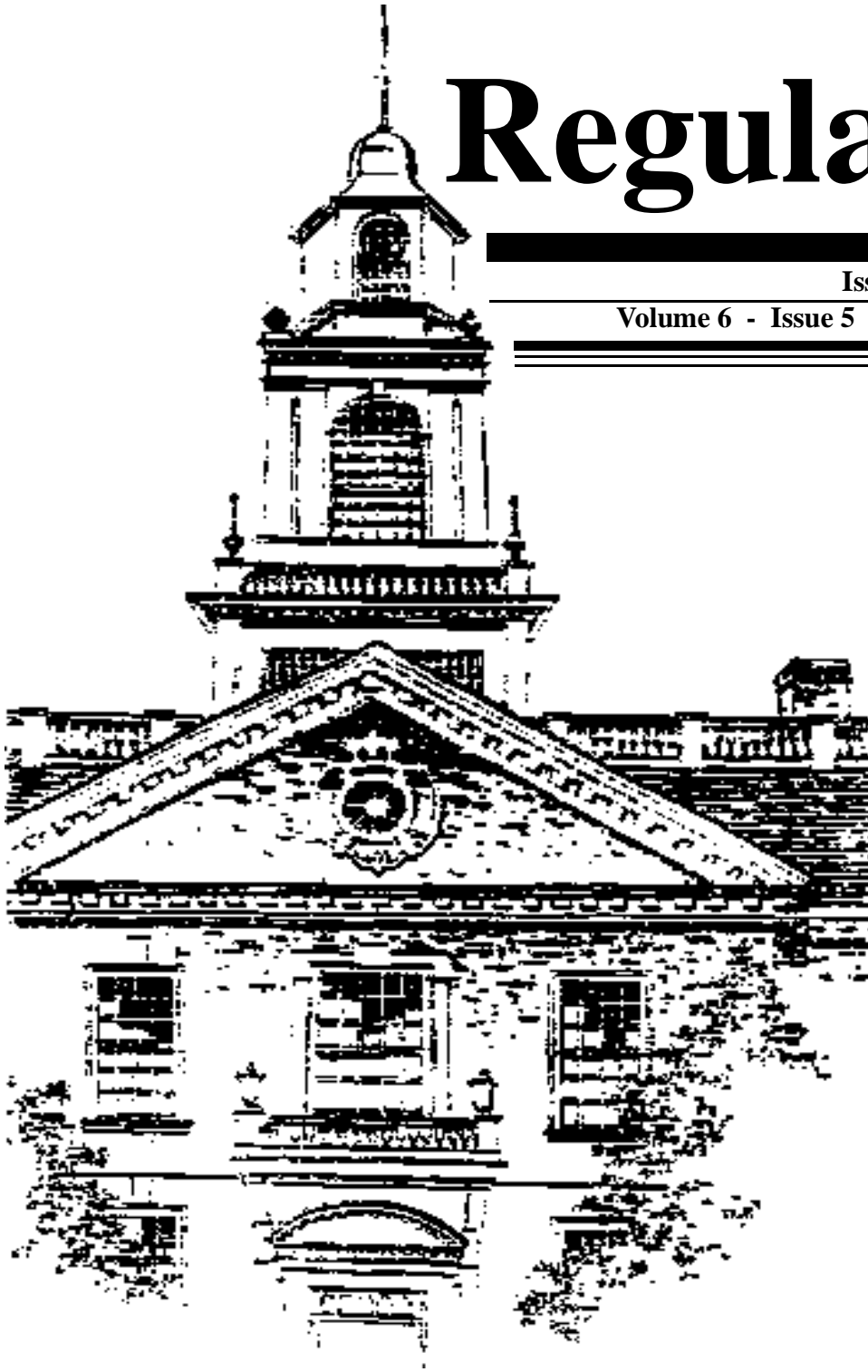


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# Delaware Register of Regulations



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Issue Date: November 1, 2002

Volume 6 - Issue 5

Pages 561 - 707

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Eratta

Proposed

Final

Governor

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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, 2002.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
- - - - -	- - - - -	- - - - -
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.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 107 (31 Del.C. §107)

**PLEASE NOTE: THE OCTOBER 2002 ISSUE OF THE REGISTER OMITTED THE CHECK BOXES FROM SECTIONS B AND E OF THE NON-EMERGENCY TRANSPORTATION CO-PAY POLICY ON PAGE 438. THE REGULATION IS BEING REPRODUCED HERE WITH THE CORRECT SYMBOLS.**

Revision: CMS-PM-85-14(BERC)  
ATTACHMENT 4.18-A  
SEPTEMBER 1985  
Page 1  
OMB NO.: 093-0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE**

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination
	Deductible	Coinsurance	Copayment	
Non-Emergency Medical Transportation	-0-	-0-	\$1.00 per one-way trip	This co-pay is effective October 1, 2002 and is based on the ranges specified in 42 CFR 447.54 and 447.55.

Revision: CMS-PM-85-14(BERC)  
ATTACHMENT 4.18-A  
SEPTEMBER 1985  
Page 2  
OMB NO.: 093-0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE**

B. The method used to collect cost sharing charges for categorically needy individuals:

Providers are responsible for collecting the cost sharing charges from individuals.

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

Non-Emergency Transportation (NET) is provided as an administrative activity under the State Plan. The State's position is that as an administrative activity, NET co-pay requirements are not subject to 42 CFR 447.53(b), exclusions from cost-sharing.

The Transportation Broker or Transportation Provider will, based on information available to them, make a determination of the client's ability to pay the co-pay. Non-payment of this standard cost-sharing amount may result in denial of the service at the Transportation Broker's or Transportation Provider's discretion. Providers may voluntarily provide transportation to client who cannot pay the co-pay amount, however the State will not reimburse the Transportation Broker or the Transportation Provider any co-payment amounts for which the client is or would have been liable. Further, the Transportation Broker or Transportation Provider have complete discretion as to whether they will pursue any unpaid co-pay amounts from clients who were provided non-emergency transportation but failed to reimburse the Transportation Provider the required co-pay fee at the time of the service. The State will not pursue unpaid co-pay amounts from clients.

Revision: CMS-PM-85-14(BERC)  
ATTACHMENT 4.18-A  
SEPTEMBER 1985  
Page 3  
OMB NO.: 093-0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE**

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

The Transportation Broker or Transportation Provider have been informed about: applicable service and amount; and, prohibition of service denial if client is unable to meet the co-pay amount.

E. Cumulative maximums on charges:

State policy does not provide maximums.

Cumulative maximums have been established as described below:

**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.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PLUMBING EXAMINERS**

18 DE Admin. Code 1800

Statutory Authority: 24 Delaware Code  
Section 1805(2) (24 **Del.C.** §1805(2))

The Delaware Board of Plumbing Examiners in accordance with 24 **Del.C.** §1805(2) has proposed comprehensive changes to its rules and regulations. The changes implement the recommendations of the Joint Sunset Committee. The changes eliminate provisions that repeat the statute or exceed the statutory authority. The Council proposes a new definition of "Direct Supervision" in 3.1.2. The pre-examination application procedure is clarified. The reciprocity rule in 5.1 has been modified to indicate the standards for licensure in the licensee's state must be "equivalent to" and not the "same as" the standards in Delaware. Disciplinary proceedings are described by reference to the statute. The web address is included for convenient access to forms and information.

A public hearing will be held at 9:00 a.m. on December 3, 2002 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing Examiners, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at

the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

- 1.0 General Provisions
- 2.0 Practice and Procedure
- 3.0 Pre-examination Requirements for Licensure
- 4.0 Examination and Licensure
- 5.0 Licensure by Reciprocity
- 6.0 Disciplinary Proceedings
- 7.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 General Provisions.**

1.1 Legislative authority. These Rules and Regulations are adopted by the Delaware Board of Plumbing Examiners (hereinafter "the Board") by authority of 24 **Del.C.** Ch. 18, and the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

1.2 Applicability. These Rules and Regulations shall govern proceedings before the Board to the extent they are consistent with governing law ~~and except that the Board may waive application of particular Rules and Regulations where the Board concludes, on the vote of a majority of a quorum of the Board, that application of the Rules and Regulations would result in substantial, manifest injustice.~~ Statutory reference: 29 **Del.C.** §10111 (2); 24 **Del.C.** §1805(2).

1.3 Officers. The Board will conduct election of officers for the offices of Chairperson, Vice-Chairperson and Secretary in May of each year. In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting

called for that purpose. Statutory reference: 24 **Del.C.** §1804(a).

1.4 Meetings. The Board shall, meet as often as necessary to transact the regular business of the Board and in any event, shall meet at least once each calendar quarter. Statutory reference: 24 **Del.C.** §1804(b).

1.5 Contact person. Information about the Board and its practices can be obtained by contacting the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Ste. 203, Dover, Delaware 19904-2467, telephone 302-739-4522 and

<http://www.professionallicensing.state.de.us/boards/plumbers/index.shtml>

Statutory reference: 29 **Del.C.** § 10111(1).

## 2.0 Practice and Procedure.

2.1 Open meetings. All meetings of the Board, or any advisory or subcommittee, will be conducted in compliance with the Freedom of Information Act, 29 **Del.C.** Ch. 100. Statutory reference: 24 **Del.C.** §1812.

2.2 Disciplinary hearings. The procedural rules for disciplinary proceedings before the Board are outlined in 6.0. Statutory reference: 29 **Del.C.** §10111(2).

2.3 Advisory and subcommittees. The Board may appoint such advisory and subcommittees from time to time to assist in the performance of its duties as the Board deems necessary. Statutory reference. 29 **Del.C.** §10111(1).

## 3.0 Pre-examination Requirements for Licensure.

3.1 Definitions. The following definitions shall apply for purposes of this section:

3.1.1 **"Performed plumbing services"** means practical, hands-on experience working with tools in the installation, maintenance, extension, alteration, repair and removal of all piping, plumbing fixtures, plumbing appliances and plumbing apparatus. It does not include time spent in supervising, engineering, estimating and other managerial tasks, nor time spent in working with an entity authorized to perform plumbing services, but on menial tasks or on tasks which do not constitute the practice of plumbing, such as sewer cleaning. Statutory Reference: 24 **Del.C.** §1806(a)

3.1.2 **"Supervision"** means ~~plumbing services performed while employed by a licensed plumber, or by the same firm, partnership, corporation, or owners of the company as the licensed plumber, and performed under that plumber's license.~~ **"Direct supervision"** shall mean control and oversight by a licensed plumber who is an owner or full-time employee of the entity providing plumbing services. The supervising licensed plumber shall be deemed to be responsible and accountable for the work performed. Statutory reference: 24 **Del.C.** §1806(a) and §1813(b).

3.2 Pre-examination requirements. In order to sit for the examination, an applicant must complete and return an

application form to the Board's office, showing that the applicant has 2 years of verified experience under the supervision of a licensed plumber after having received a Journeyman's Certificate in an apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standard. Alternatively, the applicant can show 7 years of verified experience under the supervision of a licensed plumber if the applicant has successfully completed the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school. ~~completed either the Journeyman's program or the Apprenticeship program, as follows:~~

3.2.1 ~~Journeyman's program.~~ The applicant must have received a Journeyman's certificate issued by a plumbing apprenticeship program which at least meets the Federal Bureau of Apprenticeship and Training Standards and have performed plumbing services for at least two (2) years under the supervision of a licensed plumber after obtaining the Journeyman's Certificate.

3.2.2 ~~Apprenticeship program.~~ The applicant must have completed a state-approved series of tests offered by Delaware apprenticeship schools and have performed plumbing services for at least seven (7) years under the supervision of a licensed plumber. Except upon a showing of exceptional hardship, the applicant's seven (7) years of supervised experience must have been completed within fifteen (15) years of his or her application for licensure. Statutory reference: 24 **Del.C.** §1806(a).

3.3 Supporting documentation. ~~The application must be accompanied by the necessary fees and proof of completion of either the Journeyman's course or the Apprenticeship course, in the form of sealed or conformed copies of the Journeyman's Certificate or a certified transcript or other reliable documents evidencing successful completion of the apprenticeship tests and employer(s) affidavit(s) verifying the required supervised experience.~~ The applicant shall present a copy of the Journeyman certificate or, alternatively, proof of passing the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school. Verification of the required experience shall be by affidavit of the supervising licensed plumber on the form approved by the Board. If the applicant is unable to obtain an affidavit from the supervising licensed plumber, the tax form W-2 or the affidavit of the employer or officer of the employing company may be submitted as proof of experience at the discretion of the Board. ~~The application must be accompanied by the necessary fees and proof of completion of either the Journeyman's course or the Apprenticeship course, in the form of sealed or conformed copies of the Journeyman's Certificate or a certified transcript or other reliable documents evidencing successful completion of the apprenticeship tests and employer(s) affidavit(s) verifying the required supervised experience.~~ Statutory Reference: 24

**Del.C. §1806(b).**

3.4 Disciplinary record. An applicant must also certify to the Board that he or she has not engaged in any of the acts that would be grounds for discipline of a licensee of the State of Delaware and that he or she does not have any disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where he or she has previously been or currently is licensed, or certified as a plumber. An applicant currently or previously licensed or certified in another jurisdiction shall provide the Board with certified statements from all other such jurisdictions verifying their disciplinary and complaint records. Statutory Reference: 24 **Del.C. §1806(c).**

3.5 Complete application. An application to sit for the examination is not considered complete until the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record) and all fees required by this section. Statutory Reference: 24 **Del.C. §1806(b).**

#### **4.0 Examination and Licensure.**

4.1 Applications. A person wishing to be licensed as a plumber shall complete the application form designated by the Board and submit it to the Division of Professional Regulation along with any required supporting documents and the appropriate fees. Statutory reference: 24 **Del. C. §1806(b).**

4.2 Examination. The Board designates the NAI-BLOCK Plumbing Examination as the required examination for licensure in Delaware. The examination will be offered four (4) times per year. No person shall be permitted to sit for the examination until they have he or she has completed the Pre-examination Requirements of Rule 3.0 and received the Board's approval to take the examination. ~~An applicant shall take the examination within two (2) regularly scheduled examination periods of receiving the Board's approval to sit for examination. Applicants who do not take the examination within two (2) regularly scheduled examination periods must reapply to the Board for licensure. Statutory Reference: 24 Del.C. §1805(3), (4).~~

4.3 Passing Score. The passing score on the examination shall be 70%. Statutory Reference: 24 **Del.C. §1805(3).**

4.4 Reexamination. Applicants who do not earn a passing score on the examination may retake the examination two additional times, at its next regularly scheduled administrations, without Board approval. An applicant who does not earn a passing score after taking the examination a total of three (3) times may reapply to the Board after is not eligible for licensure until one (1) year has passed from the date he or she last took the examination. Such an applicant must reapply to the Board for licensure. Statutory Reference: 24 **Del.C. §1805(4) §1806(d).**

4.5 Licensure. A plumbing license shall be issued to

~~each applicant who achieves a passing score on the examination, meets the education, experience and disciplinary record requirements of 24 Del.C. §1806 and Rule 3.0 of these Rules and Regulations and pays the appropriate fees for licensure. Statutory Reference: 24 Del.C. §1805(6).~~

#### **5.0 Licensure by Reciprocity.**

5.1 Applicability. ~~This section shall apply to any applicant seeking licensure through reciprocity from his or her current licensure in another State. Statutory Reference: 24 Del.C. §1807.~~

5.2 Applications. ~~A person wishing to be licensed as a plumber through reciprocity shall complete the application form designated by the Board and submit it to the Division of Professional Regulation along with any required supporting documents and the appropriate fees. An application for licensure by reciprocity is not considered complete until the Division of Professional Regulation has received the application form, all supporting documents and all fees required by this section. Statutory Reference: 24 Del.C. §1807.~~

5.3 Disciplinary record. ~~An applicant under this section must certify to the Board that he or she has not engaged in any of the acts that would be grounds for discipline of a licensee of this State and that he or she does not have any disciplinary proceedings or unresolved complaints pending against him or her in any state or jurisdiction where he or she has previously been or currently is licensed or certified as a plumber. An applicant currently or previously licensed or certified in another state or jurisdiction shall provide the Board with certified statements from each of those states and jurisdictions verifying their disciplinary and complaint records and confirming that the applicant is currently licensed in the State through which he or she seeks reciprocity. Statutory Reference: 24 Del.C. §1807.~~

5.4 5.1 Equivalency. An applicant under this section must demonstrate that the standards for licensure of the State through which the applicant seeks reciprocity are the same as equivalent to those under 24 **Del.C. §1806 and Rules 3.0 and 4.0 of these Rules and Regulations.** Specifically, the law of the other State must require:-

5.4.1 ~~a passing score on an examination prepared by a recognized testing service; and~~

5.4.2 ~~education or experience, or a combination of education and experience, at least equal to that required by Rule 3.2. Statutory Reference: 24 Del.C. §1807.~~

5.5 Reciprocity licensure. ~~A plumbing license shall be issued to each reciprocity applicant who meets the requirements of 24 Del.C. §1807 and this section, and pays the appropriate fees for licensure. Statutory Reference: 24 Del.C. §1805(6).~~

## 6.0 Disciplinary Proceedings.

6.1 The statutory Grounds for Discipline and the Disciplinary Sanctions can be found 24 Del.C. §1810 and §1811 respectively.

~~Hearing Procedures. All disciplinary hearings will be conducted in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101. Statutory reference: 24 Del.C. §1805(8).~~

~~6.2 Continuances. Requests for a continuance of a scheduled disciplinary proceeding shall be submitted to the Board in writing at least five (5) days before the date of the hearing. Requests submitted less than five (5) days before the date of the hearing will be granted only on a showing of unforeseeable emergency. Except on a showing of exceptional circumstances, no party shall be allowed more than one (1) continuance of any proceeding scheduled before the Board. Statutory Reference: 29 Del.C. §1011(2).~~

~~6.3 Consent Agreements. Parties to a disciplinary proceeding shall be excused from attending the scheduled hearing provided that they are not otherwise under subpoena and provided that a complete, fully executed consent agreement or like document is submitted to the Board at least five (5) days before the date of the hearing. In the event that the Board does not approve the consent agreement, the parties shall be notified and the matter rescheduled for hearing. Statutory Reference: 29 Del.C. §1011(2).~~

~~6.4 Standards of Conduct. Examples of illegal, incompetent or negligent conduct shall include, but are not limited to, the following:~~

~~Violating any provision of the State Plumbing Code as adopted by the Department of Health and Social Services, including, but in no way limited to, providing plumbing services without a permit where a permit is required.~~

~~Performing plumbing services outside the scope of the licensee's expertise.~~

~~Falsifying records and other acts of consumer fraud.~~

~~Physically abusing or assaulting customers or theft or willful destruction of a customer's property.~~

~~Improper or inadequate supervision of Journeymen or Apprentices.~~

~~Using alcohol or illegal drugs on the job.~~

~~Allowing another to use your license.~~

~~Knowingly helping another to violate or avoid the applicable licensing laws or State Plumbing Code.~~

~~Failing to report unprofessional or negligent conduct of other licensees which seriously impairs their ability to safely perform plumbing services or poses a substantial threat of harm to the public. Statutory Reference: 24 Del.C. §1810(a)(2).~~

## 7.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

7.1 If the report a written report, signed by a complainant, alleging that a licensee may be chemically

dependent or impaired 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.

7.2 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.

7.3 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).

7.4 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.

7.5 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.

7.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which

includes, but is not limited to, the following provisions:

7.6.1 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.

7.6.2 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.

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

7.6.4 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.

7.6.5 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.

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

7.7 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.

7.8 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.

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

7.10 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.

7.11 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 non disciplinary matter.

7.12 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.

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**DIVISION OF PROFESSIONAL REGULATION**

**BOARD OF VETERINARY MEDICINE**

24 DE Admin. Code 3300

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

PLEASE TAKE NOTICE, that pursuant to 29 *Del.C.* Chapter 101 and 24 *Del.C.* Section 3306(a)(1), the Delaware State Board of Veterinary Medicine proposes to add to its rules and regulations. The proposed addition concerns advertising and provision of emergency services. The proposed addition seeks to define unprofessional conduct for a veterinarian as advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The

availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call." The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond. prescribing medication without examining the animal(s) within a period of a year. The proposed regulation serves to implement or clarify Section 3313(a)(1) of 24 *Del. C.* Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, December 17, 2002 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

- 1.0 Direct Supervision
- 2.0 Unprofessional Conduct
- 3.0 Privileged Communications
- 4.0 Veterinary Premises and Equipment
- 5.0 Qualification for Licensure by Examination as a Veterinarian
- 6.0 Character of Examination - North American Veterinary Licensing Examination (NAVLE)
- 7.0 Reciprocity
- 8.0 Licensure - Renewal
- 9.0 Continuing Education
- 10.0 Voluntary Treatment Option

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

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2

which constitute the practice of veterinary medicine under 24 *Del.C.* § 3302 (6) must be performed under direct supervision. Direct supervision of support personnel also includes:

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

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

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

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

1.2.1 Diagnosing.

1.2.2 Prescribing.

1.2.3 Inducing Anesthesia.

1.2.4 Performing Surgery.

1.2.5 Administration of Rabies Vaccinations.

1.2.6 Operative dentistry and oral surgery.

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

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

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

1.2.10 Euthanasia.

1.2.11 Issue health certificates.

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

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

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

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



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

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

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

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

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

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

2.1.8.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

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

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

2.1.9 Leaving an animal during the maintenance stage of anesthesia.

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

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

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

2.1.12 Misrepresenting continuing education hours to the Board.

2.1.13 Failure to obey a disciplinary order of the Board.

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

2.1.15 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency

services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call." The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.

**See 5 DE Reg. 1897 (4/1/02)**

**See 5 DE Reg. 1962 (5/1/02)**

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

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

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

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

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

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

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

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

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

4.8 Proper refrigeration and sterilization equipment should be available.

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

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

**See 6 DE Reg. 273 (9/1/02)**

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

5.1 The applicant shall file the following documents:

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

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

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

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

5.1.5 Check or money order for the amount

established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

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

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

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

**See 6 DE Reg. 273 (9/1/02)**

#### **7.0 RECIPROcity (24 Del. C. § 3309)**

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

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

education requirements for renewal as specified in Section 9.0.

**See 6 DE Reg. 273 (9/1/02)**

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

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

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

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

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

### **9.2 Continuing Education Requirements for Reinstatement of Lapsed License**

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

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

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

### **9.3 Continuing Education Requirements for Reinstatement of Inactive License**

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

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

9.5 The following organizations are approved for

formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

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

9.5.5 Registry of Approved Continuing Education (RACE) courses.

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

9.6.1 University course work, subject to Board approval.

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

9.6.3 Government Agencies.

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

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

**See 6 DE Reg. 273 (9/1/02)**

### **10.0 VOLUNTARY TREATMENT OPTION**

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

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

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

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or

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

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

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

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

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

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

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

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

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

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

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

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

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

**See 5 DE Reg. 1962 (5/1/02)**

**See 6 DE Reg. 273 (9/1/02)**

**DEPARTMENT OF AGRICULTURE****DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code  
Sections 1008 & 1011 (2 Del.C. §§1008, 1011)

**State Forest Regulations**

The Department proposes these regulations pursuant to 3 Del.C. 1008 and 1011. The State Forests of Delaware are open to the public for all legal forms of recreation and enjoyment. The following rules and regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These regulations are a total rewrite of those regulations proposed at 2 DE Reg. 348, (9/1/98).

