

# Visit The Delaware General Assembly On The Web!



## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

**<http://www.state.de.us/research/assembly.htm>**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

| <u>SERVICES</u>   | <u>ANNUAL COST</u> |
|---|--------------------|
| <b>One copy of all legislation introduced:</b>                          |                    |
| <input type="checkbox"/> Picked up by subscriber *- - - - -             | \$100              |
| <input type="checkbox"/> Mailed daily via First Class postage - - - - - | \$775              |
| <b>One copy of all legislation signed by the Governor:</b>              |                    |
| <input type="checkbox"/> Mailed via First Class postage - - - - -       | \$195              |
| <b>One copy of House and Senate calendars:</b>                          |                    |
| <input type="checkbox"/> 1st Session set - - - - -                      | \$75               |
| <input type="checkbox"/> Picked up by subscriber *- - - - -             | \$100              |
| <input type="checkbox"/> Mailed daily via First Class postage - - - - - | \$775              |
| <b>One copy of all Governor's Advisories:</b>                           |                    |
| <input type="checkbox"/> Mailed via First Class postage - - - - -       | \$25               |
| <b>Daily Legislative Agendas and weekly Standing Committee Notices:</b> |                    |
| <input type="checkbox"/> Via Fax - - - - -                              | \$150              |

\* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at [jhague@state.de.us](mailto:jhague@state.de.us). Please dial (302) 739-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.