The proposed regulations will be considered at a public hearing scheduled for *December 6, 2002 at 1:00 p.m.* at the Delaware Department of Agriculture Building Conference Room. Copies of the proposed regulations may be obtained from the State Forester's Office. Public comments may be submitted in writing to E. Austin Short, III on or before *December 6, 2002* and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4500.

**1.0 AUTHORITY**

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by the General Assembly found in Sections 1008 and 1011 of Title 3 of the Delaware Code.

**2.0 PURPOSE**

The State Forests of Delaware are open to the public for all legal forms of recreation and enjoyment. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

**3.0 DEFINITIONS**

3.1 "Department" is the Delaware Department of Agriculture

3.2 "DFS" is the Delaware Forest Service

3.3 "DNREC" is the Delaware Department of Natural Resources and Environmental Control

**4.0 GENERAL RULES AND REGULATIONS**

4.1 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.

4.2 Fires are prohibited for any purpose on State Forest

lands other than in designated areas. Written permission must be obtained in advance for fires on State Forest lands outside of designated areas. Any such authorized fire must, at all times, be under the direct supervision and care of a competent adult, and must be thoroughly extinguished before the fire site is abandoned.

4.3 The dumping or depositing of rubbish, trash, household items, or other debris, and the placing of advertisement signs within State Forests are prohibited.

4.4 For the sake of sanitation and attractiveness, persons using public camp and picnic sites are required to deposit all waste paper, tin cans and other refuse in the containers, if provided. Where containers are not provided, users must properly dispose of all refuse off State Forest lands.

4.5 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.

4.6 All State Forest boundaries are well marked with metal signs, yellow paint on boundary line trees, brushed-out paths or with a combination of all three features. Therefore, boundary lines should be easy to identify. State Forest visitors should avoid trespass or encroachment upon adjoining private lands by staying within boundaries of State Forest lands.

4.7 Many State Forest access roads are closed to vehicular travel to improve the quality of recreation and to reduce littering. These roads and trails are open to pedestrian and non-vehicular travel only. Non-pedestrian traffic (e.g. horseback riding, mountain biking) is restricted to access roads and trails, unless otherwise noted. In addition, vehicle use of tax ditches is unlawful. Furthermore, no off-highway vehicles or all-terrain vehicles, either registered or non-registered, are permitted. The only exception to this rule applies to those off-highway vehicles owned, operated, and/or authorized by the Delaware Forest Service (DFS). Violators will be prosecuted for trespassing.

4.8 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.

4.9 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.

4.10 Fishing on State Forest lands is limited to catch and release only.

**5.0 CAMPING RULES AND REGULATIONS**

5.1 A forest use permit is required for all camping on

State Forest lands. Camping is free of charge, year round, but restricted to map-designated campsites. Permits are available at the State Forest office during office hours or from the information box.

5.2 Campsites are on a first-come/ first serve basis. Reservations may be accepted for special occasions.

5.3 Campsites are of a primitive type, and are to be used **ONLY** for tent, van or pickup campers. Travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted.

5.4 There are a limited number of campsites, each is large enough to accommodate large families. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Campsites are limited to a maximum number of 25 people per site, with a maximum stay of three nights per week.

5.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police should the need arise.

5.6 State forests are "multiple-use facilities", which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, orienteering, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.

5.7 Firewood for camp use is available at the campsites. If more firewood is needed, it may be gathered locally from dead and downed trees. No standing trees or shrubs are to be cut. Using firewood located at the office complex is prohibited. Campfires are to be in established fire rings only.

5.8 Campsites are to be left clean for the next users, and all fires are to be extinguished before departing from the area.

## **6.0 REDDEN STATE FOREST LODGE**

6.1 Maximum Lodge capacity is 45 persons (overnight use).

6.2 The organization or individual renting the Lodge must be at least 21 years of age and provide a minimum of one adult supervisor per ten youths. Youth are defined as persons under 18 years of age and adults as having reached the age of 21.

6.3 The use or possession of illegal drugs is strictly prohibited. Additionally, alcoholic beverages are prohibited (unless approved in writing by the DFS). Smoking and the use of other tobacco products are prohibited inside the Lodge.

6.4 Unauthorized heating equipment is prohibited in the Lodge. The fire alarm system is designed for the protection of all those who use the Lodge and the structure itself. **Any misuse or intentional activation of this and other alarms is strictly prohibited and legal action(s) will**

**be taken pursuant to Delaware Code.**

6.5 The use or possession of **firearms or other weapons (except as permitted for legal hunting outside the safety zone, or as approved in writing by the Delaware Forest Service)**, etc., is strictly prohibited.

6.6 No outside fires may be started at any time in the vicinity of the Lodge, except in the permanent grills installed on site and the fire pit area, or as approved in writing by the Delaware Forest Service.

6.7 Service dogs are permitted; no other pets shall be permitted within or near the Lodge.

6.8 An adequate supply of firewood will be provided and placed on the back porch. Please do not retrieve additional wood from the shed/storage area. No charcoal, wax logs, or other materials shall be used in the fireplaces.

6.9 No sleeping facilities are provided at the Lodge. There are cooking facilities and tables and chairs for eating. There are no pots, pans, dishes, or serving articles. Do not move any furniture or fixtures. Folding tables and chairs are not permitted outside the Lodge.

6.10 The telephone at the Lodge is provided for emergencies, local calls, and credit card or collect long distance calls and are only for use by adults, except in emergencies. You must dial 9 before placing any call. The number for the Lodge phone is (302) 856-5939, and incoming calls can be received. Please remember this telephone is only to be used when necessary and are not for social calls. It is the responsibility of the applicant to honor these restrictions and inform all lodge users of the telephone restrictions. If the telephone restrictions are not honored, the Delaware Forest Service reserves the right to remove the telephone at any time.

6.11 **Lodge Rental Fees, Reservations, Deposits, and Cancellations**

6.11.1 Reservations shall be made on a first-come, first-served basis. To secure a reservation, a completed application and the full Lodge user fee must be received at least 120 days prior to the desired reservation date.

6.11.2 A security-damage deposit in the amount of \$100.00 must be received at the time of check-in. If the security-damage deposit is not paid prior to check-in, the person/group/organization will not be permitted use of the lodge. The security-damage deposit will be returned within 5 days after check-out, if the lodge is found in good condition. If the lodge is not found in good condition, an itemized list of charges will be provided to the person/group/organization.

6.11.3 Cancellation policy: Reservations must be canceled at least fifteen (15) working days prior to the arrival date. If this cancellation policy is not followed, the reservation deposit will be forfeited. The security-damage deposit will be refunded for all cancellations.

6.11.4 Types of Use

6.11.4.1 Daily: 9:00 a.m. - 3:00 p.m.

6.11.4.2 Evening: 4 p.m. - 10 p.m.

6.11.4.3 Weekend: Friday 4 p.m. -

Sunday 10 p.m.

6.11.4.4 Weekday Overnight: 4 p.m. - 8

a.m.

6.11.5 Lodge Rental Fees: Lodge user fees shall be as follows:

(Amounts in parentheses indicate proposed increases in fees)

6.11.5.1 May 1 to September 30

6.11.5.1.1 \$75 Daily, Evening Use, and Weekday Overnight

6.11.5.1.2 \$200 Weekend Use

6.11.5.2 October 1 to April 30 (Increased fees due to heating expenses)

6.11.5.2.1 \$85 Daily, Evening Use, and Weekday Overnight

6.11.5.2.2 \$225 Weekend Use

6.11.5.3 Checks should be made payable to: Department of Agriculture.

6.11.5.4 Payments and application should be mailed to:

Redden State Forest

18074 Redden Forest Drive

Georgetown, DE 19947

(302)856-2893

weekdays 8:00 a.m. - 4:30 p.m.

## **7.0 HUNTING RULES AND REGULATIONS**

7.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.

7.2 No special permits are required to hunt on State Forest lands, **except as specified in the DNREC, Division of Fish and Wildlife annual hunting manual.** Properly licensed hunters may hunt during any open season except on areas designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs.

7.3 Parking is available on all State Forest tracts.

7.4 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.

7.5 Deer drives by any person or persons are not permitted on any State Forest land at any time.

7.6 Small game hunting is closed on State Forest lands during firearm deer seasons.

7.7 The DFS reserves the right to close to hunting specific State Forest tracts during specific hunting seasons. Therefore, it is important to consult the current hunting guide for a listing of these closures.

7.8 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.

7.9 Target shooting is prohibited. Firearms are allowed for legal hunting only, and are prohibited on State Forest lands from March 1 through August 31.

7.10 Waterfowl hunting is not permitted on State Forest land or waters.

7.11 The following hunting restrictions apply to several tracts of Blackbird State Forest. Maps delineating these areas are available at Blackbird State Forest headquarters or by calling (302)653-6505.

7.11.1 All deer hunting is limited to numbered stands.

7.11.2 For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at Blackbird State Forest Headquarters, located on the Tybout tract on Blackbird Forest Rd. (Rd. 471), 1 ½ hours before legal hunting time.

7.11.3 For Muzzleloader season there will be a daily lottery held at Blackbird State Forest Headquarters, located on the Tybout tract on Blackbird Forest Rd. (Rd. 471), 1 ½ hours before legal hunting time.

7.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must hunt from the stand only, as walk around hunting is not permitted.

7.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.

7.11.6 Stands will be available during Archery season on a first come first serve basis.

7.11.7 No more than one hunter may hunt from a stand at any one time.

7.12 These special hunting restrictions apply to the Tybout tract of Blackbird State Forest:

7.12.1 Squirrel hunting is not allowed with rifle or muzzleloading rifle, shotgun squirrel hunting is permitted.

7.12.2 Dog training is prohibited at all times.

## **8.0 FOREST USE PERMITS**

8.1 Forest use permits on State Forests are issued on a first-come first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation (Blackbird State Forest only). Upon arrival at the facility users are required to fill out a Forest Use Permit (Doc. No. 65-04-02/87/10/03). Under special circumstances facilities may be applied for in advance.

8.2 Items to be filled out by all applicants include:

8.2.1 Date of application

8.2.2 Time of application submission

8.2.3 Applicants' name

8.2.4 Applicants' address, city, state, zip code

8.3 Camping:

8.3.1 Individual or group permit

8.3.2 Number of persons camping

# PROPOSED REGULATIONS

- 8.3.3 The name of organization (if applicable)
- 8.3.4 Vehicle make, model, color, and license number
- 8.3.5 Permit effective date & termination date
- 8.3.6 Applicants' signature
- 8.4 Group Users/Special Events:
  - 8.4.1 The name of the person in charge
  - 8.4.2 The name of organization
  - 8.4.3 Number in the group
  - 8.4.4 Permit effective date
  - 8.4.5 Permit termination date
  - 8.4.6 Facility used:
    - 8.4.6.1 Camping
    - 8.4.6.2 Picnic shelter
    - 8.4.6.3 Nature study area
    - 8.4.6.4 Other
    - 8.4.6.5 Applicants' signature

8.5 Firewood Permits:

Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first come first serve basis. There is a fee of \$20 for firewood permits, which allows the holder to cut two standard pickup loads of firewood. No trees are to be felled; only downed wood may be cut. Designated firewood cutting areas will be delineated by State Forest employees and posted as such.

## **9.0 DEPARTMENT ENFORCEMENT REGULATIONS**

9.1 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and fined not less than \$25 nor more than \$250 and pay the court costs for each violation. For each subsequent violation, within three years of the previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and pay court costs. In addition to such fines and court costs, a violator who is convicted of damaging, destroying, or removing property owned and maintained by the State Forest Service, shall be required to make restitution to the Department for the replacement or restoration of such property.

9.2 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.

9.3 Notwithstanding the immediate preceding subsection, a forest service officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of

arrest and during the regularly scheduled hours of the Court. 9.4 After payment for fines and costs, if any, is received by the Department of Justice or Justice of the Peace Court, the Department or the Court shall mail a receipt indicating payment for such fine if the violator paying such fine makes a written request for a receipt and encloses a self-addressed envelope with proper postage affixed thereon.

Delaware Forest Service  
Forest Use Permit Application

Date(s) of use \_\_\_\_\_ Permit No. \_\_\_\_\_  
 Application For:  Firewood  Camping  Other (explain)  
 Drivers license No. \_\_\_\_\_ Expiration Date \_\_\_\_\_ Issuing State \_\_\_\_\_  
 Location  Blackbird State Forest No. in group \_\_\_\_\_  
                    Redden State Forest  
                    Taber State Forest

Name \_\_\_\_\_  
                   First                  MI                  Last  
 Address \_\_\_\_\_  
 Street/P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Phone No. ( ) \_\_\_\_\_ Phone No. ( ) \_\_\_\_\_  
   Home  Work

Vehicle Information \_\_\_\_\_  
   Year/Make/Model/Color                  Tag No.  
 Effective Date \_\_\_\_\_ Expiration Date \_\_\_\_\_ Fee \$ \_\_\_\_\_  
 Comments \_\_\_\_\_

In exercising the above-described use, I agree to abide by all of the regulations of the Delaware Forest Service (DFS), including but not limited to, those attached to this application, as well as the instructions of the undersigned DFS personnel. I fully understand that the State has neither commercially-procured insurance nor self-insurance to cover any injury, risk or loss which occurs in the State Forest and that the State is immune from any and all liability from any such injury, risk or loss.

In consideration of the granting of the permit, I agree to waive any and all claims arising out of the above-described use which may accrue to myself and/or to anyone else in my custody and control, and I further agree to indemnify the State and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damages to property arising out of any occurrence in the State Forest.

\_\_\_\_\_  
 APPROVED: SIGNATURE OF DFS PERSONNEL Date \_\_\_\_\_

\_\_\_\_\_  
 SIGNATURE OF APPLICANT Date \_\_\_\_\_

Note: Any violation of the State Forest rules and regulations will result not only cancellation of this permit, but may also result in possible arrest and fines. This permit



is to be kept in applicant's vehicle or on his/her person and must be produced at the request of any forest officer. This permit is subject to cancellation by the state forester at any time for just cause. Authority: Title 3, Chapter 10, Sections 1008 and 1011.

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**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 Del.C. §10103)

The Delaware Thoroughbred Racing Commission proposes to enact a new Rule 15.13. The proposed rule would provide as follows:

1) prohibit possession of an instrument used for shock wave therapy on the licensee's race track; 2) provide that no horse may be treated with any form of shock wave therapy within ten days of racing; 3) provide that the administration of shock wave therapy may only be performed by a licensed veterinarian who must document treatment in the daily medication report; and 4) impose penalties on trainers and veterinarians for violations.

The Commission will accept written comments from November 1, 2002 through January 5, 2003. The Commission will hold a public hearing on the proposed rule on January 6, 2003 at 10:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, at the Department of Agriculture.

The proposed rule 15.13 is as follows:

**15.13 Shock Wave Therapy/Instruments**

(a) No person may possess on a licensee's race track an instrument used for shock wave therapy.

(b) No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).

(c) The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.

(d) A Trainer or Veterinarian who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the stewards and/or Commission including but not limited to a maximum suspension of ninety (90) days.

**PLEASE NOTE: AS THE REMAINDER OF THE RULE IS NOT BEING MODIFIED IT IS NOT BEING PUBLISHED.**

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Sections 1145(f), 1146(f)  
(16 Del.C. §§1145(f), 1146(f))

**Public Notice****Regulations for Criminal History Checks and Drug  
Testing for Home Health Agencies**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies pursuant to 16 Del.C., Sections 1145(f) and 1146(f). These regulations address issues including criteria for unsuitability for employment, confidentiality and the responsibilities of employers, applicants and the Department with respect to criminal history checks and drug testing for applicants for employment by home health agencies and/or private healthcare givers in a resident's home or home of residence.

**Invitation For Public Comment**

Public hearings will be held as follows:

Monday, December 2, 2002, 10:00 AM  
Department of Natural Resources &  
Environmental Control  
89 Kings Highway, Dover

Tuesday, December 3, 2002, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway, New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments on these proposed regulations should be sent to:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the December 3, 2002 public hearing.

**72.0 Purpose**

The purpose of these regulations is to ensure the safety

and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 Delaware Code, Section 122(3)o., and/or private healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment in these agencies or private homes, effective July 1, 2001, shall be subject to pre-employment criminal history checks and pre-employment drug testing.

## **72.1 Definitions**

72.101 **"Conditional Employment"** pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the State criminal history record, (b) the Federal criminal history record, and (c) the drug test. Conditional employment must end immediately if either the State or Federal criminal history record contains disqualifying crime(s) as delineated in Section 72.201 of these regulations.

72.102 **"Department or DHSS"** means Department of Health and Social Services.

72.103 **"Employer"** is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

72.104 **"Final Employment"** means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in such person's federal criminal record, and the results of the drug testing.

72.105 **"Hire"** means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in return for a finder or placement fee.

72.106 **"Home Health Agency"** is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of these services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

72.107 **"Illegal drug"** for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

72.108 **"Promotion"** means any change in job

classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

## **72.2 Criteria For Unsuitability For Employment**

72.201 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:

a. Conviction of any act causing death as defined in 11 Delaware Code, Chapter 5, Subchapter II, Subpart B with no time limit;

b. Conviction of any sexual offense designated as a felony in 11 Delaware Code, Chapter 5, Subchapter II, Subpart D with no time limit;

c. Conviction of any violent felony as specified in 11 Delaware Code, Section 4201(c) within the last ten years;

d. Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last ten years;

e. Conviction of any felony other than those specified above within the last five years;

f. Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last five years;

g. Conviction of any Class A misdemeanor included in 11 Delaware Code, Chapter 5, Subchapter II, Subpart A within the last five years;

h. Conviction of any attempt to commit a crime, as defined in 11 Delaware Code, Section 531, with respect to any of the above listed offenses.

72.202 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in home health care:

a. Type of conviction(s);

b. Frequency of conviction(s);

c. Length of time since conviction(s) occurred;

d. Age at the time of the conviction(s);

e. Record since the conviction(s);

f. Relationship of conviction(s) to type of job assignment.

## **72.3 Employer Responsibilities**

72.301 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.

72.302 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.

72.303 If an employer wishes to have a criminal

history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.

72.304 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.

72.305 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.

72.306 Upon receipt of the results of the criminal history record check and the drug testing, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 72.202 unless the state and/or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.

72.307 The employer shall notify the applicant of the findings of the criminal history record check and drug testing.

72.308 The employer is required to provide complete copies of all information received from the Department pertaining to an applicant to the individual in need of care or his/her guardian upon placement of the applicant.

72.309 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations.

#### **72.4 Applicants' Responsibilities**

72.401 Applicants are responsible for completing all information accurately and completely on the *Criminal History Record Request Form* and any form provided by the employer for use in obtaining mandatory pre-employment drug testing. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.

72.402 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.

72.403 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional

fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

72.404 The applicant is responsible for submitting to the required drug testing and providing verification to the employer.

#### **72.5 Department's Responsibilities**

72.501 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.

72.502 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.

#### **72.6 Confidentiality**

72.601 In accordance with 11 Delaware Code, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.

72.602 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.603 The Department shall not release to employers, as defined in Section 72.103 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

72.604 The following procedure shall be used to permit the review of criminal history record files by any applicant:

a. An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

b. An applicant shall make an appointment to review the record at the Department in the presence of a

Department employee. The applicant shall present photo identification at the time of the review.

c. Written documentation of the date and time of the review and the names of those present shall be filed in the criminal history record file of the applicant.

d. Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.

72.605 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 72.103 of these regulations, or the Department.

72.606 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.607 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

Office of Emergency Medical Services  
Blue Hen Corporate Center, Suite 4-H  
655 Bay Road  
Dover, Delaware 19901  
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by Friday, November 22, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

### **Pre-Hospital Advanced Care Directive Regulations**

**Authority:** 16 Delaware Code, Chapter 97, Section 9706(h)

**Purpose:** There is a need to address the recognition of Pre-Hospital Advanced Care Directives (Do-Not-Resuscitate Orders) in conjunction with Advanced Care Directives as provided for in Delaware Code Title 16, Chapter 25, in the pre-hospital emergency environment. These regulations require the use of a specific form of individual identification that can be readily recognized and verified during a pre-hospital emergency. The regulations also detail the legislated immunity for certified providers honoring this order.

While such legal instruments serve individuals well in clinical settings such as hospitals and nursing homes, they pose practical problems in life-threatening situations when emergency medical services (EMS) individuals are called for assistance. Living wills, powers of attorney and other advance directives are often long and complex, can vary greatly in form and content, and do not apply to the pre-hospital environment. Many are hand-written and are impossible to verify on the scene of an emergency. Furthermore, in most states, if an EMS provider is called to a scene, they are legally required to perform life-saving techniques (CPR) even if the individual's heart has stopped and they are clinically expired. And, they cannot stop these efforts based on a living will or appointed proxy's request, because advance directives may not apply in EMS related medical emergencies. A Delaware Pre-Hospital Advanced Care Directive is a specific order initiated by the individual and signed by a physician stipulating a specific order for individual non-resuscitation.

A Pre-Hospital Advanced Care Directive regulation authorizes the Division of Public Health/Office of Emergency Medical Services in conjunction with the Board

## **DIVISION OF PUBLIC HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code,  
Section 9706(h) (16 Del.C. §9706(h))

### **Nature Of The Proceedings**

The attached regulations, "**State of Delaware EMS Pre-Hospital Advanced Care Directive Regulations**," are being proposed in accordance with 16 Delaware Code, Chapter 97 and the State of Delaware Death with Dignity Act, 16 Delaware Code, Chapter 25.

The proposed regulation defines procedures and processes to be used by Delaware Emergency Medical Service (EMS) personnel when encountering a terminally ill patient who has executed a pre-hospital advanced care directive.

### **Notice Of Public Hearing**

The Office of Emergency Medical Services, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware EMS Pre-Hospital Advanced Care Directive Regulations.

The public hearing will be held on Tuesday, November 26, 2002 at 9:00 AM in the Conference Room of the Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

of Medical Practice, the Delaware Fire Prevention Commission, and other key groups within the State to develop and implement an EMS Pre-Hospital Advanced Care Directive (PACD) protocol for EMS providers. This law and protocol standardize the legal advanced care directive documentation so EMS providers have a readily recognizable format upon which they may make a decision. This would also allow EMS providers to honor the individual's wishes to the greatest extent possible and grant the individual the dignity, humanity and compassion they deserve.

### **1.0 Definitions**

**"Advanced health care directive"** shall mean an individual instruction or power of attorney for health care, or both.

**"Agent"** shall mean an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

**"Artificial nutrition and hydration"** means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastromstomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle-feeding.

**"Capacity"** shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health care decision.

**"Declarant"** shall mean a individual who executes an advance health care directive.

**"Division"** shall mean the Division of Public Health.

**"DNR"** shall mean Do Not Resuscitate. A physician order in writing on forms approved by the Director of the Division of Public Health instructing EMS providers to withhold care as instructed on the order.

**"EMS prehospital advanced care directive order (PACD)"** shall mean an advanced health care directive/do not resuscitate order as defined in paragraph 1.1, signed by the individual's physician on forms approved by the Director of the Division of Public Health.

**"EMS PACD Program"** shall mean the regulations and administrative guidelines promulgated by the Division of Public Health for the administration of this Act.

**"Guardian"** shall mean a judicially appointed guardian or conservator having authority to make health care decisions for an individual.

**"Health care"** shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

**"Health care decision"** shall mean a decision made by an individual or the individual's agent, surrogate or

guardian regarding the individual's health care, including:

Selection and discharge of health care providers and institutions;

Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

**"Health care institution"** means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of profession.

**"Emergency medical services (EMS) provider"** shall mean individual providers certified by the Delaware State Fire Prevention Commission or the Office of EMS, or emergency medical dispatchers certified by the National Academy of Emergency Medical Dispatch.

**"Emergency medical services (EMS) provider agency"** shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of EMS, or an emergency medical dispatch center under contract with the Department of Public Safety.

**"Individual"** means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

**"Individual instruction"** means an individual's direction concerning a health-care decision for the individual.

**"Life-sustaining procedure"** means:

Any medical procedure, treatment or intervention that:

1. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and
2. Is of such a nature as to afford a individual no reasonable expectation of recovery from a terminal illness.

Procedures that can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

**"Medically ineffective treatment"** means that, to a reasonable degree of medical certainty, a medical procedure will not:

Prevent or reduce the deterioration of the health of an individual: or

Prevent the impending death of an individual.

**"Office"** shall mean the Office of Emergency Medical Services (EMS) within the Division of Public Health.

**"PACD"** means an EMS prehospital advanced care directive or do not resuscitate order signed by the individual

and the individual's physician, on forms approved by the Director of Public Health.

**"Physician"** means an individual licensed to practice medicine under Chapter 17 of Title 24 of the Delaware Code.

**"Power of attorney for health care"** means the designation of an agent to make health care decisions for the individual granting the power.

**"Primary physician" or "attending physician"** shall mean a physician designated by an individual or the individual's agent, surrogate or guardian to have primary responsibility for the individual's health care or, in the absence of a designation, or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

**"Reasonably available"** shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual's health care needs.

**"Supervising health care provider"** shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

**"Surrogate"** means an adult individual or individuals who (1) have capacity;(2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a individual who lacks capacity; and (4) are identified by the individual's identification in accordance with this chapter as the individual or individuals who are to make those decisions in accordance with this chapter.

**"Terminal illness"** means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

## **2.0 Right to Self-Determination**

2.1 An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

## **3.0 Medical Prerequisites**

3.1. Any individual with legal capacity may execute a Pre-Hospital Advanced Care Directive (PACD); however, this Directive will not become effective unless signed by a physician after diagnosis of a terminal illness.

3.2 Individual with legal capacity, who is able to communicate by some reliable, proven means (i.e. verbally,

eye blink, finger tap) but is physically unable to sign, may execute a PACD through an agent or surrogate to be effective upon the diagnosis of a terminal illness from a physician in Delaware. Conditions that may prevent physical signing of the PACD include, but are not limited to:

3.2.1 Blindness or illiteracy

3.2.2 Severe arthritis

3.2.3 Amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease)

3.2.4 Quadriplegia

3.2.5 Paralysis of the writing hand

3.2.6 Amputation

3.3 Individual who no longer has capacity may be issued a PACD through an agent, guardian or surrogate and the individual's physician.

3.3.1 Conditions for which a PACD may be issued are:

3.3.1.1 Terminal Illness

## **4.0 Prehospital Advanced Care Directives**

### **4.1 Prehospital Advanced Care Directive Options**

4.1.1 Option A (Advanced Life Support) - "Maximal (Restorative) Care Before Arrest, Then DNR"

4.1.1.1. When this option is selected on an EMS PACD, the individual shall receive the full scope of restorative interventions permissible under the Delaware Statewide ALS treatment protocol (including intubation for respiratory distress, cardiac monitoring, synchronized cardioversion for pulse-present ventricular or supra ventricular tachycardia, cardiac pacing for pulse-present symptomatic bradycardia, insertion of IV's, and drug therapy), in an attempt to forestall cardiac or respiratory arrest (see Delaware Statewide ALS treatment protocol for full description of permissible interventions).

4.1.2 Option B (Basic Life Support) - "Limited (Palliative) Care Only Before Arrest, Then DNR"

4.1.2.1. Palliative care is defined as supportive care for control of signs and symptoms.

4.1.2.1.1. This includes opening the airway using non-invasive means (e.g. chin lift, jaw thrust, finger sweep, nasopharyngeal airway, oropharyngeal airway and abdominal thrust, O2 administration, suctioning, positioning for comfort, control of external bleeding using standard treatments (dressing, elevation, direct

pressure, pressure points, cold packs, tourniquets, etc.), immobilize fractures, and family or other health care provider administered medications for pain control.

4.1.2.1.3. Existing IV lines may be in place and, if so, shall be monitored to the extent possible according to the provider's level of certification and licensure.

4.1.2.2. Inappropriate Care for a Palliative Care Individual includes:

4.1.2.2.1. Pacing, cardioversion, and defibrillation

4.1.2.2.2. Initiation of IV therapy

4.1.2.2.3. EMS Initiated Medications - Except passive oxygen

4.1.2.2.4. CPR

4.1.2.2.5. Intubation (EOA, endotracheal, nasotracheal, or gastric tube)

4.1.2.2.6. Pneumatic anti-shock garment (PASG)

4.1.2.2.7. Active ventilatory assistance, unless on an out individual ventilator.

4.1.3 Option C (Do Not Resuscitate) – “No Care Administered Of Any Kind”.

4.1.3.1. This option permits an individual to reject care of any kind provided there is a signed order clearly stating this course of action. Where this option is in place, no form of life saving efforts, including but not limited to, the opening of the airway, the administration of oxygen, or any other form of life-saving efforts will be administered by EMS personnel under any circumstances, unless the individual provides some form of communication as indicated in Section 3.1.2A.

## **5.0 Methods of Identification**

5.1 Provided there is a signed PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing the EMS PACD protocol:

- 5.1.1 Delaware EMS PACD Form
- 5.1.2 Delaware EMS PACD Wallet Card
- 5.1.3 Wrist Bracelet to include Medic-Alert

Bracelet or other bracelet approved by the Director of the Division of Public Health.

- 5.1.4 Other State EMS PACD Form

5.2 Even if a signed PACD, or other approved Division of Public Health signed form is present, the following are not acceptable for implementing the EMS PACD protocol:

- 5.2.1 Advance directives without an EMS PACD
- 5.2.2 Facility specific PACDs
- 5.2.3 Notes in medical records
- 5.2.4 Prescription pad orders
- 5.2.5 PACD stickers
- 5.2.6 Any oral request.
- 5.2.7 Any other device or instrument not listed

above as acceptable.

5.3 The Delaware EMS PACD must be completed for all individuals on a standard form approved by the Division of Public Health, and the form must be present.

5.4 If any question exists as to the identity of the individual identified on the Delaware EMS PACD form, the EMS provider shall seek to identify the individual through another form of positive identification.

- 5.4.1 If in doubt as to the identification of the

individual, the EMS provider shall initiate resuscitative efforts.

## **6.0 Revocation of PACD**

6.1 An EMS PACD may be revoked at any time by:

6.1.1 A written cancellation signed by the individual.

6.1.2 An oral statement or gesture of any manner by the individual in the presence of two (2) witnesses, one of whom is a health care provider, requesting only palliative care or resuscitation. If the individual revokes an EMS PACD orally, the EMS PACD notification devices do not need to be destroyed. EMS providers should thoroughly document the circumstances of the revocation. An oral revocation by an individual is only good for the single response or transport for which it was issued.

6.2 During an emergency, when the authorized decision maker is not the individual, this individual cannot revoke an EMS PACD. Because of the difficulty in identifying authorized decision makers in emergent situations, it is incumbent upon an authorized decision maker who has authority to revoke an EMS PACD to do so prior to the emergency if they wish resuscitation for the individual. Under no circumstances, can a person or entity, other than the individual, revoke an EMS PACD during an emergency.

**7.0 Section 2513(b) of the Health Care Decision Act (Code of Delaware)** makes willful concealment, destruction, falsification or forging of an advance directive, without the individual's or authorized decision maker's consent, a class C felony.

## **8.0 Field Termination**

8.1 Nothing in these regulations shall effect the power of EMS providers to do the paramedic field termination of resuscitation protocol as approved by the Delaware Board of Medical Practice.

## **9.0 Protocol**

9.1 The Division of Public Health, in consultation with the Board of Medical Practice and the Delaware Fire Prevention Commission, shall develop and publish a protocol for EMS providers to comply with the requirements of this regulation.

## **10.0 Limitations of Liability**

10.1 In addition to other immunity that may be provided for in law, Section 2510 of the Health Care Decisions Act provides the specific immunity in cases involving the provision, withdrawal, or withholding of care which may be life sustaining in nature.

10.1.1 EMS providers are not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate

licensing, registering, or certifying authority as a result of withholding or withdrawing any health care under authorization obtained in accordance with the Health Care Decisions Act.

## **11.0 Data Collection/Program Evaluation**

11.1 The Division of Public Health shall provide appropriate information, education and training on the EMS PACD Program to health care providers.

11.2 The Division of Public Health shall provide forms for Delaware licensed physicians and hospices, or other authorized health care providers.

11.3 The Division shall monitor the use of EMS PACDs as presented to EMS providers.

11.4 The Division shall take such measures as necessary to assure individual confidentiality.

## **12.0 Reciprocity**

12.1 Standardized EMS DNR from another State approved by the Director of the Division of Public Health shall be honored.

12.2 EMS providers shall treat out-of-state EMS DNR's as Limited (Palliative) Care Only Before Arrest PACD individuals.

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

### **PUBLIC NOTICE**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Cash Assistance Program is proposing to amend Section 6103 of the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## **Summary of Proposed Change- DSSM 6103 Relative Caregivers' (Non-Parent) Transitional Resource Program**

Based on the Kinship Care law, Title 31, Delaware Code, Chapter 3, §356 (b)(4), DSSM 6103 is being amended to reflect the income of the caregiver is counted and cannot exceed 200% of the Federal Poverty Level (FPL) based on the household size. Also, the income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home, is not counted.

### **6103 Eligibility**

Applicants must meet the following eight criteria to receive assistance from the Relative Caregivers' (Non-Parent) Transitional Resource Program:

1. Relationship-The child is living with a relative within the 5th degree of relationship (DSSM 3004).
  2. Age-The child is less than 18 years of age.
  3. Residence-Applicants must reside in Delaware to be eligible for benefits. Persons including the homeless (those with no fixed address or not living in a permanent dwelling) who currently live in Delaware and plan to stay, regardless of the length of time they have been here, meet the residency requirement.
  4. Time Limitation-The child has been living in caregiver(s) home less than or equal to 90 days.
  5. Income-The income of the caregiver cannot exceed 200% of the Federal Poverty Level based on the household size. The caregiver's household includes the caregiver and his/her children. The household size used in the income determination is the child and the child's siblings or half siblings who moved within 90 days into the caregiver(s) home. Children who are not a sibling or half sibling will be considered a separate household. The income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home, is not counted.
    - b. ~~The income of the caregiver(s) is always excluded. The income of siblings or half siblings of the child living with the caregiver(s) for more than 90 days will not be considered.~~
  6. Resources-Eligibility will be determined without regard to the child or caregiver(s) resources.
  7. Citizenship-The child is a citizen or lawfully admitted alien.
  8. Need-The child's need is for one or more of the covered services.
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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

**PUBLIC NOTICE**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to provide an inpatient hospital care reimbursement methodology for interim payments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**ATTACHMENT 4.19-A PAGE 3****METHODS AND STANDARDS FOR ESTABLISHING  
PAYMENT RATES - INPATIENT HOSPITAL CARE  
(Continued)****Rate Setting Methods - Development of Implementation  
Year Operating Rates, Updates and Rebasing (Continued)**

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97, and every three years thereafter.

**Other Related Inpatient Reimbursement Policies**

~~Outliers - High cost Medicaid cases will be identified and reimbursed.~~ High cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus 79 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

~~Cases with long length of stay (LOS) - There will be no interim payment for cases with an exceptionally long LOS.~~

~~The hospital will submit a single claim for the discharge.~~

For certain high cost cases, providers may request an interim payment, that is, a payment prior to the discharge of the patient when the discharge is not likely to occur in the near future. Cases that are approved by the State for reimbursement on an interim payment basis must meet all of the following conditions: (1) length of stay over one year, and (2) over one million dollars in costs as determined in the paragraph above, and (3) attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Interim payment cases will be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount. Interim payments that are renewed must meet all of the following conditions: (1) an additional length of stay over one year (2) an additional one million dollars in costs as determined in the paragraph above and (3) continued attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Any interim payment cases that are renewed will also be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount.

Transplants - Transplant cases will be treated as outliers and, when appropriate, will be subject to the outlier payment policy. Organ acquisition costs will not be reimbursed separately, but will be included in the per discharge rate.

Transfers/readmissions - There will be no distinct payment policy for transfers/ readmissions between hospitals. These cases will be paid on a discharge basis. The PRO will conduct a periodic review to monitor these types of cases and determine that discharges are appropriate.

Split bills - For in-State cases and Out-of-State hospitals receiving per diem payment that span FY94 and FY95, the cost associated with the days in FY94 will be reimbursed using the current methodology. The full per-discharge rate will be paid for the days of care in FY95. Out of State hospitals who already use DRGs or a per discharge methodology will be paid the per discharge rate for all discharges on or after July 1, 1994.

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code  
Sections 311 and 2312 (18 Del.C. §§ 311, 2312)

**Notice of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Tuesday December 3, 2002, at 2:00 p.m. in the Executive Conference Room of the Delaware Department of Insurance,

841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 80 relating to the standards for prompt, fair and equitable settlement of claims for health care services.

The purpose for amending Regulation 80 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Tuesday December 3, 2002, at 2:00 p.m. and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Monday, December 2, 2002.

**Regulation 80**  
**Standards For Prompt, Fair And Equitable Settlement**  
**Of Claims**  
**For Health Care Services**

Adopted and signed on July 2, 1998

Effective November 4, 1998

Amended effective \_\_\_\_\_

- 1.0 Authority
- 2.0 Definitions
- 3.0 Scope
- 4.0 Purpose
- 5.0 Prompt Payment of Claims
- 6.0 General Business Practice
- 7.0 Penalties
- 8.0 Causes of Action
- 9.0 Separability
- 10.0 Effective Date

### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 *Del.C.* §§ 311, 2304(16), and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

### 2.0 Definitions

For the purpose of this regulation, the following definitions shall apply:

~~a. **Health Insurer**—health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or~~

~~benefits subject to state insurance regulations.~~

~~b. **Health Care Provider**—any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.~~

~~c. **Policyholder**—a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.~~

~~d. **Clean Claim**—a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.~~

2.1 **“Carrier” or “Health Insurer”** shall have the same meaning applied to it by 18 *Del.C.* § 3343(a)(1).

2.2 **“Clean Claim”** shall mean a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.

2.3 **“Health Care Provider”** shall mean any entity or individual licensed, certified or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.-

2.4 **“Policyholder,” “Insured” or “Subscriber”** shall be a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.

### 3.0 Scope

This regulation shall apply to all health insurers as defined in Section 2.0 above, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long-term care insurance.

### 4.0 Purpose

The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 *Del. C.* § 2304(16).

### 5.0 Prompt Payment of Claims

5.1 A health insurer shall pay a clean claim to a policyholder or covered person, or make payment to a health care provider no later than ~~30~~ 45 calendar days after receipt

of a clean claim ~~or bill~~ for services.

5.2 A claim is not a clean claim as defined in section 2 ~~d.~~ 2.2 if any of the following circumstances exist:

5.2.1 Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonable clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.

5.2.2 Where there exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.

5.2.3. For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by ~~subparagraph b(1) above section 5.2.1,~~ a health insurer shall pay all portions of a claim meeting the definition of clean claim ~~found in section 2-d.~~ in accordance with ~~subsection 5-a hereof~~ this section. Additionally, a health insurer shall notify the policyholder in writing within ~~30~~15 days of the receipt of the claim:

5.3.1 that such carrier is not obligated to pay the claim or make the medical payment, in whole or in part, stating the specific reasons why it is not liable; or

5.3.2 that additional information is needed and is being sought to determine liability to pay the claim or make the healthcare payment.

5.4 Upon receipt of the information ~~provided in subparagraph c(2) above~~ required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the claim or make medical payment, a health insurer shall ~~comply with paragraph "a." of this section~~ make payment as required by section 5.1.

## 6.0 General Business Practice

6.1 Within a 36 month period, three instances of a health insurer's failure to pay a Claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del.C.* §2304(16)(f). In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeline standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.

6.2 The 36 month time period established in ~~paragraph "a." above section 6.1~~ shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual

policyholder that is processed in violation of this regulation shall constitute an "instance" as described in ~~paragraph "a." above~~ section 6.1.

## 7.0 Penalties

In addition to the imposition of penalties in accordance with 18 *Del.C.* § 2312(b), the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del.C.* 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

## 8.0 Causes of Action

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* § 2304 (16).

## 9.0 Separability

If any provision of this regulation or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

## 10.0 Effective Date

This regulation, as amended, shall become effective ~~120~~90 days ~~from the date signed by the Commissioner~~ after its publication in the Register of Regulations.

ADOPTED AND SIGNED BY THE COMMISSIONER  
\_\_\_\_\_, 2003

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code  
Sections 311 and 2312 (18 *Del.C.* §§ 311, 2312)

### Notice of Public Hearing

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a PUBLIC HEARING will be held on Tuesday, December 3, 2002 at 9:30 a.m. in the Second Floor Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The Hearing is to consider implementation of Regulation 86 entitled "Standards for Safeguarding Customer Information."

The purpose of the Regulation is to establish standards

for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

The Hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Wednesday, December 4, 2002, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Joan Zimmerman at (302) 739-4251, Ext. 157 no later than Monday, December 2, 2002.

## Regulation 86

### Standards For Safeguarding Customer Information

#### Table of Contents

1.0	<u>Authority</u>
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6.0	<u>Assess Risk</u>
7.0	<u>Manage and Control Risk</u>
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9.0	<u>Adjust the Program</u>
10.0	<u>Determined Violation</u>
11.0	<u>Effective Date</u>

#### 1.0 Authority

1.1 This regulation is promulgated pursuant to 18 Del.C. §§ 311, 535.

1.2 This regulation establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

1.2.1 Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its Customers and to protect the security and confidentiality of those customers' nonpublic personal information.

1.2.2 Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards

relating to administrative, technical and physical safeguards:

1.2.2.1 to ensure the security and confidentiality of customer records and information;

1.2.2.2 to protect against any anticipated threats or hazards to the security or integrity of such records; and

1.2.2.3 to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

1.2.3 Section 505(b)(2) calls on state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation with respect to persons engaged in providing insurance.

1.2.4 Section 507 provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. This regulation requires that the safeguards established pursuant to this regulation shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

#### 2.0 Definitions

For purposes of this regulation, the following definitions apply:

2.1 "Customer" means a customer of the licensee as the term customer is defined in Delaware Insurance Department Regulation 84 Section 4.

2.2 "Customer information" means nonpublic personal information as defined in Delaware Insurance Department Regulation 84 section 4.16 and 4.17 about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

2.3 "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

2.4 "Licensee" means a licensee as that term is defined in Delaware Insurance Department Regulation 84 section 4.17, except that "licensee" shall not include: a purchasing group pursuant to 18 Del.C. Chapter 80, or an unauthorized insurer in regard to the excess line business conducted pursuant to 18 Del. C. Chapter 19.

*Drafting Note: Although service contract providers and extended warranty providers are "licensees" under the insurance laws of many states, they are not so defined under Delaware law.*

2.5 "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

#### 3.0 Information Security Program

Each licensee shall implement a comprehensive written information security program that includes administrative,

technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

#### **4.0 Objectives of Information Security Program**

A licensee's information security program shall be designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information; and protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

#### **5.0 Examples of Methods of Development and Implementation**

The actions and procedures described in Sections 6 through 9 of this regulation are examples of methods of implementation of the requirements of Sections 3 and 4 of this regulation. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement Sections 3 and 4 of this regulation.

#### **6.0 Assess Risk**

The licensee:

6.1 Identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;

6.2 Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

6.3 Assesses the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

#### **7.0 Manage and Control Risk**

The licensee:

7.1 Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

7.2 Trains staff, as appropriate, to implement the licensee's information security program; and

7.3 Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

#### **8.0 Oversee Service Provider Arrangements**

The licensee:

8.1 Exercises appropriate due diligence in selecting its

service providers; and

8.2 Requires its service providers to implement appropriate measures designed to meet the objectives of this regulation, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

#### **9.0 Adjust the Program**

The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

#### **10.0 Determined Violation**

Repeated failure to comply with this Regulation will be grounds for investigation and enforcement as an unfair practice in the insurance business pursuant to 18 Del. C. Chapter 23.

#### **11.0 Severability**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

#### **12.0 Effective Date**

This regulation shall become effective on February 1, 2003.

ADOPTED AND SIGNED BY THE COMMISSIONER  
\_\_\_\_\_, 2003

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### **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code  
Sections 311 and 2312 (18 Del.C. §§ 311, 2312)

#### **Public Notice**

Insurance Commissioner Donna Lee H. Williams hereby gives public notice of proposed Regulation 87 relating to the USE OF CREDIT INFORMATION by insurance companies issuing automobile and homeowners policies in the State of Delaware.

The purposes for promulgating Regulation 87 are:

- To prohibit insurers from engaging in unfair

discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

- To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.
- To assure that consumers, whether on initial application or renewal, are given notice when credit reports will be requested and reviewed in connection with a consumer's eligibility for and/or the continuance of insurance coverage and/or a consumer's tier or level of premium payment.
- To prohibit the practice of assigning a consumer to a premium level based solely on the consumer's credit rating or credit score.
- To assure that, if used, credit information obtained by the insurer shall be utilized consistently within the insurer's book of business even though one or more affiliated companies may decline to use credit information or to utilize credit scoring as a factor in its rate making.
- To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

Public hearings will be held in each county. Notice of the public hearings will be published on the Insurance Commissioner's webpage, [www.sate.de.us/incom](http://www.sate.de.us/incom) and in the Delaware State News and News Journal newspapers. Comments are being solicited from any interested party. Comments must be in writing and be received by the Department of Insurance no later than January 24, 2003. Written comments should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

**Regulation No. 87**  
**Use Of Credit Information**

<u>1.0</u>	<u>Authority</u>
<u>2.0</u>	<u>Scope</u>
<u>3.0</u>	<u>Purpose</u>
<u>4.0</u>	<u>Definitions</u>
<u>5.0</u>	<u>Prohibited Practices</u>
<u>6.0</u>	<u>Written Notice to Consumers</u>
<u>7.0</u>	<u>Corrections to a Consumer's Credit Score</u>
<u>8.0</u>	<u>General Business Practices</u>
<u>9.0</u>	<u>Confidentiality</u>
<u>10.0</u>	<u>Severability</u>
<u>11.0</u>	<u>Causes of Action and Defenses</u>
<u>12.0</u>	<u>Effective Date</u>

**1.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del. C. §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 Del.C. Chapter 101.

**2.0 Scope**

This regulation shall apply to all insurers offering automobile, property, surety and/or casualty insurance for personal or family protection. This regulation shall not apply to any line of commercial insurance.

**3.0 Purpose**

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that consumers, whether on initial application or renewal, are given notice when credit reports will be requested and reviewed in connection with a consumer's eligibility for and/or the continuance of insurance coverage and/or a consumer's tier or level of premium payment.

3.4 To prohibit the practice of assigning a consumer to a premium level based solely on the consumer's credit rating or credit score.

3.5 To assure that, if used, credit information obtained by the insurer shall be utilized consistently within the insurer's book of business even though one or more affiliated companies may decline to use credit information or to utilize credit scoring as a factor in its rate making.

3.6 To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

**4.0 Definitions**

4.1 "Adverse action" has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. An adverse action includes but is not limited to the following:

4.1.1 Cancellation, denial or nonrenewal of insurance coverage;

4.1.2 Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable, whether the charge is by:

4.1.2.1 application of a rating rule;

4.1.2.2 assignment to a rating category within

a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or

4.1.2.3 placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or

4.1.3 A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

4.1.3.1 coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

4.1.3.2 the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

4.1.4 Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an applicant or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the credit report.

4.2 "Commissioner" shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

4.3 "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the Federal Fair Credit Reporting Act) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for person, family, or household purposes.

4.4 "Credit score" means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's credit report created by an insurer or any person, firm or entity for use by an insurer.

4.5 "Document" or "public record" shall have the same meaning as described in 29 *Del.C.* § 10002(d) and 18 *Del.C.* §§ 320, 321.

4.6 "Insurance score" shall have the same meaning as "credit score."

4.7 "Insured," "policyholder" or "consumer" shall mean the applicant(s) for coverage or named policyholder who shall have an insurable interest in the property to be covered as defined by 18 *Del.C.* § 2706.

*Drafting Note: A spouse of an insured who has no title interest and/or who has not co-signed a note and/or*

*mortgage for the real property to be insured does not have an insurable interest in the real property to be insured.*

## **5.0 Prohibited Practices**

5.1 No credit report or credit score shall be valid or utilized if it is based or utilizes in any manner, factors which include any or all of race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical handicap, or any similar category prohibited by federal or state law.

5.2 No insurer shall utilize a credit report or score as part of its rating or underwriting criteria unless it shall have first obtained authority to do so as part of its rate filing and shall have filed such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine that the use of such credit report or score shall not:

5.2.1 unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or

5.2.2 be the sole basis upon which the insurer denies coverage, assigns the consumer to a more expensive premium class or tier and/or refuses to renew consumer's insurance coverage.

5.3 No insurer shall be permitted to use the services of a third party to develop a credit report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports, actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the credit report or score of any person other than the named policyholder or person(s) who have an insurable interest to be covered under the policy.

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall be permitted to obtain credit information about any current or prospective policyholder except as may be expressly permitted by the laws of the United States or the State of Delaware.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged

to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

5.7 No insurer shall be permitted to penalize, impose a higher rate or take any action adverse or detrimental to a current or prospective policyholder because such person shall or may have refused to authorize the release of credit information or may have an unacceptable number of credit inquiries.

5.8 No insurer shall be permitted to penalize, impose a higher rate or take any action adverse or detrimental to a current or prospective policyholder because such person shall have no credit history or a credit history that has insufficient activity upon which to calculate a credit score.

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or violation of this regulation.

#### **6.0 Written Notice to Consumers**

6.1 No denial of an application or refusal to issue insurance based on credit scoring or information contained in a consumer's credit report shall be valid unless, in addition to any other requirements that may apply, the insurer includes on the face of the application the following statement or a statement substantially similar to it in boldface type in a font no smaller than the regular text of the notice: "This application may be denied based on information contained in a credit report relating to you and/or someone else who resides in your household."

6.2 No refusal to renew or cancellation of insurance based on credit scoring or information contained in an insured's credit report shall be valid unless, in addition to any other requirements that may apply, the insurer includes in the notice of intent not to renew the following statement or a statement substantially similar to it in boldface type in a font no smaller than the regular text of the notice: "This (nonrenewal)(cancellation) is based on information contained in a credit report relating to you and/or someone else who resides in your household."

6.3 A notice denying an application for insurance or a notice refusing to renew or cancel insurance shall contain the following:

6.3.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.3.2 A summary of the most significant reasons for the adverse action that relate to the consumer's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be in the order of decreasing importance, shall be specific and shall identify

the information associated with each reason. The notice shall be sufficiently clear and specific that a consumer of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary.

6.3.3 A statement advising the insured that, if the insured wishes to inquire further about the credit information on which the refusal, denial or nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than ten days after the date on which the notice of refusal, denial or nonrenewal was mailed to the insured.

6.3.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the insured the specific reasons why the adverse action was taken.

6.4 If the insured submits such written notification, the refusal, denial or nonrenewal shall not become effective until thirty days after the accuracy of the credit information, which the insured has questioned and on which the refusal, denial or nonrenewal was based, has been verified and communicated to the insured. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the insured has questioned and on which the refusal, denial or nonrenewal was based. The insured must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer no more than ten days after the date on which such communication was mailed to the insured. If the insured fails to cooperate in the investigation of the credit information, the insurer may, after providing fifteen days' written notice to the insured, terminate such investigation and may refuse, deny or nonrenew the policy.

6.5 An insurer may require that an insured submit written documentation authorizing the insurer, or such other party as the insurer shall identify, to perform the investigation of the credit information. The insured shall be obligated to pay any pro rata premium due for insurance provided during the period in which the investigation of the credit information is pending up to the date on which the policy refusal, denial or nonrenewal becomes effective. Although the obligations imposed upon an insurer by this subdivision may be satisfied by a third party who agrees, and is authorized, to act on behalf of the insurer, the insurer shall remain responsible for compliance with the obligations imposed by this subdivision.



**7.0 Corrections to a Consumer's Credit Score**

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction under section 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the mistaken credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

**8.0 General Business Practices**

8.1 Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 Del. C. Chapter 25.

8.2 No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 Del. C. Chapter 25.

8.3 No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 Del. C. Chapter 25.

8.4 Affiliated companies may make independent decisions with respect to the use of credit information or credit scores, but any insurer or insurance company, or affiliate thereof, having elected to use such information shall apply the information uniformly and consistently within the company's book of business.

8.5 Any insurer that requests or utilizes credit reports in consideration of an application for personal lines automobile or homeowners insurance shall maintain evidence of its compliance in its regular business files at its principal place of business. Such evidence need not be in any particular form, so long as it is sufficient to reasonably demonstrate compliance. Such evidence shall be made available for

review and examination by the Commissioner. When an insurer denies or fails to renew a policy, evidence of the notice of denial or nonrenewal shall be retained by the insurer, and a record of the contents of the credit report shall be maintained by the insurer or pursuant to the insurer's agreement with the consumer reporting agency for a sufficient time to be available during the next market conduct examination by the Commissioner.

**9.0 Confidentiality**

Any document, report, model or other supporting information, irrespective of the format or media in which it is contained, shall be considered a public document and subject to the confidentiality provisions of 18 Del. C. § 321(g) and/or, upon the request of the insurer or owner of the document, 29 Del. C. § 10002(d)(2). In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

**10.0 Severability**

If any provision of this Regulation or the application of any such provision to and person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

**11.0 Causes of Action and Defenses**

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 Del. C. § 2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del. C. § 2304(15)(c).

**12.0 Effective Date**

This regulation shall become effective 30 days after publication in the *Delaware Register of Regulations*.

Adopted and Signed By The Commissioner, \_\_\_\_\_ 2003

## DEPARTMENT OF LABOR

### DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 29 Delaware Code,  
Section 8503(7)

#### Clean Indoor Air Act Regulations

##### Notice of Public Comment

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Friday, November 22, 2002  
Delaware Department of Education Cabinet Room  
Room 278, Second Floor, Townsend Building  
401 Federal Street  
Dover, DE 19901

Interested parties can obtain copies of the proposed regulations at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8318.

#### ~~Delaware Clean Indoor Air Act Regulations~~

~~Adopted: 9/15/95~~

##### ~~I. Introduction.~~

~~The General Assembly finds that it is in the best interest of the people of this State to protect non-smokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, in public meetings, food service establishments, and places of employment.~~

~~The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of the "Clean Indoor Air Act" is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.~~

~~The Department of Labor has been charged with the enforcement of this Act as it applies to employers, employees, places of employment and the work place.~~

##### ~~H. Definitions~~

~~The words, terms and phrases used in these Regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~1. "Act" means 16 Del.C. §§2901 et seq., the~~

~~"Clean Indoor Air Act".~~

~~2. "Employer" means any person, partnership, association, corporation or nonprofit entity that employs one or more persons, including the legislative, executive, and judicial branches of state government; any county, city, town, village or political subdivision of the state, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.~~

~~C. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, but that is not generally accessible to the public.~~

~~D. "Smoke-free work area" means an indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated and separate from any smoking area.~~

~~E. "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.~~

~~F. "Smoking area" means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.~~

~~G. "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.~~

##### ~~III. Requirements In Places Of Employment.~~

~~A. Written Smoking Policy. Each employer shall adopt and implement a written smoking policy that contains at least the following:~~

~~1. the provision of a work area where no smoking occurs for each employee who requests one;~~

~~2. a notice that the employer is not required to incur any expense to make structural or physical modifications to accommodate individual preferences. If a satisfactory accommodation cannot be reached, the preferences of non-smoking employees shall prevail;~~

~~3. the provision that the employer may set aside a work area for smoking;~~

~~4. the provision of non-smoking areas in employee cafeterias, lunch rooms and lounges. The non-smoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand;~~

~~5. a procedure to resolve employee disputes and objections arising under the smoking policy; and~~

~~6. a statement providing that the employer will~~

not retaliate or take any adverse personnel action against any employee exercising his or her rights under the Act.

B. Posting of Smoking Policy. Employers shall post the smoking policy in normal employee posting areas.

#### **IV. Sign Posting Requirements.**

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol (which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be prominently posted and properly maintained where smoking is regulated by the provisions of the Act. These signs shall be posted and maintained by the employer, owner, operator, manager or other person having control of the indoor area of the place of employment.

#### **V. Violations And Administrative Penalties.**

1. Violations. The following acts constitute violations of these regulations:

1. permitting smoking in an area which has been designated as a non-smoking area;
2. failing to post a non-smoking sign as required by Section IV;
3. willfully destroying or defacing a required posted sign;
4. failing to adopt a smoking policy as set forth in section III, Subsection A; and
5. failing to designate a non-smoking area as required by these regulations.

2. Administrative Penalties. Any person who violates any provision of these regulations shall be subject to an administrative penalty of \$25 for the first violation and not less than \$50 for each subsequent violation.

#### **VI. Enforcement.**

A. Complaint. Any person may file a complaint with the Office of Labor Law Enforcement alleging a violation of any provision of this section. The Complaint shall be in writing, and shall set forth the specifics of any alleged violation of the Act. The Complaint shall be directed to the Administrator of the Office of Labor Law Enforcement.

B. Enforcement Actions. Upon complaint to the Office of Labor Law Enforcement, the Administrator will assign the Complaint for investigation to a Labor Law Enforcement Specialist. The Office of Labor Law Enforcement, upon a determination that a violation has occurred, shall enforce the provisions of this section of the Act as follows:

1. The Office of Labor Law Enforcement may serve notice requiring the prompt correction by the owner, proprietor, manager or other person having the authority to manage and control any place of employment, of any violation of this section. Such notice will give a specified date on which compliance is required. Follow-up action will

be taken to ensure compliance.

2. If prompt corrective action is not taken in accordance with the foregoing notice, the Office of Labor Law Enforcement may issue to any person a citation for payment of administrative penalties as outlined in Section V, Subsection B.

C. Waiver of Provisions. The Director of the Division of Industrial Affairs, upon written request, may waive the provisions of these Regulations, if it is determined that there are compelling reasons to do so, providing that such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products. The Director shall make a decision as to whether a waiver should be granted within thirty (30) days after receipt of the written request. This waiver may be revoked by the Director at any time should the Director believe that there are no longer compelling reasons for the waiver.

#### **VII. Preemption And Severability.**

A. Preemption. The provisions of 16 Del.C. §§2901 et seq. and the provisions of these Regulations shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the same subject which were enacted or adopted after the effective date of the Act.

B. Severability. If any provision of the "Clean Indoor Air Act" or these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of the Act and these Regulations shall not be affected by such holding and shall remain in full force and effect.

#### **VIII. Subsequent Modification Of Regulations.**

The Secretary of Labor may, upon her/his own motion or upon the written request of any member of the public setting forth reasonable grounds therefore, revoke or modify these regulations, after an opportunity has been given to members of the public to present their views on the proposed changes. These regulations shall take effect thirty (30) days after the date of adoption.

Approved and adopted this 15<sup>th</sup> day of September, 1995  
Darrell J. Minott, Secretary of Labor

#### **Delaware Clean Indoor Air Act Regulations**

Pursuant to 29 Del.C. §8503 (7), the Department of Labor, State of Delaware, hereby promulgates the following rules and regulations to implement the provisions of 16 Del.C. §2901 et seq., "Clean Indoor Air Act". These Regulations replace, in their entirety, the Clean Indoor Air Act Regulations which were adopted on September 15, 1995.

## **1.0 Introduction**

1.1 The General Assembly finds that it is in the best interest of the people of this State to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment.

1.2 The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of the "Clean Indoor Air Act" is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

1.3 The Department of Labor has been charged with the enforcement of this Act as it applies to employers, employees, places of employment and the work place.

## **2.0 Definitions**

2.1 The words, terms and phrases used in these Regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

"Act" means 16 Del.C. §2901 et seq., the "Clean Indoor Air Act".

"Employer" means any person, partnership, association, corporation or nonprofit entity that employs one or more persons, including the legislative, executive, and judicial branches of state government; any county, city, town, village or any other political subdivision of the state, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

"Environmental tobacco smoke" (ETS) is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke inhaled by the smoker. ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

"Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, but that is not generally accessible to the public.

"Smoke-free work area" means an indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated and separate from any smoking area.

"Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

"Work area" means an area in a place of

employment where one or more employees are routinely assigned and perform services for their employer.

## **3.0 Requirements in Places of Employment.**

In order to reduce the levels of exposure to environmental tobacco smoke, the Clean Indoor Air Act, specifically 16 Del.C. §2903 (10) provides that no person shall smoke in any workplace not otherwise exempted by the law.

## **4.0 Exemptions**

4.1 In accordance with 16 Del.C. §2904, the Act shall not apply to the following locations:

4.1.1 Private homes, private residences and private automobiles, provided, however, it shall apply when such homes, residences or vehicles are being used for child care or day care, or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

4.1.2 Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

4.1.3 Limousines under private hire;

4.1.4 A hotel or motel room rented to one or more guests, provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%);

4.1.5 Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company, provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company;

4.1.6 Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Del.C. §6201, provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

## **5.0 Sign Posting Requirements.**

"Warning: Smoking Permitted" signs shall be prominently posted and properly maintained where smoking is permitted pursuant to section 2904(a)(2) and (4) of the Act. These signs shall be posted and maintained by the owner, operator, manager or other person having control of such area. The letters on such signs shall be at least one (1) inch in height.

## **6.0 Violations and Administrative Penalties.**

6.1 Violations. The following acts constitute violations of these regulations:

6.1.1 Permitting smoking in the workplace; and

6.1.2 Failing to post a warning sign as required

by Section V.

6.2 Administrative Penalties: Any owner, operator, manager or other person having control of the workplace who violates any provision of the Act or these regulations shall be subject to an administrative penalty of \$100 for the first violation and not less than \$250 for each subsequent violation.

### **7.0 Enforcement**

7.1 Complaint. Any person may file a complaint with the Office of Labor Law Enforcement alleging a violation of any provision of this Act or regulations. The Complaint shall be in writing, and shall set forth the specifics of the alleged violation. The Complaint shall be directed to the Administrator of the Office of Labor Law Enforcement.

7.2 Inspection. Pursuant to the authority granted under 19 Del.C. §107, the Office of Labor Law Enforcement may conduct an inspection of any workplace to insure compliance with the Act.

7.3 Enforcement Actions. Upon complaint to the Office of Labor Law Enforcement, or a finding of apparent non-compliance with the Act during a workplace inspection, the Administrator will assign the case for investigation to a Labor Law Enforcement Officer. The Office of Labor Law Enforcement, upon a determination that a violation has occurred, shall enforce the provisions of this section of the Act as follows:

7.3.1 The Office of Labor Law Enforcement may serve notice requiring the prompt correction by the owner, proprietor, manager or other person having the authority to manage and control any place of employment, of any violation of this section. Such notice will give a specified date on which compliance is required. Follow-up action will be taken to ensure compliance.

7.3.2 If prompt corrective action is not taken in accordance with the foregoing notice, the Office of Labor Law Enforcement may issue to any person a citation for payment of administrative penalties as outlined in Section VI, Subsection B.

7.4 Waiver of Provisions. The Secretary of Labor, upon written request, may waive the provisions of these Regulations, if it is determined that there are compelling reasons to do so, providing that such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products. The Secretary shall make a decision as to whether a waiver should be granted within thirty (30) days after receipt of the written request. The Secretary may revoke this waiver at any time should the Secretary believe that there are no longer compelling reasons for the waiver.

### **8.0 Preemption and Severability.**

8.1 Preemption. The provisions of 16 Del.C. §2901 et seq. and the provisions of these Regulations shall preempt and supersede any provisions of any municipal or county

ordinance or regulation on the same subject which were enacted or adopted after the effective date of the Act.

8.2 Severability. If any provision of the "Clean Indoor Air Act" or these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of the Act and these Regulations shall not be affected by such holding and shall remain in full force and effect.

### **9.0 Subsequent Modification of Regulations.**

The Secretary of Labor may, upon her/his own motion or upon the written request of any member of the public setting forth reasonable grounds therefore, revoke or modify these regulations, after an opportunity has been given to members of the public to present their views on the proposed changes. These regulations shall take effect in accordance with the provisions of the state's Administrative Procedures Act (29 Del. C. Ch. 101).

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## **UNEMPLOYMENT INSURANCE APPEAL BOARD**

Statutory Authority: 19 Delaware Code,  
Section 3321(a) (19 Del.C. §3321(a))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 19 Del.C. Section 3321(a), the Delaware Unemployment Insurance Appeal Board ("Board") proposes to revise its rules and regulations. The proposed revisions set forth procedural requirements which apply to appeals and hearings before the Board.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, December 4, 2002 at 9:00 a.m. in the First Floor Appeals Hearing Room at the Department of Labor, 4425 N. Market Street, Wilmington, DE 19809. 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 Helen McClure 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 Helen McClure at the above address or by calling (302) 761-8370.

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

STATE OF DELAWARE RULES AND REGULATIONS  
under Part III, Title 19, Delaware Code  
Unemployment Compensation  
November, 1979  
Administered By

Unemployment Insurance Appeal Board  
801 West Street, Wilmington, Delaware

**UNEMPLOYMENT INSURANCE APPEAL BOARD  
STATE OF DELAWARE  
RULES AND REGULATIONS**

**A. REQUEST FOR CONTINUANCES**

No continuance, postponement, or rescheduling of any hearing shall be granted unless application is made to the Board secretary six days prior to the scheduled date of hearing. Any other request made after six days prior to the date of hearing shall be made directly to the Board Chairman. In such case, a postponement for rescheduling shall be granted only for emergency circumstances such as death in the family or serious illness.

**B. HEARINGS**

Appeals to the Board will be heard upon the evidence in the record based upon the record before the Appeals Referee. However, the Board may direct the taking of testimony in addition to that contained in the record of the Referee's hearing and, in its discretion, allow any interested party to offer additional evidence.

The Board shall inquire fully into the facts of the particular case and shall consider the issues expressly ruled upon in the decision from which the appeal was filed. However, any issue in the case may be heard and determined, although not expressly ruled upon or indicated as being dealt with at the hearing before the Appeals Referee, if the speedy administration of justice, without prejudice to any party, will be substantially served. The Board of Appeals shall have the power to call, examine and cross-examine a witness and to request documentary evidence be admitted into the record. All parties to the hearing shall be given the opportunity to cross-examine witnesses, introduce documents and inspect documents.

Upon request of any party, the Board may grant limited oral argument, neither the facts that should be found nor the application of legal principles to the facts. The Board may permit the filing of written briefs by the parties, in their discretion if they deem that would be beneficial to the disposition of the appeal.

The hearing, unless otherwise ordered by the Board, shall be conducted informally, but in such manner to ascertain the substantial rights of all parties. The statutory and common law rules of evidence shall apply with the exception that the Board shall receive and consider medical and hospital reports and statements from duly licensed physicians appearing on hospital or physician's stationery or Department of Labor medical request forms.

All parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled time for hearing shall be deemed

to waive his right to participate in said hearing and the hearing shall commence without the presence of said party.

Members of the Appeal Board may not participate in the hearing of any appeal in which he has an interest or feels that, due to friendship with any participant or witness, he may not be able to objectively determine the evidence and apply the law. In such case, the Board member shall disqualify himself.

Three members of the Board shall constitute a quorum thereof for the purpose of any hearing.

The Board may sever an appeal or may consolidate two or more appeals where the interest of justice will be served and where there will be no prejudice to the substantial rights of any party.

**C. APPEALS FROM DISMISSALS BY APPEAL REFEREE**

In any case where a party's appeal is dismissed by the Appeals Referee for the failure of that party to appear at the scheduled hearing by the Appeals Referee, the Board shall consider the reason for the absence of the party at the scheduled hearing before the Appeals Referee. If the Board is satisfied from the explanation offered by the absent party, the Board shall remand the case to the

Appeals Referee for a full and complete hearing on the records. The remanded case shall be placed upon the calendar by the Appeals Referee for prompt hearing.

**D. REMANDS**

The Board may remand any case to the Appeals Referee for any purpose that it may direct.

**E. APPEALS INVOLVING EMPLOYER'S LIABILITY**

When an employer wishes to protest a determination by the administrative staff of the Division of Unemployment Insurance concerning the charge to its experienced rating account or the requirement that it reimburse the Unemployment Insurance Fund, the employer shall, within 15 days after the mailing of notice of determination by the Division of Unemployment Insurance, file with the Appeal Board a protest specifying its objections to the determination and requesting a hearing on it.

A communication, in writing, filed with the Appeal Board within the time specified above, shall be considered a valid appeal if the following requirements are met:

1. The communication sets forth the protest.
2. The communication makes application for hearing.
3. The communication contains substantially the following information:
  - (a) The date of the protest for appeal;
  - (b) The name, address and employer account number of the employer; and
  - (c) A concise statement of the reasons for the

protest or objection to the determination signed by the employer, his agent or attorney.

At the hearing to determine the liability of the employer, the administrative staff of the Division of Unemployment Insurance shall be notified to attend and shall have the burden of showing the reason for the liability of the employer.

#### **F. REPRESENTATION**

At any hearing, the claimant may appear and be represented by an attorney-at-law, a union representative, or such other person as he wishes to represent him. An employer, if he desires representation, may be represented by an attorney-at-law duly admitted to practice in the State of Delaware.

The Board may designate, to its Attorney, the authority to assist them in the conduct of the hearing and grant their Attorney the right to ask such questions of any party as he deems appropriate to assist the Board in their determinations.

On its own motion, or on application duly made to it, the Board may, within 10 days following their decision, direct a rehearing on one or more issues involved in the appeal. Said rehearing shall be conducted in the manner described in these rules and regulations.

#### **G. DECISION**

The Board shall render its decisions promptly. The Board may affirm or reverse, wholly or in part. In addition, the Board may modify the appealed decision or determination as may be necessary. The decision of the Board shall be accompanied by a notice of the right to appeal therefrom to the Superior Court of the State of Delaware within 10 days after the decision has become final.

#### **APPROVED BY**

Harold P. Minner, Chairman  
Emilie E. Tugen, Member  
W. Allen Jones, Member  
Dr. Jack E. Robinson, Member  
Frank J. Carello, Member

#### **Proposed Rules And Regulations Of The Unemployment Insurance Appeal Board**

#### **1.0 Definitions.**

As used in these Rules and Regulations, the following definitions shall apply:

1.1 **“Board”** shall mean the Unemployment Insurance Appeal Board.

1.2 **“Chairman”** shall mean the Chairman of the Board.

1.3 **“Hearing Officer”** shall mean the Appeals Referee or his or her designate who heard the initial appeal.

1.4 **“Hearsay evidence”** shall be such evidence so

designated by the Delaware Rules of Evidence (D.R.E.).

1.5 **“Relevant evidence”** shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

#### **2.0 Location of Unemployment Insurance Appeal Board.**

2.1 **All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board’s fax number is (302) 761-6635.**

2.2 **Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.**

**3.0 Commencement.** A hearing before the Board may be initiated by:

3.1 **Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;**

3.2 **A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or**

3.3 **The Board sua sponte with notice to the parties below or their counsel.**

#### **4.0 Hearings.**

4.1 **Purpose.** The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee’s record and any new evidence presented to the Board shall be considered by the Board in making its decision.

4.2 **Presence of parties required.** All parties to the appeal shall be present at the Board’s hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.

4.3 **Representation.**

4.3.1 **At any hearing, a party may appear pro se or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other**

artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.

4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.

4.4 Continuances and Postponements.

4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.

4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.

4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.

4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.

4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.

4.7 Evidence.

4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.

4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.

4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.

4.7.4 The Board shall not receive into evidence any testimony offered by means of a telephone or other electronic or electromagnetic device.

4.8 Subpoenas.

4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed

description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.

4.8.2 The Board sua sponte may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.

4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.

4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

**5.0 Remand.** The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

**6.0 Decisions.**

6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.

6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.

6.3 The Board may sua sponte affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.

6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 Del.C. § 3323.

**7.0 Rehearing.** At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before the Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.

7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.

7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.



**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

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

SAN # 2002-15

**1. Title Of The Regulation**

Regulation No. 3, Section 11 (PM<sub>10</sub> and PM<sub>2.5</sub> Particulates), "Ambient Air Quality Standards"

**2. Brief Synopsis Of The Subject, Substance And Issues:**

The Department proposes to revert Delaware's Regulation 3, Section 11 Particulate Matter (PM<sub>10</sub>) air quality standards back to their pre-November, 1999 form. This action is necessary in response to the March 26, 2002 Court of Appeals decision that vacated EPA's standards that were set forth in the 62 FR 38711, dated July 18, 1997. That decision resulted in the standard contained in DNREC'S November 3, 1999 State Implementation Plan (SIP) submittal being less restrictive than the current PM<sub>10</sub> National Ambient Air Quality Standards(NAAQS). As a result, EPA cannot approve Delaware's SIP revision containing a less restrictive PM<sub>10</sub> NAAQS standard than the 1987 standard.

The impacts of proposed amendments are minimal. The proposed changes will not change the annual and 24-hour average concentration standards of 50 ug/m<sup>3</sup> and 150 ug/m<sup>3</sup>, respectively. The changes are primarily a technical, procedural change in the Department's methodology of determining concentrations from monitored data.

**3. Possible Terms Of The Agency Action:**

None

**4. Statutory Basis Or Legal Authority To Act:**

7 Delaware Code, Chapter 60

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice Of Public Comment:**

The public comment period for this proposed regulation will extend through December 1, 2001. Interested parties may submit comments in writing to: John Sipple, Air Quality Management Section, 156 South State Street, Dover,

DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Tuesday, November 26, 2002 beginning at 6:00 pm in the DNREC R & R Auditorium, 89 Kings Highway, Dover DE.

7) **Prepared By:** John Sipple (302) 739-4791  
October 7, 2002

**Regulation No. 3  
Ambient Air Quality Standards**

09/11/99

Section 1 - General Provisions

1.1 Air Quality Standards are required to assure that ambient air quality shall be consistent with established criteria and shall serve to effectively and reasonably manage the air resources of the State of Delaware.

1.2 At such time as additional pertinent information becomes available with respect to applicable air quality criteria, recommendations shall be incorporated and the air quality standards shall be subject to revisions.

1.3 The absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.

1.4 Air Quality Standards are defined by frequency distribution presentations and arithmetic averages. The characteristic parameters describing the frequency distribution are the geometric mean and 99th percentile.

a. The geometric mean is defined as the Nth root of the product of N numbers. Assuming a log-normal cumulative frequency distribution, the 50th percentile value will be equal to the geometric mean.

b. The arithmetic average (mean) is defined as the sum of a set of values divided by the number of values.

c. The 99th percentile for a group of numbers is defined as that value which is exceeded by one percent of the numbers.

1.5 The ambient air quality values stated herein shall apply to all areas outside a source property line.

1.6 The sampling and analytical procedures and techniques employed to determine ambient air concentrations of contaminants shall be consistent with methods which result in a representative evaluation of the prevailing conditions. The following methods shall be used directly or employed as reference standards against which other methods may be calibrated;

a. Ambient concentrations of total suspended particulates shall be determined by the reference high volume method in accordance with 40 CFR, Part 50, Appendix B, June 29, 1979.

b. Ambient concentrations of sulfur dioxide shall be determined by the reference or equivalent method in

accordance with 40 CFR, Part 50, Appendix A, June 29, 1979.

c. Ambient concentrations of carbon monoxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix C, June 29, 1979.

d. Ambient concentrations of ozone corrected for interferences due to nitrogen oxides and sulfur dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix D, June 29, 1979.

e. Ambient concentrations of methane and non-methane hydrocarbons shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix E, June 29, 1979.

f. Ambient concentrations of nitrogen dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix F, June 29, 1979.

g. Ambient concentrations of hydrogen sulfide shall be determined by gas chromatographic separation - flame photometric detection.

h. Ambient concentrations of lead shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix G, June 29, 1979.

i. Ambient concentrations of PM<sub>10</sub> particulate shall be determined by a reference method in accordance with 40 CFR, Part 50, Appendix J, or an equivalent method.

j. Ambient concentrations of PM<sub>2.5</sub> particulate shall be determined by the reference method based on 40 CFR, Part 50, Appendix L, as found in the Federal Register dated July 18, 1997, on page 38714 – 38752.

1.7 Air quality standards are expressed in metric units with the approximate equivalent volumetric units in parentheses. The standard conditions for air ambient monitoring is 760 mm. Hg and 25°C. The formula to convert metric units to parts per million (ppm) is:

$$\text{ppm (vol)} = \frac{\mu\text{g}/\text{m}^3 \times .024465}{\text{MW}} \quad \text{or} \quad \frac{\text{mg}/\text{m}^3 \times 24.465}{\text{MW}} \times 10^{-6}$$

MW is molecular weight of the contaminant being measured.

02/01/81

#### Section 2 - General Restrictions

2.1 No person shall cause the Air Quality Standards specified in this Regulation to be exceeded.

02/01/81

#### Section 3 - Suspended Particulates

3.1 The Primary Ambient Air Quality Standards for Particulate Matter are:

a. An annual geometric mean of 75 micrograms per cubic meter not to be exceeded, based upon twenty-four hour average concentrations.

b. A value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations.

3.2 The Secondary Ambient Air Quality Standards for Particulate Matter are:

a. An annual geometric mean of 60 micrograms per cubic meter as a guideline for achieving the secondary standard based upon twenty-four hour average concentrations.

b. A value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations.

02/01/81

#### Section 4 - Sulfur Dioxide

4.1 The Primary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:

a. An annual arithmetic average value of 80  $\mu\text{g}/\text{m}^3$ , (0.03 ppm) not to be exceeded, based upon twenty-four hour average concentrations.

b. A twenty-four average value of 365  $\mu\text{g}/\text{m}^3$  (0.14 ppm) not to be exceeded more than once per year based upon twenty-four hour average concentrations.

4.2 The Secondary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:

a. A three-hour average value of 1300 micrograms per cubic meter (0.5 ppm), not to be exceeded more than once per year.

02/01/81

#### Section 5 - Carbon Monoxide

5.1 The average concentration of carbon monoxide taken over any consecutive eight (8) hours shall not exceed a value of 10 milligrams per cubic meter (9 ppm) more than once per year.

5.2 The average concentration of carbon monoxide taken over any one (1) hour period shall not exceed 40 milligrams per cubic meter (35 ppm) more than once per year.

09/11/99

#### Section 6 - Ozone

6.1 1-hour primary and secondary ambient air quality standards for ozone

The average number of days per calendar year with a maximum one hour average value exceeding 235  $\mu\text{g}/\text{m}^3$  (0.12 ppm) shall be equal to or less than one, averaged over three consecutive years. This standard shall be applicable to New Castle and Kent Counties.

6.2 8-hour primary and secondary ambient air quality

standards for ozone

The average of the fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, averaged over three consecutive years. This standard applies to all Counties in Delaware.

02/01/81

Section 7 - Hydrocarbons

7.1 The hydrocarbons standard in subsection 7.2 is for use as a guide in devising implementation plans to achieve the ozone standard.

7.2 The average concentration of hydrocarbons, exclusive of methane, taken over a three (3) hour period from 6:00 to 9:00 a.m., local time, shall not exceed 160 micrograms per cubic meter (0.24 ppm) more than once per year.

02/01/81

Section 8 - Nitrogen Dioxide

8.1 The annual arithmetic mean concentration of nitrogen dioxide shall not exceed 100 micrograms per cubic meter (0.05 ppm).

02/01/81

Section 9 - Hydrogen Sulfide

9.1 The average concentration of hydrogen sulfide taken over any consecutive three (3) minutes shall not exceed 0.06 ppm.

9.2 The average concentration of hydrogen sulfide taken over any consecutive 60 minutes shall not exceed 0.03 ppm.

02/01/81

Section 10 - Lead

10.1 The 24 hour concentration of lead averaged over a calendar quarter shall not exceed 1.5 micrograms per cubic meter.

~~09/11/99~~ / /03

Section 11 - PM<sub>10</sub> and PM<sub>2.5</sub> Particulates

11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM<sub>10</sub> are:

a. 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), 24 hour average concentration. The standards are attained when the 99<sup>th</sup> percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38759, is less than or equal to 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) expected number of days per calendar year with a 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$ , as determined in accordance with 40 CFR, Part 50,

Appendix K, is equal to or less than one.

b. 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix KN, as found in the Federal Register dated July 18, 1997, on page 38759, is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .

11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM<sub>2.5</sub> are:

a. 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) 24-hour average concentration. The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98<sup>th</sup> percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757 - 38758, is less than or equal to 65  $\mu\text{g}/\text{m}^3$

b. 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual arithmetic mean concentration. The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38756 - 38757, is less than or equal to 15.0  $\mu\text{g}/\text{m}^3$

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

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

**SAN # 2002-14**

**1. Title Of The Regulation:**

**Regulation No. 24, Section 10, "Aerospace Coatings"**

**2. Brief Synopsis Of The Subject, Substance And Issues:**

The Department proposes to revise Regulation No. 24, Section 10, to correct an error found in the recently promulgated regulation. Based on the EPA's final Aerospace Manufacturing and Rework MACT standard and EPA's final Control Technique Guideline (CTG) document "Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations" issued December 1997, the current definition of "Fire-Resistant (interior) Coating" is not currently reflected in Regulation 24. The definition will be changed to correctly differentiate between civilian aircraft subject to FAA fire worthiness requirements, and military aircraft and space

applications subject to other flammability requirements.

**3. Possible Terms Of The Agency Action:**

None

**4. Statutory Basis Or Legal Authority To Act:**

7 Delaware Code, Chapter 60

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice Of Public Comment:**

The public comment period for this proposed regulation will extend through December 1, 2002. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Tuesday, November 26, 2002 beginning at 6:00 pm in the R & R Auditorium, 89 Kings Highway, Dover, Delaware.

**7. Prepared By:**

Deanna Morozowich (302)739-4791, October 7, 2002

**Section 10 - Aerospace Coatings**

~~08/11/02~~xx/xx/xx

**a. Applicability.**

1. Except as provided for in (a)(2) and (a)(3), this Section applies to any owner or operator of any aerospace manufacturing or rework facility that conducts any of the following operation(s):

- i. hand-wipe cleaning;
- ii. spray gun cleaning;
- iii. flush cleaning;
- iv. primer, topcoat, self-priming topcoat, and specialty coating application;
- v. the depainting of the outer surface of aerospace vehicles (except for depainting parts or units normally removed during depainting);
- vi. Type I or Type II chemical milling maskant application; and
- vii. VOC handling and storage.

2. Except for the requirements in paragraph (c)(8), this Section does not apply to the following operations in any aerospace manufacturing or rework facility:

- i. Chemical milling;
- ii. Metal finishing;
- iii. Electrodeposition (except for the electro-deposition of paints); and
- iv. Composite processing operations (except for cleaning and coating of composite parts or components that

become part of an Aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure).

3. The requirements of this Section do not apply to aerospace manufacturing or rework facilities whose plant-wide, actual emissions from the operations in paragraph (a)(1) without control devices are less than 6.8 kilograms (kg) (15 pounds [lbs]) of volatile organic compounds (VOCs) per day.

4. Existing sources affected by this Section shall comply with the provisions of this Section on and after the effective date of this Section, except for the requirements of paragraph (c)(6)(ii) and (c)(7). Existing sources affected by this Section shall comply with the requirements of paragraph (c)(6)(ii) and (c)(7) beginning as soon as practicable, but no later than the date one year after the effective date of this Section. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section on and after startup. Notwithstanding Section (1)(e) of Regulation 24, any owner or operator currently permitted under Regulation 2 and/or Regulation 30 to operate an aerospace manufacturing or rework facility shall submit to the Department an application to amend the current permit and to comply with the provisions of this Section, pursuant to Regulation 2 and/or Regulation 30, as applicable.

5. Any facility that becomes or is currently subject to the provisions of this Section by exceeding the applicability threshold in paragraph (a)(3) of this Section shall remain subject to these provisions even if its emissions later fall below the applicability threshold.

6. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to these provisions, even if its throughput or emissions later fall below the applicability threshold.

**b. Definitions.** As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24 of the State of Delaware "Regulations Governing the Control of Air Pollution".

**"Ablative coating"** means a specialty coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulation barrier, protecting adjacent components from the heat or open flame.

**"Adhesion promoter"** means a very thin specialty coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

**"Adhesive bonding"** means the joining together of two or more metal parts, such as the parts of a honeycomb core. The surfaces to be bonded are first coated with an adhesive

bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave.

**"Adhesive bonding primer"** means a specialty coating that is applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250oF or below and primers with a design cure above 250oF.

**"Aerospace manufacturing or rework facility"** means a commercial, civil, or military facility that produces in any amount an aerospace vehicle or component, or a commercial, civil, or military facility that reworks (or repairs) any aerospace vehicle or component.

**"Aerospace vehicle or component"** means any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

**"Aircraft fluid system"** means those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

**"Aircraft transparency"** means the aircraft windshield, canopy, passenger windows, lenses and other components that are constructed of transparent materials.

**"Antichafe coating"** means a coating applied to areas of moving aerospace components that may rub during normal operations or installation.

**"Bearing coating"** means a specialty coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

**"Bonding maskant"** means a temporary specialty coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

**"Brush coating,"** means the application of a coating material to a substrate by means of a brush (this technique is commonly used for touch-up and maskant operations).

**"Caulking and smoothing compounds"** means semi-solid specialty coating materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

**"Chemical agent-resistant coating (CARC)"** means an exterior topcoat; specialty coating designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

**"Chemical milling"** means a process used to reduce the

thickness of selected areas of metal parts in order to reduce weight by submerging the metal parts in an etchant.

**"Chemical milling maskant"** means a coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included.

**"Chemical milling maskant application"** means the use of spray equipment or a dip tank to apply a Chemical milling maskant, prior to chemically milling the component with a Type I or II etchant.

**"Cleaning operation"** means collectively spray gun, hand-wipe, and flush cleaning operations.

**"Cleaning solvent"** means a liquid VOC containing material used for hand-wipe, spray gun, or flush cleaning.

**"Clear coating"** means a transparent coating applied to any substrate.

**"Coating"** means a material that is applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself.

**"Coating operation"** means the use of a spray booth, tank, or other enclosure or area, such as a hangar, for the application of a single type of coating (e.g., primer). The use of the same spray booth for the application of another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

**"Commercial exterior aerodynamic structure primer"** means a specialty coating primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

**"Commercial interior adhesive"** means specialty coating materials used in the bonding of passenger cabin interior components that meet the FAA fireworthiness requirements.

**"Compatible substrate primer"** means a specialty coating that is either a compatible epoxy primer or an adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that (1) inhibits corrosion and

serves as a primer applied to bare metal surfaces or prior to adhesive application, or (2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

**"Composite processing operations"** include layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup means the process of assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming means the process of forming the layup in a mold, which usually takes place in an autoclave. Debulking means the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. Curing means the process of changing the resin into a solid material through a polymerization reaction. Break-out means the removal of the composite structure from the mold or curing fixtures. Compression molding means the process of filling one half of molds with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding means the use of a closed mold, where the molding compound is injected into the mold, maintained under pressure, and then cured by applying heat.

**"Corrosion prevention system"** means a coating system that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

**"Critical use line and sealer maskant"** means a temporary specialty coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

**"Cryogenic flexible primer"** means a specialty coating primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275oF and below).

**"Cryoprotective coating"** means a specialty coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

**"Cyanoacrylate adhesive"** means a fast-setting, single component specialty coating adhesive that cures at room temperature. Also known as "super glue."

**"Depainting"** means the removal of any coating from

the outer surface of an aerospace vehicle or component by either chemical or non-chemical means.

**"Depainting operation"** means the use of a chemical agent, media blasting, or any other technique to remove coatings from the outer surface of aerospace vehicles or components. The depainting operation includes washing of the aerospace vehicle or component to remove residual stripper and coating residue.

**"Dip coating"** means the application of a coating material to a substrate by dipping the part into a tank of the coating material.

**"Dry lubricative material"** means a specialty coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

**"Electric or radiation-effect coating"** means a specialty coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

**"Electrodeposition"** means an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electrodeposition typically used are electroplating and plasma arc spraying.

**"Electrostatic discharge and electromagnetic interference (EMI) coating"** means a specialty coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

**"Electrostatic spray"** means a method of applying a spray coating in which opposite electrical charges are applied to the substrate and the coating. The coating is attracted to the substrate by the electrostatic potential between them.

**"Elevated-temperature Skydrol-resistant commercial primer"** means a specialty coating primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150oF for 1,000 hours.

**"Epoxy polyamide topcoat"** means a specialty coating used where harder films are required or where engraving is accomplished in camouflage colors.

**"Etchant"** means a chemical used to mill a part or subassembly (e.g., sodium hydroxide for aluminum parts).

**"Exempt solvent"** means an organic compound that has been determined to have negligible photochemical

reactivity, as specified, and is defined in Regulation 24, Section 2 under "exempt compounds."

**"Fire-resistant (interior) coating"** means for civilian aircraft, fire-resistant interior specialty coatings used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings means coatings that are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, fire-resistant interior coatings means coatings that these specialty coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

**"Flexible primer"** means a specialty coating primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

**"Flow coating"** means the application of a coating material to a substrate by pouring the coating over the suspended part.

**"Flush cleaning"** means the cleaning of an aerospace vehicle or component by passing solvent over, into, or through the vehicle or component. The solvent may simply be poured into the vehicle or component and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action is used are not flush cleaning operations.

**"Formulation"** means a specific coating made by a specific manufacturer. Each different color of a specific coating is considered a separate formulation.

**"Fuel tank adhesive"** means a specialty coating adhesive used to bond components exposed to fuel which shall be compatible with fuel tank coatings.

**"Fuel tank coating"** means a specialty coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition, and to assure sealant adhesion in extreme environmental conditions.

**"Hand-wipe cleaning operation"** means the removal of contaminants such as dirt, grease, oil, and coatings from aerospace vehicles or components by physically rubbing them with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

**"High temperature coating"** means a specialty coating designed to withstand temperatures of more than 350oF.

**"High volume low pressure (HVLP) spray equipment"** means spray equipment that is used to apply

coatings using a spray gun that operates at equal to or less than 10.0 psig of atomized air pressure at the air cap.

**"Insulation covering"** means a specialty coating material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

**"Intermediate release coating"** means a thin specialty coating applied beneath topcoats to assist in removing the topcoat in depainting operations, which generally allows the use of less hazardous depainting methods.

**"Lacquer"** means a clear or pigmented specialty coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

**"Leak"** means any visible leakage, including misting and clouding.

**"Limited access space"** means internal surfaces or passages of an aerospace vehicle or component that cannot be reached for the application of coatings without the aid of an airbrush or a spray gun extension.

**"Metal finishing"** means conversion coating, anodizing, desmutting, descaling, and any operation that chemically affect the surface layer of a part, and is used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance.

**"Metalized epoxy coating"** means a specialty coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

**"Mold release"** means a specialty coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

**"Non-chemical-based depainting equipment"** means any depainting equipment or technique that does not rely on a chemical stripper to repaint an aerospace vehicle or component (e.g., media blasting equipment).

**"Nonstructural adhesive"** means a specialty coating adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

**"Part marking coating"** means a specialty coating or ink used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

**"Pretreatment coating"** means an organic specialty coating that contains at least 0.5 percent acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

**"Primer"** means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, environment protection, functional fluid resistance, and adhesion promotion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

**"Radome"** means the non-metallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

**"Rain erosion-resistant coating"** means a specialty coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

**"Research and development"** means an operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

**"Rocket motor bonding adhesive"** means a specialty coating adhesive used in rocket motor bonding applications.

**"Rocket motor nozzle coating"** means a catalyzed epoxy specialty coating system used in elevated temperature applications on rocket motor nozzles.

**"Rubber-based adhesive"** means a quick setting, specialty coating contact cement that provides a strong, yet flexible bond between two mating surfaces that may be of dissimilar materials.

**"Scale inhibitor"** means a specialty coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

**"Screen print ink"** means a specialty coating ink used in screen printing processes during fabrication of decorative laminates and decals.

**"Sealant"** means a specialty coating material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

**"Seal coat maskant"** means a specialty coating overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

**"Self-priming topcoat"** means a coating that is applied directly to an Aerospace vehicle or component for purposes of corrosion protection, environmental protection, and functional fluid resistance and that is not subsequently topcoated. More than one layer of identical coating formulation may be applied to the aerospace vehicle or component. Self-priming topcoats that are defined as specialty coatings are not included under this definition.

**"Silicone insulation material"** means an insulating specialty coating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

**"Solids"** means the nonvolatile portion of the coating that after drying makes up the dry film.

**"Solid film lubricant"** means a very thin specialty

coating consisting of a binder system containing as its main pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

**"Space vehicle"** means a man-made device, either manned or unmanned, designed for operation prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage that through contamination can compromise the space vehicle performance.

**"Specialty coating"** means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection. A specialty coating is any coating listed in Table 7-1 and defined in paragraph (b) of this Section.

**"Specialized function coating"** means a specialty coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

**"Spray gun"** means a device that uses air pressure or air flow to atomize a coating or other material, and to project the atomized coating particulates or other material onto a component.

**"Stripper"** means a liquid that is applied to an aerospace vehicle or component to remove primer, topcoat, self-priming topcoat, or coating residue.

**"Structural autoclavable adhesive"** means a specialty coating adhesive used to bond load-carrying aerospace components that are cured by heat and pressure in an autoclave.

**"Structural nonautoclavable adhesive"** means a specialty coating adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

**"Surface preparation"** means the removal of contaminants from the surface of an aerospace vehicle or component, or the activation or reactivation of the surface in preparation for the application of a coating.

**"Temporary protective coating"** means a specialty coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included



in this category.

**"Thermal control coating"** means a specialty coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

**"Topcoat"** means a coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

**"Touch-up and repair coating"** means a coating used to cover minor coating imperfections appearing after the main coating operation.

**"Touch-up and repair operation"** means that portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating. Touch-up and repair operations are not to exceed an area of 4 square feet per aerospace vehicle.

**"Type II etchant"** or "Type II chemical milling etchant" means a Chemical milling etchant that is a strong sodium hydroxide solution containing amines (Type I etchants do not contain amines).

**"Volatile Organic Compound (VOC)"** means any compound defined as VOC in Regulation 24, Section 2 - Definitions.

**"VOC composite vapor pressure"** means the sum of the partial pressures of the compounds defined as VOC's and is determined by the following calculation:

$$PP_c = \frac{\sum_{i=1}^n \frac{(W_i)(VP_i)}{MW_i}}{\frac{W_w}{MW_w} + \sum_{e=1}^n \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

- W<sub>i</sub> = Weight of the "i"th VOC compound, grams
- W<sub>w</sub> = Weight of water, grams
- W<sub>e</sub> = Weight of nonwater, non-VOC compound, grams
- MW<sub>i</sub> = Molecular weight of the "i"th VOC compound, g/g-mole
- MW<sub>w</sub> = Molecular weight of water, g/g-mole
- MW<sub>e</sub> = Molecular weight of exempt compound, g/g-mole
- PP<sub>c</sub> = VOC composite partial pressure at 20oC, mm Hg
- VP<sub>i</sub> = Vapor pressure of the "i"th VOC compound at 20oC, mm Hg

**"Wet fastener installation coating"** means a specialty coating primer or sealant applied by dipping, brushing, or

daubing to fasteners that are installed before the coating is cured.

**"Wing coating"** means a corrosion-resistant specialty coating topcoat that is resilient enough to withstand the flexing of the wings.

c. Standards.

1. Hand-Wipe Cleaning Operations.

i. Except as exempted in paragraph (c)(1)(ii), no person subject to this Section shall cause or allow on any day the use of any cleaning solvent in any hand-wipe cleaning operation that does not comply with one of the following limits:

A. VOC composite vapor pressure should be less than 45 millimeters (mm) mercury (Hg) (1.8 inches [in] Hg) at 20 degrees Celsius ((C) (68 degrees Fahrenheit [(F)).

B. Cleaning solvent shall be an aqueous cleaning solvent (i.e., a solvent in which water is at least 80 percent of the solvent, as applied).

ii. The requirements of paragraphs (c)(1)(i) of this Section shall not apply to the following hand-wipe cleaning operations:

A. Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

B. Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, and hydrazine).

C. Cleaning and surface activation prior to adhesive bonding.

D. Cleaning of electronics and assemblies containing electronics.

E. Cleaning of aircraft fluid system and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

F. Cleaning of fuel cells, fuel tanks, and limited-access spaces.

G. Surface cleaning of solar cells, coated optics, and thermal control surfaces.

H. Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

I. Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

J. Cleaning of aircraft transparencies.

K. Cleaning associated with research and development, quality control, and laboratory testing.

**2. Spray Gun Cleaning Operations.**

i. No person subject to this Section shall cause or allow on any day the use of any spray gun cleaning techniques that does not comply with one of the following:

A. Use of an enclosed spray gun cleaning system that is kept closed when not in use.

B. Non-atomized discharge of solvent into a waste container that is kept closed when not in use.

C. Disassembly of the spray gun and placing the parts for cleaning in a vat that is kept closed when not in use.

D. Atomized spray into a waste container that is fitted with a device that captures atomized solvent emissions.

E. Any alternative technique that has been demonstrated to, and accepted by the Department as producing emissions that are equal to or less than the emissions from the techniques specified in paragraph (c)(2)(i)(A) through (D) of this Section. Emissions from any alternative technique shall be demonstrated pursuant to test protocols that are approved in advance by the Department.

ii. Any enclosed spray gun cleaner shall be visually inspected for leaks at least once per month. Such inspection shall occur while the enclosed spray gun cleaner is in operation.

iii. Leaks from any enclosed spray gun cleaner shall be repaired as soon as practicable, but no later than 15 days from when the leak is first discovered.

iv. If any leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired.

3. Flush Cleaning. Any cleaning solvents used during flush cleaning operations shall be handled pursuant to paragraph (c)(8) of this Section.

4. Primer, Topcoat, and Self-Priming Topcoat Application.

i. Except as provided for in paragraph (c)(4)(ii), (d) and (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any primer, topcoat, and/or self-priming topcoat with a VOC content that does not comply with the following limits:

A. Primers shall have a VOC content equal to or less than 350 g/L (2.9 lb/gal), excluding water and exempt compounds, as applied.

B. Topcoats and self-priming topcoats shall have a VOC content equal to or less than 420 g/L (3.5 lb/gal), excluding water and exempt compounds, as applied.

ii. The requirements of paragraphs (c)(4)(i)(B) of this Section shall not apply to facilities that use less than 50 gallons per consecutive rolling 12-month period of a particular formulation of topcoat, or self-priming topcoat provided:

A. Each topcoat and self-priming topcoat shall have a VOC content equal to or less than 720 g/L (6.0

lb/gal), excluding water and exempt compounds as applied.

B. A total of not more than 200 gallons per consecutive rolling 12-month period of all such high VOC coatings are used at the facility.

iii. Except as provided for in paragraph (c)(4)(iv) of this Section, no person subject to this Section shall cause or allow on any day the use of any application technique to apply any primer, topcoat, or self-priming topcoat other than the following:

A. flow/curtain coat, roll coat, brush coat, dip coat, cotton-tip swab application, electrostatic spray, electrodeposition, or high volume low pressure (HVLP) spray guns;

B. Any alternate technique that has been demonstrated to and accepted by the Department as providing emissions that are less than or equal to the emissions from HVLP or electrostatic spray application techniques. Emissions from any alternate techniques shall be demonstrated pursuant to test protocols that are approved in advance by the Department. Such tests shall, at a minimum, compare the emission levels determined using an initial 90-day period of HVLP or electrostatic spray attraction techniques with the emission levels determined using the alternate technique for a period of time necessary to coat the equivalent amount of parts with the same coatings.

iv. The equipment standards and application techniques in paragraph (c)(4)(iii) of this Section shall not apply to the following primer, topcoat and self-priming topcoat application operations:

A. The application of coatings in any limited access space.

B. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

C. The application of coatings that normally have a dried film thickness of less than 0.0005 inches and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

D. The use of airbrush application methods for stenciling, lettering, and other identification markings.

E. Any touch-up and repair operation.

v. All application equipment shall be operated according to the manufacturer's specifications at all times, even if it is exempt from the equipment standards specified in paragraph (c)(4)(iii) of this Section.

5. Depainting Operation. No person subject to this Section shall cause or allow on any day the use of any stripper that does not comply with one of the following limits:

i. VOC composite vapor pressure shall be less than 10 mm Hg (0.4 in. Hg) at 20°C (68°F).

ii. VOC content shall be less than 400 g/L (3.3 lb/

gal), excluding water and exempt compounds, as applied.

6. Chemical Milling Maskant Application.

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any chemical milling maskant with a VOC content that does not comply with the following emission limits:

- i. For any Type I maskant, VOC content equal or less than 622 g/L (5.2 lbs/gal), excluding water and exempt compounds, shall be applied; or
- ii For any Type II maskant, VOC content equal

or less than 160 g/L (1.3 lbs/gal), excluding water and exempt compounds, shall be applied.

7. Specialty Coatings

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any specialty coating that has a VOC content, excluding water and exempt compounds, as applied, that is greater than the limits specified in Table 7-1:

Coating Type	Limit	Coating Type	Limit
<i>Ablative Coating</i>	600	<i>Epoxy Polyamide Topcoat</i>	660
<b>Adhesives:</b>	760	<i>Fire-Resistant (interior) Coating</i>	800
<i>Commercial Interior Adhesive</i>	1,020	<i>Flexible Primer</i>	640
<i>Cyanoacrylate Adhesive</i>	620	<i>Flight-Test Coatings: Missile or Single Use Aircraft</i>	420
<i>Fuel Tank Adhesive</i>	360	<i>All other</i>	840
<i>Nonstructural Adhesive</i>	890	<i>Fuel-Tank Coating</i>	720
<i>Rocket Motor Bonding Adhesive</i>	850	<i>High-Temperature Coating</i>	850
<i>Rubber-based Adhesive</i>	60	<i>Insulation Covering</i>	740
<i>Structural Autoclavable Adhesive</i>	850	<i>Intermediate Release Coating</i>	750
<i>Structural Nonautoclavable Adhesive</i>		<i>Lacquer</i>	830
<i>Adhesion promoter</i>	890	<b>Maskants (excluding Type I and Type II):</b>	1,230
<b>Adhesive Bonding Primers:</b>	850	<i>Bonding maskant</i>	1,020
Cured at 250°F or below	1,030	<i>Critical Use and Line Sealer Maskant</i>	1,230
Cured above 250°F		<i>Seal Coat Maskant</i>	
<i>Antichafe coating</i>	660	<i>Pretreatment Coating</i>	780
<i>Bearing coating</i>	620	<i>Rain Erosion-Resistant Coating</i>	850
<i>Caulking and smoothing compounds</i>	850	<i>Rocket Motor Nozzle Coating</i>	660
<i>Chemical Agent-Resistant Coating</i>	550	<i>Scale Inhibitor</i>	880
<i>Clear Coating</i>	720	<i>Screen Print Ink</i>	840
<i>Commercial exterior aerodynamic structure primer</i>	650	<b>Sealants:</b>	
<i>Compatible Substrate Primer</i>	780	<i>Extrudable/Rollable/Brushable Sealant</i>	280
<i>Corrosion Prevention Compound</i>	710	<i>Sprayable Sealant</i>	600
<i>Cryogenic Flexible Primer</i>	645	<i>Silicone Insulation Material</i>	850
<i>Cryoprotective Coating</i>	600	<i>Solid Film Lubricant</i>	880
<i>Dry Lubricative Material</i>	880	<i>Specialized Function Coating</i>	890
<i>Electric or Radiation-Effect Coating</i>	800	<i>Temporary Protective Coating</i>	320
<i>Electrostatic Discharge and Electromagnetic Interference (EMI) Coating</i>	800	<i>Thermal Control Coating</i>	800
<i>Elevated-Temperature Skydrol-Resistant Commercial Primer</i>	740	<i>Wet Fastener Installation Coating</i>	675
		<i>Wing Coating</i>	850

<sup>a</sup> Coating limits expressed in terms of mass (grams) of VOC per volume (liters) of coating less water and less exempt solvent. To convert from g/L to lbs/gallon multiply by 0.00835.

8. VOC Handling and Storage.

i. Except as provided in paragraph (c)(8)(ii) of this Section, any person subject to this Section shall use

good house keeping measures when handling any VOC and any VOC-containing material at the facility. Such measures shall include:

- A. Handling and transferring all fresh and spent cleaning solvent and other VOC-containing material to or from any container, tank, vat, vessel, or piping system, etc. in such a manner that minimizes losses.

B. All fresh and spent solvents and VOC-containing material shall be stored in closed containers at all times except during filling or emptying.

C. All solvent-laden cloths, papers, or other absorbent materials shall be placed in closed containers immediately after use.

ii. The requirements in paragraph (c)(8)(i) of this Section shall not apply to wastes that are determined to be hazardous wastes under the Resource Conservation and Recovery Act of 1976 (PL 94-580) (RCRA), as implemented by 40 Code of Federal Regulations (CFR) Parts 260 and 261, and that are subject to RCRA requirements, as implemented in 40 CFR Parts 262 through 268.

d. Daily-Weighted Average Limitations. As an alternative to complying with the individual limits specified in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, coatings in any primer, topcoat, chemical milling maskant, or specialty coating application operation shall not be applied at the facility, during any day, whose daily-weighted average VOC content, calculated in accordance with the procedure specified in Appendix "C" of Regulation 24 and the provisions listed below, exceeds the applicable emission limits in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, as applicable.

1. Averaging between primers, topcoats, self-priming topcoats, chemical milling maskants and/or specialty coatings is prohibited.

2. Averaging between coatings used in operations where air emissions are not captured and controlled and coatings used in operations where air emissions are captured and controlled is prohibited.

e. Control Devices.

1. As an alternative to complying with the individual limits specified in paragraph (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7), any person subject to this Section shall, for any primer, topcoat, self-priming topcoat, chemical milling maskant, and/or specialty coating application operation:

i. Install, test, calibrate, operate, maintain, and monitor according to the manufacturer's specifications, as approved by the Department, an air pollution control device consisting of a capture and control system on that operation; and

ii. Demonstrate that the overall emission reduction efficiency achieved is equal to or greater than 81 weight percent.

2. The procedures in Appendix "D" and Appendix "E" of Regulation 24 shall be used to demonstrate compliance with paragraph (e)(1)(ii) of this Section. The method in Appendix "I" of Regulation 24 may be used to determine an alternative multi-day rolling period when calculating the

efficiency of any carbon absorption system.

f. Test Methods.

1. The VOC composite vapor pressure specified in paragraph (c)(1)(i)(A) and paragraph (c)(5)(i) of this Section shall be determined either by using ASTM Method E 260-91, manufacturer's supplied data, or standard engineering reference text values.

2. The water content specified in paragraph (c)(1)(i)(B) of this Section shall be determined using the test methods found in Appendix "A" and Appendix "B" of Regulation 24.

3. The VOC content specified in paragraph (c)(4)(i)(A) and (c)(4)(i)(B) shall be determined by using the test method found in Appendix "A" and Appendix "B" of Regulation 24.

g. Recordkeeping. Any person subject to this Section shall maintain at the facility for a minimum period of 5 years from the information's date of record, all of the following information. Such information shall be immediately submitted to the Department upon written or verbal request.

1. For any person subject to the requirements of paragraph (c)(1) of this Section (i.e., hand-wipe cleaning operations):

i. Identification of each hand-wipe cleaning solvent used at the facility;

ii. The composite vapor pressure of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(A), and all supporting documentation, to include any test reports and/or calculations.

iii. The water content of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(B), and all supporting documentation, to include any test reports and/or calculations.

iv. Identification of each hand-wipe cleaning solvent used at the facility pursuant to paragraph (c)(1)(ii) of this Section, and a list of the parts, assemblies, or subassemblies cleaned with each such hand-wipe cleaning solvent.

2. For any person subject to paragraph (c)(2) of this Section (i.e., spray gun cleaning):

i. A description of each method used to clean spray guns.

ii. Records of the inspections conducted pursuant to paragraph (c)(2)(ii)(A).

iii. For any leak found pursuant to paragraph (c)(2)(ii)(A), records indicating the source of the leak, the date the leak was discovered, and the date the leak was repaired.

3. For any person subject to paragraph (c)(4) of this Section (i.e., primer, topcoat, and self-priming topcoat application):

i. For each coating applied pursuant to paragraph

(c)(4)(ii) of this Section.

A. Not later than the 5th day of each month, identification of each coating used at the facility pursuant to paragraph (c)(4)(ii) of this Section during the preceding month.

B. The volume used of each coating identified in paragraph (g)(3)(i)(A) of this Section.

C. The summation of the volumes recorded pursuant to paragraph (g)(3)(i)(B) for the preceding twelve (12) months.

D. The records required by paragraph (e) of Section 4 of Regulation 24.

ii. A description of the proper operation of all coating application equipment used at the facility.

iii. Documentation associated with any alternate coating application techniques approved pursuant to paragraph (c)(4)(iii)(B) of this Section.

4. For any person subject to paragraph (c)(4), (c)(6), and (c)(8) of this Section (i.e., primer, topcoat, self-priming topcoat, chemical milling maskant, and specialty coating application):

i. Identification of the control strategy employed (i.e., the combination of complying coatings, daily-weighted averaging, and control devices used at the facility).

ii. Where complying coatings are used, the records required by paragraph (c) of Section 4 of Regulation 24.

iii. Where daily-weighted averaging pursuant to paragraph (d) of this Section is used, the records required by paragraph (d) of Section 4 of Regulation 24.

iv. Where a control device(s) pursuant to paragraph (e) of this Section is used, the records required by paragraph (e) of Section 4 of Regulation 24.

5. For any person subject to paragraph (c)(5) of this Section:

i. If complying with paragraph (c)(5)(i), the name, VOC composite vapor pressure, and method and supporting documentation used to determine the VOC composite vapor pressure of each stripper used at the facility.

ii. If complying with paragraph (c)(5)(ii), the name, VOC content, and method and supporting documentation used to determine the VOC content of each stripper used at the facility.

iii. A description of any non-chemical-based depainting equipment used at the facility, to include the name and type of equipment or technique.

iv. Records and a description of all malfunctions of non-chemical-based depainting equipment used at the facility, to include the dates and alternative depainting method(s) used.

v. A list of any parts, assemblies, or subassemblies normally removed during depainting operations.

6. For any person subject to paragraph (c)(8) of this Section, a description of the procedures used to ensure that containers are kept closed when not in use and that solvents and other VOC-containing materials are stored in closed containers.

h. Reporting. Notification of any non-compliance with any requirement of this Section shall be reported to the Department in accordance with Section 4 and 5 of Regulation 24, as applicable and any other applicable Federal or State reporting requirements.

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

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

**SAN # 2002-19**

**1. Title Of The Regulations:**

**AMENDMENTS TO DELAWARE 2005  
PROGRESS PLAN, and AMENDME  
DELAWARE PHASE II ATTAINMENT  
DEMONSTRATION, toward attainment of the 1-hour  
National Ambient Air Quality Standard (NAAQS) for the  
ground-level ozone in Kent and New Castle Counties.**

**2. Brief Synopsis Of The Subject, Substance And  
Issues:**

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for every three years after 1996 to demonstrate how Delaware will achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors that form ground-level ozone. Delaware's 2005 Rate-of-Progress Plan, which covers the three-year period from 2003 to 2005, was submitted to EPA in December 2000. Under the CAAA, Delaware is also required to develop a SIP revision to demonstrate its capability of attaining the 1-hour ozone standard in 2005. This SIP revision, termed as the Phase II Attainment Demonstration, was amended and submitted to EPA in January 2000. The purpose of this action is (1) to amend the 2005 RPP, and (2) to amend the Phase II Attainment Demonstration to reflect mobile emission budgets using the Mobile 6 emission model. No other changes to the plans are proposed.

**3. Possible Terms Of The Agency Action:**

None.

**4. Statutory Basis Or Legal Authority To Act:**

7 Del. C., Chapter 60, Environmental Control  
Clean Air Act Amendments of 1990

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice Of Public Comment:**

A public hearing will be held on November 26, 2002 beginning at 6:00 PM in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

**7. Prepared By:** Frank F. Gao, Project Leader  
(302) 323-4542 October 11, 2000

6. *64 FR 70444, December 16, 1999*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; proposed rule.

7. *66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

8. *Amendments to Delaware Phase II Attainment Demonstration SIP: Revision of 2005 On-Road Mobile Source Emission Budgets Using MOBILE 6*, Department of Natural Resources and Environmental Control, Dover, Delaware, proposed in November 2002.

**AMENDMENTS TO  
Delaware 2005 Rate-of-Progress Plan  
FOR KENT AND NEW CASTLE COUNTIES  
For Demonstrating  
Progress Toward Attainment of the National Ambient  
Air Quality Standard for Ground-Level Ozone**

Submitted To  
U.S. Environmental Protection Agency  
By  
Delaware Department of Natural Resources and  
Environmental Control  
Dover, Delaware  
November 2002

List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

3. *Measures to Meet the EPA-Identified Shortfalls in Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*, Department of Natural Resources and Environmental Control, Dover, Delaware, July 2001.

4. *Delaware Regulations Governing the Control of Air Pollution, Regulation 24 Section 26*, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, Updated to March 8, 1995.

5. *Memorandum: Correction Errata to the 15 Percent Rate of Progress Guidance Document*, from J. T. Helms, Group Leader, Ozone Policy and Standard Group, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, March 17, 1999.

**1. Introduction**

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) of the ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) for the period between 1990 and 1996, and a revision of such SIP for every three years after 1996 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors that form ground-level ozone. Thus, these SIP revisions are termed as Rate-of-Progress Plans (RPPs). Delaware's 2005 Rate-of-Progress Plan, which covers the three-year period from 2003 to 2005, was submitted to EPA in December 2000 (Reference 2). The plan will be referred to hereafter as the 2005 Rate-of-Progress Plan or simply the 2005 RPP.

This document amends Delaware's 2005 RPP according to EPA's requirements on use of the agency's newly released MOBILE6 model to reevaluate VOC and NOx emissions from on-road mobile sources (Reference 7). The amendments include using MOBILE6 for (1) reevaluating VOC and NOx emissions for the 2005 attainment year, and (2) reevaluating VOC and NOx emissions for the 1990 base year, the 1996, 1999 and 2002 milestone years, to revise the emission targets for all milestone years. In addition, the amendments include a section that revises VOC emission estimates for the Stage I Vapor Recovery Program in Kent and New Castle Counties. The document concludes that, with the replacement of MOBILE5b estimates with MOBILE6 estimates for on-road mobile sources, the revised VOC emission estimates for the Stage I Program, plus additional control measure identified in Delaware Shortfall SIP Revision (Reference 3), Delaware meets the VOC and/or NOx emission reduction requirements set forth for 2005 by the CAAA.

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Program Manager I. The following staff members of PCP are responsible for fulfilling this document:

Frank Gao, Ph.D., P.E., Environmental Engineer  
 Principal Author and Project Leader  
 Phil Wheeler, Environmental Planner  
 Lead person for MOBILE6 modeling

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail [frank.gao@state.de.us](mailto:frank.gao@state.de.us), Air Quality Management Section, DAWM-DNREC, 715 Grantham Lane, New Castle, Delaware 19720.

**2. Revising 1990 Baseline Emission Inventory**

Delaware’s 1990 baseline VOC and NOx emissions was revised in the original 2005 Rate-of-Progress Plan to accommodate differences in on-road mobile source emissions estimated by MOBILE5a and MOBILE5b (Section 1.3, Reference 2). The baseline emissions thereof need to be revised again to reflect new emission estimates from MOBILE6. The following formula is used for this revision:

$$EMIS_{90BL-M6} = EMIS_{90BL-M5b} - M5b \text{ Emission} + M6 \text{ Emission} \quad (1)$$

where,  $EMIS_{90BL-M6}$  = 1990 baseline all-source emission revised by MOBILE6 for this document;

$EMIS_{90BL-M5b}$  = 1990 baseline all source emission revised by MOBILE5b in the original 2005 RPP (Table 1-7, Reference 2);

$M5b \text{ Emission}$  = mobile source emission estimated by MOBILE5b;

$M6 \text{ Emission}$  = mobile source emission estimated by MOBILE6.

Emission data for MOBILE5b are obtained from the original 2005 RPP (Appendix F, Reference 2). Emission data for MOBILE6 are listed in Appendix A of this document. The revised 1990 baseline VOC and NOx emissions are summarized in Table 1 below.

**Table 1. Delaware 1990 Baseline VOC and NOx Emissions as Revised for MOBILE6.**

Source Sector	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.24	6.13	26.94	85.77	30.18	91.90
Stationary Area Sources	12.78	1.20	34.37	5.40	47.15	6.60
Off-Road Mobile Sources	3.49	7.89	16.67	18.78	20.17	26.67
On-Road Mobile Sources	18.42	12.52	47.48	34.07	65.90	46.59
<b>TOTAL EMISSIONS</b>	<b>37.93</b>	<b>27.75</b>	<b>125.46</b>	<b>144.01</b>	<b>163.39</b>	<b>171.76</b>

To reassess emission targets in each milestone year, the above baseline emissions must be adjusted to remove VOC and NOx emission reductions from two pre-1990 control programs, i.e., the Federal Motor Vehicle Control Program (FMVCP) and the Reid Vapor Program (RVP). Details of how to conduct this adjustment are given in the original 2005 RPP (Reference 2). On-road mobile source emission data required for this adjustment, as estimated using MOBILE6 model, are provided in Appendix A of this document. Emission reductions from FMVCP and RVP as estimated by MOBILE6 model are summarized in Table 2. The 1990 baseline emissions adjusted to individual milestone years are summarized in Table 3. The adjusted baseline emissions will be used in a later section (Section 5) to reevaluate emission targets in individual milestone years.

**Table 2. Emission Reductions From Fmvcp And Rvp In On-road Mobile Sources.**

Description	VOC	NOx	
1990 Baseline On-Road Mobile Source Emissions	65.90	46.59	(a)
1990 Adjusted Base Year On-Road Mobile Source Emissions			
Adjusted for 1996	40.51	34.00	(b) <sub>1996</sub>
Adjusted for 1999	35.98	31.14	(b) <sub>1999</sub>
Adjusted for 2002	33.36	30.19	(b) <sub>2002</sub>
Adjusted for 2005	31.00	29.07	(b) <sub>2005</sub>
FMVCP/RVP Emission Reductions			
For 1990-1996	25.38	12.59	(a)- (b) <sub>1996</sub>
For 1990-1999	29.92	15.45	(a)- (b) <sub>1999</sub>
For 1990-2002	32.54	16.41	(a)- (b) <sub>2002</sub>

For 1990-2005	34.90	17.52	(a)- (b)2005
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**Table 3. The 1990 Baseline Emissions Adjusted to Individual Milestone Years.**

Description	VOC	NOx	
1990 Baseline Inventory (All Sources)	163.39	171.76	(a)
FMVCP/RVP Emission Reductions			
For 1990-1996	25.38	12.59	(b)1996
For 1990-1999	29.92	15.45	(b)1999
For 1990-2002	32.54	16.41	(b)2002
For 1990-2005	34.90	17.52	(b)2005
1990 Adjusted Baseline Emissions			
Relative to 1996	138.01	159.17	(a)- (b)1996
Relative to 1999	133.47	156.31	(a)- (b)1999
Relative to 2002	130.85	155.35	(a)- (b)2002
Relative to 2005	128.49	154.24	(a)- (b)2005

**3. Revising VOC Emission Estimates for Stage I Vapor Recovery Program**

Stage I Vapor Recovery is a control measure for gasoline vapor emissions at gasoline dispensing facilities that result from unloading gasoline from a delivery vessel (tank truck) into a stationary storage vessel (storage tank). The vapors displaced in the storage tank by the liquid gasoline are retrieved into the tank truck and transported back to the refinery. Delaware Stage I Vapor Recovery Regulation was revised in January 1993 (Sec. 26 of Delaware Air Regulation 24, Reference 4). The regulation requires gasoline storage tanks at gasoline dispensing facilities to be loaded by submerged filling with vapor balance system. In the original 2005 RPP, however, VOC emissions from facilities covered by this regulation were estimated with an emission factor for the splash filling.

In March 1999, EPA revised one major projection equation for area sources, including gasoline-dispensing facilities (Reference 5). This revised equation, as shown below, allows Delaware to use an emission factor for balanced and submerged filling to better estimate VOC emissions from the covered facilities.

$$EMIS_{PY} = ORATE_{BY} \times GF \times EF_{PY} \left[ 2 - \left( \frac{CE_{PY}}{100} \right) \left( \frac{RE_{PY}}{100} \right) \left( \frac{RP_{PY}}{100} \right) \right]$$

- (2)  
 where  $EMIS_{PY}$  = Projection year (2005) emission;  
 $ORATE_{BY}$  = Base year activity level  
 = 190 thousand gallons per day for Kent County  
 = 608 thousand gallons per day for New Castle County;  
 $GF$  = growth factor  
 = 0.91 for both counties.  
 $EF_{PY}$  = emission factor for balanced submerged filling  
 = 0.3 lb. per thousand gallons;  
 $CE_{PY}$  = control efficiency in projection year  
 = 100 along with the submerged  $EF_{PY}$  for both counties;  
 $RE_{PY}$  = rule effectiveness in projection year  
 = 80% for both counties;  
 $RP_{PY}$  = rule penetration  
 = 100 for both counties.

Using Eq. (2) and the above parameters, VOC emissions from Stage I facilities can be re-estimated as:

$$KenEMIS_{PY} = 190 \times 10^3 \left[ 2 - \left( \frac{100}{100} \right) \left( \frac{80}{100} \right) \left( \frac{100}{100} \right) \right] \times \frac{1}{2000} = 0.03 TP$$

$$NewCastleEMIS_{PY} = 608 \times 10^3 \left[ 2 - \left( \frac{100}{100} \right) \left( \frac{80}{100} \right) \left( \frac{100}{100} \right) \right] \times \frac{1}{2000} = 0.1 TP$$

In the original 2005 RPP, VOC emissions from Stage I facilities are 0.20 TPD and 0.64 TPD for Kent County and New Castle County, respectively.

**4. Revising Control Strategy Projections for Individual Milestone Years**

To re-evaluate 2005 VOC and NOx emission targets with mobile source emissions generated by MOBILE6, the control strategy projections in all previous milestone years must be also re-evaluated for MOBILE6. An equation similar to Eq. (1) is used for this purpose:

$$EMIS_{PY-M6} = EMIS_{PY-M5b} - M5b-C-Emis + M6-C-Emis \quad (2)$$

where,  $EMIS_{PY-M6}$  = projection year all-source emission revised by MOBILE6;



$EMIS_{PY-M5b}$  = projection year all-source emission revised by MOBILE5b in the original 2005 RPP (Table 1-7, Reference 2);

$M5b-C-Emis$  = control strategy mobile source emissions estimated by MOBILE5b (Appendixes F and L, Reference 2);

$M6-C-Emis$  = control strategy mobile source emissions estimated by MOBILE6 (Appendix A of this document).

For 2005, in addition to the above adjustment regarding MOBILE6, the VOC emission differences for the Stage I facilities must be also adjusted in the same manner. The revised control strategy emissions for individual milestone years are summarized in Table 4.

**Table 4. Revised Control Strategy Projections for Individual Milestone Years.**

Milestone Year	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
1996	26.79	27.38	97.34	150.19	124.13	177.58
1999	24.66	23.45	91.94	114.91	116.61	138.36
2002	21.77	22.64	83.23	112.96	104.99	135.60
2005	19.98	20.35	77.32	110.40	97.29	130.75

**5. Reevaluating Emission Targets for Individual Milestone Years**

Details of how to estimate emission targets for 1996, 1999, 2002 and 2005 have been described in Sections 1.3 and 1.4 of the original 2005 RPP (Reference 2). Therefore, only outlines for the necessary calculations and brief explanations are given herein.

(1). Calculating Fleet Turnover Corrections for On-Road Mobile Sources

Fleet turnover corrections are differences in FMVCP/RVP emission reductions between two adjacent milestone years, as indicated in Table 5.

**Table 5. Fleet Turnover Corrections for On-Road Mobile Sources.**

Fleet Turnover Correction	VOC	NOx	*
For 1996-1999	4.53	2.86**	$(b)_{1996} - (b)_{1999}$
For 1999-2002	2.62	0.96	$(b)_{1999} - (b)_{2002}$
For 2002-2005	2.37	1.11	$(b)_{2002} - (b)_{2005}$

\* Data from Table 2.

\*\* Not needed for 1999 NOx target calculation.

(2). Calculating VOC Emission Targets in 2005 without NOx Substitution

The CAAA requires that Delaware obtain 15% VOC emission reduction between 1990 and 1996, and a 9% VOC and/or NOx reduction every three years thereafter. The VOC targets levels for all milestone years are calculated first, as indicated in Table 6. It should be noted that the fleet turnover correction must be incorporated in the calculation because they are actually emission reductions from FMVCP and RVP that are creditable reductions.

**Table 6. Emission Targets of VOC for Individual Milestone Years.**

1996 Milestone Year			
1990 Baseline	1996		
	Req. 15% Reduction	FMVCP/RVP	Target Level
(a)	(b)	(c)	$(d)=(a)-(b)-(c)$
163.39	20.70	25.38	117.31
1999 Milestone Year			
1996 Target Level	1999		
	Req. 9% Reduction	Fleet Turnover	Target Level
(a)	(b)	(c)	$(d)=(a)-(b)-(c)$
117.31	12.01	4.53	100.76
2002 Milestone Year			
1999 Target Level	2002		
	Req. 9% Reduction	Fleet Turnover	Target Level
(a)	(b)	(c)	$(d)=(a)-(b)-(c)$
100.76	11.78	2.62	86.36
2005 Milestone Year			
2002 Target Level	2005		
	Req. 9% Reduction	Fleet Turnover	Target Level
(a)	(b)	(c)	$(d)=(a)-(b)-(c)$
86.36	11.56	2.37	72.43

(3). Calculating Creditable VOC Emission Reductions  
Comparing Table 4 and Table 6 indicates that the VOC control strategy projection for all milestone years are higher than the target levels. Thus, NOx emission reductions must

be considered to meet the required rate-of-progress emission reductions. First, the creditable VOC emissions and percentages must be determined, as shown in Table 7.

**Table 7. Creditable Voc Emission Reductions And Percentages.**

Description	Emissions	
1999 Milestone Year		
1990 Baseline VOC Emission Adjusted for 1999	133.47	(a)
1996 VOC Target Level	117.31	(b)
VOC Fleet Turnover Correction for 1996-1999	4.53	(c)
1999 VOC Control Strategy Projection*	116.61	(d)
Creditable VOC Emission Reductions for 1999	-3.83	(e)=(b)-(c)-(d)
% of VOC Reductions for 1999 Rate-of-Progress	-2.87%	(f)=(e)/(a)×100
2002 Milestone Year		
1990 Baseline VOC Emission Adjusted for 2002	130.85	(a)
1999 VOC Target Level	116.61	(b)
VOC Fleet Turnover Correction for 1999-2002	2.62	(c)
2002 VOC Control Strategy Projection*	104.99	(d)
Creditable VOC Emission Reductions for 2002	8.99	(e)=(b)-(c)-(d)
% of VOC Reductions for 2002 Rate-of-Progress	6.87%	(f)=(e)/(a)×100
2005 Milestone Year		
1990 Baseline VOC Emission Adjusted for 2005	128.49	(a)
2002 VOC Target Level	104.99	(b)
VOC Fleet Turnover Correction for 2002-2005	2.37	(c)
2005 VOC Control Strategy Projections*	97.29	(d)
Creditable VOC Emission Reductions for 2005	5.33	(e)=(b)-(c)-(d)
% of VOC Reductions for 2005 Rate-of-Progress	4.15%	(f)=(e)/(a)×100

(4). Calculating Required NOx Emission Reductions.

The guidance of this calculation is that the percentages of NOx emission reductions plus the creditable VOC reduction percentages in Table 7 must equal to 15% for 1996 and to 9% for each milestone year thereafter. The calculations and results are summarized in Table 8.

**Table 8. Required NOx Emission Reductions for Individual Milestone Years.**

Description	NOx Emissions	
1999 Milestone Year		
1990 Baseline NOx Emission Adjusted for 1999	156.31	(a)
% VOC Reductions for 1999 Rate-of-Progress	-2.87%	(b)
% NOx Reductions for 1999 Rate-of-Progress	11.87%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1996-1999	18.56	(e)=(a)×(c)
2002 Milestone Year		
1990 Baseline NOx Emission Adjusted for 2002	155.35	(a)
% VOC Reductions for 2002 Rate-of-Progress	6.87%	(b)
% NOx Reductions for 2002 Rate-of-Progress	2.13%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1999-2002	3.30	(e)=(a)×(c)
2005 Milestone Year		
1990 Baseline NOx Emission Adjusted for 2005	154.24	(a)
% VOC Reductions for 2005 Rate-of-Progress	4.15%	(b)
% NOx Reductions for 2005 Rate-of-Progress	4.85%	(c)
Total % VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 2002-2005	7.48	(e)=(a)×(c)

(5) Calculating Emission Targets for Both VOC and NOx.

By setting the VOC control strategy projections in Table 4 as VOC target levels for 1999, 2002 and 2005, and using required NOx emission reductions as determined in Table 8, the target levels of NOx emissions in individual milestone years, including 2005, can be calculated. Both VOC and NOx emission targets are summarized in Table 9.

**Table 9. Target Levels for Both VOC and NOx Emissions.**

Description	Emissions (TPD)		
	VOC	NOx	
1996 Target Level-VOC	117.31		(a)
1990 Baseline Adjusted for 1999-NOx		156.31	
1999 Milestone Year			
Emission Reduction for Rate-of-Progress	-3.83	18.56	(b)
Fleet Turnover Correction for 1996-1999	4.53	0.00	(c)
Target Level for 1999	116.61	137.75	(d)=(a)-(b)-(c)
2002 Milestone Year			
Emission Reduction for Rate-of-Progress	8.99	3.30	(e)
Fleet Turnover Correction for 1999-2002	2.62	0.96	(f)
Target Level for 2002	104.99	133.49	(g)=(d)-(e)-(f)
2005 Milestone Year			
Emission Reduction for Rate-of-Progress	5.33	7.48	(h)
Fleet Turnover Correction for 2002-2005	2.37	1.11	(i)
Target Level for 2005	97.29	124.90	(j)=(g)-(h)-(i)

**6. Additional Controls and Adequacy of 2005 Rate-of-Progress Plan**

As shown in Table 9, the target levels of VOC emission and NOx emission in 2005 are 97.29 TPD and 124.90 TPD, respectively. Comparison of these two targets with the 2005 control strategy projections, as revised in Table 4, indicates that, with all control measures proposed in the original 2005 RPP, Delaware will still have a 5.85 TPD shortfall in NOx emission reduction (Shortfall = Target Level – Control Strategy Projection = 124.90 – 130.75 = -5.85 TPD). Thus, additional controls on either VOC or NOx emissions are needed for 2005.

In July 2001, Delaware submitted to EPA a SIP revision entitled “Measures to Meet the EPA-Identified Shortfalls in Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area” (Reference 3, hereafter referred to as the Shortfall SIP). The EPA has proposed approval for the 6 new/amended regulations specified in the Shortfall SIP in September 2002. In the Shortfall SIP, Delaware adopted into the Delaware SIP 6 new or amended regulations with

compliance dates before the ozone season of 2005. These new regulations are expected to lead to an additional 4.96 TPD VOC emission reduction and an additional 0.36 TPD NOx emission reduction in 2005 (Section 3.1 and Table 3, Reference 3).

Delaware hereby further amends the original 2005 RPP by adding the above 6 regulations to its control measure list. These 6 new/amended regulations make the 2005 RPP adequate by clearing the 5.85 TPD NOx reduction shortfall caused by switching MOBILE5b to MOBILE6. This judgement of adequacy can be reached by the following steps.

(1) The 1990 baseline VOC and NOx emissions adjusted to 2005 are 128.49 TPD and 154.24 TPD, respectively (Table 3, this document). The ratio of VOC and NOx baseline emissions is

$$\text{VOC} : \text{NOx} = 128.49 : 154.24 = 1 : 1.20$$

(2) According to the above ratio, the additional 4.96 TPD VOC emission reduction in the Shortfall SIP is equivalent to 5.95 TPD NOx reduction (4.96x1.20=5.95 TPD). Thus, the total additional NOx emission reduction from the 6 new/amended regulations is 6.31 TPD (5.95+0.36=6.31 TPD), which is greater than the NOx shortfall of 5.85 TPD caused by MOBILE6.

(3) Therefore, adding the 6 new/amended regulations to the original 2005 RPP will enable Delaware to successfully meet the 2005 emission targets set forth under the rate-of-progress requirements.

[Note: The above adequacy could be also determined by revising the 2005 control strategy projections first (Section 4), and then following the steps used in Section 5. The calculation results would be the same.]

It should be pointed out that the MOBILE6-based emissions in 2005 (Appendix A of this document) are also the revised on-road mobile source emission budgets for Kent and New Castle Counties for the purposes of meeting the transportation conformity requirements set forth in Section 182 of the CAAA. It should be noted that the revised budgets are calculated using MOBILE6 emission factors and the related planning assumptions (i.e., VMT, speed data, fleet mix) currently available and used in the original 2005 RPP. After January 29, 2003 the mobile budgets established by this SIP revision shall be used to determine the conformity of transportation plans and programs to the SIP (Reference 6 and 7).

## Appendixes

### Appendix A: Summary of MOBILE6-Based Emission Estimates.

**Table A1. MOBILE6-Based Estimates for On-Road Mobile Sources.**

Inventory Title	Kent County		New Castle y		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
1990 Base Year	18.4 2	12.52	47.48	34.07	65.90	46.59
1990 Baseline						
Adjusted to 1996	11.1 6	9.23	29.35	24.77	40.51	34.00
Adjusted to 1999	9.72	8.41	26.26	22.73	35.98	31.14
Adjusted to 2002	8.80	8.07	24.56	22.11	33.36	30.19
Adjusted to 2005	7.93	7.66	23.07	21.41	31.00	29.07
Emissions with Controls						
1996	11.0 3	10.15	29.36	25.93	40.39	36.08
1999	9.70	9.20	26.75	23.96	36.46	33.16
2002	7.53	8.44	20.66	22.18	28.20	30.63
2005	6.06	7.39	16.13	19.94	22.19	27.33

Note: The emissions in the table are calculated with emission factors generated by MOBILE6, and VMTs and speeds currently used in the original 2005 RPP (Appendix F, Reference 2). The VMT and speeds represent the latest planning assumptions available to DNREC, and registration data used is for the corresponding year.

### Appendix B: MOBILE 6 Input/Output Files and Emission Calculations

Available upon request.

(Proposal)

**AMENDMENTS TO**

**Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton Ozone Non-attainment Area**

**Submitted To**

**U.S. Environmental Protection Agency**

**by**

**Delaware Department Of Natural Resources And Environmental Control  
Dover, Delaware**

**November 2002**

#### List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as

amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, and in December, 2000.

3. *Memorandum: Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity*, from John S. Seitz, Director of Office of Air Quality Planning and Standards, and Margo T. Oge, Director of Office of Transportation and Air Quality, US EPA, Washington D.C., January 18, 2002.

4. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, January 2000.

5. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

6. *Amendments to Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, as proposed in November 2002.

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8. *66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

## 1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) of the ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures over VOC and NOx emission sources. This SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended two times thereafter (Reference 2).

One requirement of EPA for a state's attainment

demonstration SIP revision is to set up on-road motor vehicle VOC and NOx emission budgets for use in transportation conformity analysis in that state. In its amendments to the Phase II Attainment Demonstration SIP in January 2000, Delaware set up these two budgets for 2005 using EPA's MOBILE5b model and including MOBILE5-based Tier 2 benefits. In its amendments to the Phase II Attainment Demonstration SIP in December 2000, Delaware committed that it would revise the budgets within one year after the release of the then-anticipated MOBILE6 model. In January 2002, EPA officially released the MOBILE6 model.

The document proposed herein is to use MOBILE6 model to revise the on-road motor vehicle VOC and NOx emission budgets in the Delaware Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Program Manager I. The following staff members of PCP are responsible for fulfilling this document:

Frank Gao, Ph.D., P.E., Environmental Engineer  
 Principal Author and Project Leader  
 Phil Wheeler, Environmental Planner  
 Lead person for MOBILE6 modeling

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail [frank.gao@state.de.us](mailto:frank.gao@state.de.us), or Phil Wheeler at (302)739-4791, e-mail [phillip.wheeler@state.de.us](mailto:phillip.wheeler@state.de.us), Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, DE 19901.

**2. Requirements of EPA on Use of MOBILE6 Model**

In January 2002, EPA officially released the MOBILE6 model for states to use in their ozone SIP revisions and transportation conformity analysis. In a policy guidance regarding the use of MOBILE6 model (Reference 3), EPA requires that, if a state used MOBILE5-based Tier 2 benefits when it determined its previous on-road motor vehicle emission budgets, the state must revise those budgets within one year after MOBILE6 is released, and submit the revised budgets to EPA as a SIP revision. Since Delaware used the MOBILE5-based Tier 2 benefits in its last mobile budget SIP submittal, Delaware needs to meet this requirement upon the MOBILE6 release (See also References 7 and 8).

According to the same guidance, Delaware can revise its

motor vehicle emission budgets using MOBILE6 without revising the entire Phase II Attainment Demonstration SIP or completing additional modeling, if Delaware can satisfy the following two criteria: (1) the SIP continues to demonstrate attainment when the MOBILE6 is used to estimate motor vehicle emissions and to set up new emission budgets, and (2) the growth and control strategy assumptions for stationary sources and non-road mobile sources continue to be valid to maintain the overall conclusions of the SIP.

Delaware decides not to revise the entire Phase II Attainment Demonstration SIP and not to conduct additional modeling. The second criterion above can be satisfied by the following two documents: (1) Delaware 1996 Milestone Demonstration for Kent and New Castle Counties (Reference 4), and (2) Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties (currently under development). In these two documents, Delaware has successfully demonstrated that the overall emissions of VOC and/or NOx in the 1996 and 1999 Periodical Emission Inventories are below the emission targets in these two milestone years, which indicates continuous adequate progress toward the attainment of the 1-hour ozone standard in 2005.

In the following sections of this document, Delaware will show that EPA's first criterion will be satisfied by demonstrating that the MOBILE6 estimates of motor vehicle emissions are equal to or lower than the previous MOBILE5 estimates for the attainment year of 2005.

**3. MOBILE6 Estimates of On-Road Mobile Source Emissions**

The MOBILE6 modeling has been conducted in-house by staff members of DNREC Air Quality Management Section. The modeling domain includes all control measures specified in Delaware's 2005 Rate-of-Progress Plan (Reference 5). The model input files, output files, and summary of emission factors generated by MOBILE6 are provided in Appendix A of this document. Using the emission factors generated by MOBILE6 and the VMT/speed data currently available and used in the original 2005 RPP, the MOBILE6-based motor vehicle emissions can be calculated. The calculations and results are also presented in Appendix A. The MOBILE6 estimates of on-road motor vehicle emissions are summarized in Table 1.

**Table 1. MOBILE6 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New Castle y		Total NAA *	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emission (TPD)	6.06	7.39	16.13	19.94	22.19	27.33

\*NAA: Non-Attainment Area.

#### 4. Comparison of MOBILE6-Based Estimates and MOBILE5b-Based Estimates

The MOBILE5-based estimates of on-road motor vehicle emissions in 2005 are presented in Table 2. These estimates are also the on-road motor vehicle emission budgets as specified in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). Details of how Delaware conducted MOBILE5b modeling work and obtained these estimates are provided in Delaware's 2005 Rate-of-Progress Plan (Reference 5).

**Table 2. MOBILE5 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New County Castle		Total NAA *	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emission (TPD)	4.84	7.91	14.76	22.92	19.60	30.83

\*NAA: Non-Attainment Area.

Comparison of MOBILE6-based estimates and MOBILE5-based estimates can be made through the following steps.

1. For the total non-attainment area (NAA), the MOBILE6 VOC emission is 2.59 TPD higher than the MOBILE5 VOC emission ( $22.19 - 19.60 = 2.59$  TPD), while the MOBILE6 NOx emission is 3.50 TPD lower than the MOBILE5 NOx emission ( $27.33 - 30.83 = -3.50$  TPD).
2. Delaware's 1990 baseline VOC and NOx emissions, as adjusted to the attainment year of 2005 using MOBILE6 model, are 128.49 TPD and 154.24 TPD, respectively (Reference 6). Thus, the VOC-to-NOx emission ratio is 1-to-1.2.
3. Using the above VOC-to-NOx emission ratio, the 2.59 TPD VOC emission increase due to using MOBILE6 is equivalent to a 3.11 TPD NOx emission increase ( $2.59 \times 1.20 = 3.11$  TPD). This equivalent NOx emission increase is smaller than the 3.50 TPD NOx emission decrease as indicated in (1) above.

The above comparison indicates that in the attainment year of 2005, the new MOBILE6 estimates are lower than the MOBILE5 estimates previously presented in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2), and in Delaware's 2005 Rate-of-Progress Plan (Reference 5). Therefore, the first criterion specified in EPA's MOBILE6 guidance document (Reference 3) is satisfied.

#### 5. New MOBILE6-Based Motor Vehicle Emission

#### Budgets

Since the two criteria specified in EPA's MOBILE6 guidance document (Reference 3) are satisfied, Delaware decides to set the new MOBILE6-based estimates to be the new on-road motor vehicle emission budgets for Kent and New Castle Counties, as presented in Table 3. After January 29, 2003 the mobile budgets established by this SIP revision shall be used to determine the conformity of transportation plans and programs to the SIP (Reference 7 and 8).

**Table 3. New MOBILE6-Based Motor Vehicle Emission Budgets for 2005.**

Attainment Year	Kent County		New County Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Budgets (TPD)	6.06	7.39	16.13	19.94	22.19	27.33

#### Appendix A: MOBILE6 Input/Output Files, Emission Factors and Calculations.

Available upon request.

## EXECUTIVE DEPARTEMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code,  
Sections 5005(11) & 7903(10); 30 Del.C. 2004

### Department Of Health And Social Services Tax Appeal Board

#### Notice Of Proposed Regulation Governing Neighborhood Assistance Act Tax Credit Program

#### Title Of Regulation

Neighborhood Assistance Act Tax Credit Program Regulation

#### Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the members of the Tax Appeal Board are proposing to adopt regulations pertaining to the tax credit set forth in the Neighborhood Assistance Act, 30 *Del. C.* §§2001 — 2007. The regulation sets forth certain definitions pertaining to the Act and the regulation and explains how to apply for an

NAA Credit and the procedures pertaining to the application process.

**Statutory Basis And Legal Authority To Act**

29 *Del. C.* §§ 5005(11) & 7903(10); 30 *Del. C.* § 2004.

**Other Regulations Affected:**

None.

**Notice Of Public Hearing; How To Comment On The Proposed Regulations**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Mr. Jack Tarburton, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the members of the Tax Appeal Board, or an employee of the Delaware Economic Development Office designated by the Secretary, the Director and the members of the Tax Appeal Board, will hold a public hearing at which members of the public may present comments on the proposed regulation on December 2, 2002 in the conference room of the offices of the Delaware Economic Development Office on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Jack Tarburton at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 30, 2002.

**Neighborhood Assistance Act Tax Credit Program Regulation****1.0 Introduction**

This regulation is promulgated under the authority granted by 30 *Del. C.* §2004 to the Secretary of DHSS, the Director of DEDO, and the TAB to make regulations for the approval or disapproval of Applications from Business Firms for the NAA Credit. The Act, administered by DHSS, DEDO & TAB, is the Neighborhood Assistance Act, 30 *Del. C.* §§ 2001 – 2007. The Act is designed to encourage both Contributions by Business Firms to Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations performing Community Service and offering Neighborhood Assistance and the direct operation by Business Firms of Programs for the provision of Job Training, Education, Community Services, Crime

Prevention Housing and Economic Development to benefit individuals living in Impoverished Areas.

This regulation sets forth the definition of certain terms used in the Act and describes (i) the eligibility requirements for Business Firms desiring to participate in the program, (ii) the processes used by the Council to provide guidance and recommendations to the Director of DEDO and the TAB on business firms that should receive a tax credit, (iii) how to apply for the tax credit, (iv) how the Council will assist DEDO, DHSS and the TAB.

**2.0 Definitions.**

For purposes of this regulation, initially capitalized terms not otherwise defined in this section 2.0 shall have the meanings set forth in the Act.

For purposes of this regulation, initially capitalized terms not defined by the Act shall have the following definitions:

“Act” means the Neighborhood Assistance Act, 30 *Del. C.* §§2001 – 2007, as amended from time to time.

“Administrator” means the DHSS, DEDO and the TAB, with the guidance of the Council. For purposes of the approval process over Applications, DEDO shall have primary responsibility for administration of the Act.

“Applicant” means a Business Firm that makes an application for approval of an Investment or a Program in accordance with this regulation.

“Application” means an application made by an Applicant on the form prescribed by the Administrator setting forth pertinent information pertaining to (i) the Applicant, (ii) the Investment proposed, including, as appropriate, the qualification of the recipient of a Contribution as a Neighborhood Organization, a Community Development Corporation or Community-Based Development Organization, (iii) the purposes for which such Neighborhood Organization, a Community Development Corporation or Community-Based Development Organization will expend or use a Contribution, (iv) a description of a Program, (v) the amount of cash support that will be used in the Program and detailed information concerning the underlying factual basis and valuation methodology that the Applicant used to value goods and services proposed to be furnished in connection with a Program, (vi) the Impoverished Area or Low Income People involved, and (vii) such other information or types of information as the Administrator deems necessary. The Administrator may require submission of additional materials to substantiate information elicited by an Application.

“Contribution” means a contribution of money or of goods and services, valued at their Fair Market Value, to (i) a Neighborhood Organization for use by such organization in providing Community Services or in offering Neighborhood Assistance, or (ii) a Community Development Corporation

or Community-Based Development Organization for use by such organization in the planning and implementation of Economic Development projects. Contributions of in-kind goods and services and/or loans of money will not be considered contributions for this program.

**“Council”** means the Neighborhood Assistance Act Advisory Council established by 30 *Del. C.* §2004.

**“DEDO”** means the Delaware Economic Development Office.

**“DHSS”** means the Department of Health and Social Services.

**“Emergency Assistance”** means the provision of payments or services for families in order to eliminate or alleviate an emergency condition. An "emergency condition" is defined the loss of the family shelter or the loss of energy supply to the family shelter.

**“Fair Market Value”** means, with respect to an item of goods or services, the price in a market in which the item of such goods or services is most commonly sold to the public at which such item would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.

**“Impoverished Area”** means any clearly-defined, economically distressed urban or rural area in the State of Delaware that has been certified as such by DHSS, with the advice of the Council, and approved by the TAB in a regulation-making proceeding in accordance with the Delaware Administrative Procedures Act. DHSS shall make its certification of an Impoverished Area based on federal census studies and current indices of social and economic conditions, including an analysis of Block Groups as defined by the United States Census Bureau, which studies and indices shall be identified in connection with the regulation-making proceeding. DHSS shall make publicly available accurate verbal descriptions and maps of all Impoverished Areas that it certifies and that the TAB approves. By regulation-making proceeding under the Delaware Administrative Procedures Act, DHSS may modify the description of an Impoverished Area, revoke the status of an area as an Impoverished Area, and designate new Impoverished Areas; provided, however, that any such modifications, revocations or additional designations shall be based on federal census studies and current indices of social and economic conditions that are identified by DHSS; and provided further, that no modification of the description of an Impoverished Area or revocation of the status of an Impoverished Area as such shall operate to deprive any person of a NAA Credit that has previously been granted.

**“Investment”** means (i) the amount of a Contribution or (ii) the amount of money and the Fair Market Value of goods and services proposed to be made or expended within the taxable year of the Applicant on a Program.

**“Locally Based”** means, with respect to a Community

Development Corporation or a Community-Based Development Organization, that such Community Development Corporation or Community-Based Development Organization is organized by residents of and located in one or more of the Impoverished Areas in which they serve.

**“Low Income People”** or “Low Income Person” means individuals or an individual with an annual income that is fifty percent (50%) or below the established median income for the State as established by the United States census and maintained by the State Data Center at DEDO.

**“NAA Credit”** means the credit described in 30 *Del. C.* §2005, subject to the limitations of 30 *Del. C.* §2006 and regulations governing the NAA Credit promulgated by the Delaware Division of Revenue.

**“Program”** means the direct provision by an Applicant in an Impoverished Area of (i) Neighborhood Assistance, (ii) Job Training for individuals not employed by the Applicant, (iii) Education for individuals not employed by the Applicant, (iv) Community Services, (v) Crime Prevention, (vi) Housing, or (viii) Economic Development.

**“Proposal”** means the description of the relationship between the Business Firm making an Application and the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization to which the Business Firm will make a Contribution and a description of how the Neighborhood Organization will provide Community Services or Neighborhood Assistance or of how the Community Development Corporation or Community-Based Development Organization will engage in Economic Development.

**“Resident-Controlled”** means, for purposes of the definition in the Act of the terms “Community Development Corporation” and “Community-Based Development Organization,” an organization that otherwise meets the definition of a “Community Development Corporation” or “Community Based Development Organization” under the Act, the by-laws or other organizational documents of which require that at least fifty-one percent (51%) of the members of the board of directors, or other governing body of such organization, reside or work in the Impoverished Area served by the organization.

**“TAB”** Means the Tax Appeal Board.

### 3.0 Program Priorities

Applications received for consideration of an Investment must meet all eligibility requirements under the Act and this regulation, including, but not limited to the purpose of the Program or Proposal with respect the Investment is to be made, the eligibility requirements for the Business Firm making an Application and for the Neighborhood Organization, Community Development Corporation, or Community-Based Development



Organization that will receive a Contribution.

Applications will be reviewed and ranked on the following factors: (i) financial feasibility of the Program or Proposal, (ii) capacity of the Applicant to carry out a Program or of the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization that will receive a Contribution to implement the activities described in the Proposal; (iii) specific description of goals to be achieved and the relationship of such goals to the priorities established by the Act; (iv) proposed methods by which the success of the Program or Proposal can be measured; (v) specific description of the impact of the Program or Proposal on an Impoverished Area; and, (vi) other information requested in the Application form prescribed by the Administrator and any supplementary information requested by the Administrator.

#### **4.0 Making Application for NAA Credits**

Applications may be submitted at any time directly to: Administrator of the Neighborhood Assistance Act, Delaware Economic Development Office, 99 Kings Highway, Dover Delaware 19903. The Administrator will review the Application for completeness. If the Application is incomplete, the Administrator will return it to the Applicant and shall specify in what regard it is incomplete. The Administrator may also request additional information or other documentation in support of an Application.

#### **5.0 Procedures for Recommendation of Approval or Disapproval of Application**

5.1 Initial Processing and Distribution of Complete Applications. When the Administrator finds that an Application is complete, it shall submit copies of the Application to DEDO, the members of the TAB and the members of the Council.

##### 5.2 Council Review of Application.

5.2.1 The Council shall review Applications transmitted to it by the Administrator in accordance with Section 5.1 hereof at its public meetings held in compliance with 29 Del. C. §10004. In addition to posting its agenda publicly, as required by 29 Del. C. §10004(e), the Council shall mail a written notice of such meetings to all Applicants whose Applications will be reviewed by the Council at such meetings at least seven days in advance of such meetings.

5.2.2 At its meeting, the Council shall review the completed Applications based on eligibility criteria set forth in the Act and this regulation.

5.2.3 The Council shall prepare a written recommendation to the Director of DEDO and the members of the TAB on all Applications reviewed at its meetings. The Council's recommendation shall include a recommendation for the approval or disapproval of an Application and a recommended amount of the Investment

to be approved. The Council shall send its written recommendation to the Director of DEDO, the members of the TAB and the Applicant.

##### 5.3 Hearing on Application

5.3.1 In General. Hearings on all Applications shall be conducted jointly by (i) the Director of DEDO, or an employee of DEDO designated by the Director of DEDO, and (ii) the members of the TAB to consider Applications based on the criteria for eligibility set forth in the Act and in this regulation and on the recommendation of the Council. If the Director of DEDO and the members of the TAB so agree, the hearing may be conducted by an employee of DEDO designated as a hearing officer by both the Director of DEDO and the members of the TAB.

5.3.2 Scheduling of Hearings. The Director of DEDO and the members of the TAB, or the hearing officer designated by them in accordance with section 5.3.1, shall schedule a hearing on an Application after receiving the written recommendation of the Council described in subsection 5.2.3 hereof and shall notify the Applicant of the hearing in compliance with the provisions of 29 Del. C. §10122. The recommendation of the Council shall become part of the record in the hearing, and the Applicant will be asked to stipulate to the inclusion of such recommendation in the record of the hearing; provided, however, that the Applicant shall have the opportunity to introduce evidence and testimony at the hearing to supplement or contradict the recommendation.

5.3.3 Conduct of Hearing; Burden of Proof. The hearing shall be conducted on the record in accordance with the procedures for agency case decisions set forth in 29 Del. C. §§ 10121 – 10129. The burden of proof shall always be on the Applicant.

5.3.4 Final Order; Proposed Order. The Director of DEDO and the members of the TAB shall decide whether to approve or disapprove an Application, with or without modification of the Investment or Program, and on the amount of the approved Investment or Program based on the entire record of the case and shall issue a final order in accordance with 29 Del. C. § 10128. If a designated hearing officer conducts the hearing, such hearing officer shall comply with the requirements of 29 Del. C. § 10126 in preparing a proposed order for the consideration of the Director of DEDO and the members of the TAB, a copy of which shall be delivered to the Applicant in accordance with such section.

**STATE EMPLOYEE BENEFITS  
COMMITTEE**

Statutory Authority: 29 Delaware Code,  
Sections 5210(4), 9602(b)(4)  
(29 Del. C. §§5210(4), 9602(b)(4))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 29 Del.C. Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendment inserts a new sentence in Rule 7.01 that clarifies that coverage is retained under certain circumstances for public school or higher education employees through the end of the summer.

A public hearing will be held on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules on Thursday, December 5, 2002 at 1:00 p.m., in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware, 19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Deborah E. McCall at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Group Health Care Insurance Eligibility and Coverage Rules or to make comments at the public hearing should notify Deborah E. McCall at the above address by calling (302) 739-8331.

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

**State Of Delaware**  
**State Employee Benefits Committee**  
**Group Health Care Insurance**  
**Proposed Revisions To Eligibility And Coverage Rules**

7.01 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required contributions have been made. In the event an Employee fails to make the required contributions for any optional coverage selected, coverage will revert to "Basic" coverage on the first day of the month for which the Employee failed to make the required contribution. If an employee works one day in the month in which they terminate, they shall earn state share for the

entire month.

**PLEASE NOTE: AS THE REMAINDER OF THE REGULATION IS NOT BEING MODIFIED IT IS NOT BEING PUBLISHED.**

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PILOT COMMISSIONERS  
24 DE ADMIN. CODE 1000**

Statutory Authority: 23 Delaware Code,  
Section 102 (23 **Del.C.** §102)

**ORDER**

Pursuant to due notice and an opportunity for public comment, the Board of Pilot Commissioners met and considered amendments to its regulations concerning an Offshore Trip Experience Requirement, a Service Requirement for Advancement from a License Class to a Higher License Class, and a change in the deadline to complete re-training in Bridge Resource Management.

The text of the changes were duly published in the Delaware Register, with the first two changes published in the June 1 edition and the third proposed change published in the September 1 edition. Public hearings were held on June 25 and October 1, 2002.

After due consideration, the Board hereby adopts these regulations as in the best interest of the public and the piloting profession, with the following noted change from the proposals as printed in the Delaware Register:

As to Section 11.2, delete the last sentence thereof. This sentence dealt with pilots already holding a first class pilot

license, and the required renewal by 2005 as set forth in this sentence was deemed unnecessary.

**SO ORDERED: Board of Pilot Commissioners**

Signatures on file at the Division of Professional Regulation

Approved as to Form:

Frederick H. Schranck, Deputy Attorney General,  
October 11, 2002

**1.0** Delaware licensed Bay and River Pilots are required to be familiar with the Delaware Code, Title 23, Chapter 1. Pilots-Section 100 through 138.

**2.0 Original License**

2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.

2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.

2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.

2.4 The Board of Pilot Commissioners shall issue

endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

### 3.0 To Raise License

Fourth Class Pilots shall demonstrate their knowledge to the Commission of their thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

### 4.0 Renewal of License

Pilot Licenses are to be issued on anniversary of their original date from October 24, 1967, to comply with Delaware law.

### 5.0 All Delaware Licensed Pilots must:

5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.

5.2 Hold a valid radar certificate.

ARPA certification is also required.

5.3 Provide a copy of all licenses and certificates to the Commission Secretary.

5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.

5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.

5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.

5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:

Ship Handling, Port Revel  
Centre De Port Revel  
38136 St. Pierre de Bressieux  
France

Maritime Institute of Technology  
5700 Hammonds Ferry Road  
Linthicum Heights, MD 21090

SCI Maritime Training  
241 Water Street  
New York, NY 1003 8

South Hampton Institute  
Newtown Road, Warsash Hampshire  
England

Tidewater Navigation  
Norfolk, VA

5.7 Attend and complete at least once every ~~three (3)~~ five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards satisfaction of the requirement of subparagraph "E", above. All licensed Pilots shall have passed and approved BRM course prior to 1 July 1997.

6.0 Pilots must pass a designated physical examination every year within 120 days before their date of license renewal, results of the examination shall be reported on the form provided each Pilot. Examinations may also be ordered by the Board for any Pilot at any time for any cause.

7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:

7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and

7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:

7.2.1 The name of the vessel.

7.2.2 The date of pilotage.

7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.

7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

### 8.0 Docking, Undocking, and Anchoring of Vessels

8.1 When a vessel is docking or anchoring, a Delaware licensed Pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.

8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

### **9.0 Casualty Reports**

9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. All such reports must be made within five days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.

9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U.S. Coast Guard relating to any occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

### **10.0 Commission Recommendations**

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

### **11.0 Offshore Trip Experience Requirement for Second Class Pilots**

11.1 Under the provisions of 23 Del.C. Section 113(b), no person shall be eligible for licensure as a first class Pilot by this Board, until that person has served at least one year in each of the lower classes.

11.2 While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of these trips to the Board at least thirty days prior to being granted their first class Pilot license. Any pilots holding a first class pilot license as of the date of the

adoption of this regulation shall also complete these two trips by the date of the renewal of their license in 2005.

### **12.0 Service Requirement for Advancement from License Class to a Higher License Class**

12.1 Under 23 Del.C. Section 113(b), a licensed pilot must serve at least one year in each of the previous lower Pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 Del.C. Section 112(1). Using the plain meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.

12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the Pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the Pilot's license renewal date, at the completion of the total one-year term.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PRIVATE  
INVESTIGATORS & PRIVATE  
SECURITY AGENCIES**

24 DE Admin. Code 1300

Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 Del.C. §1304(b)(3))

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 11, 2002 on the proposed amendment of promulgated rules and regulations 10.0 - Licensing Fees, 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 fees for Class D License - Armored Car Agency License.

#### **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 fees for Class D License - Armored Car Agency License.

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 fees for Class D License - Armored Car Agency License.

### 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 10.0(10.4), in its entirety, any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this order shall be July 11, 2002.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 11th day of July, 2002.

Colonel L. Aaron Chaffi , Chairman

APPROVED AS TO FORM:

Michael Tupman , Esquire Deputy Atty. General  
September 25, 2002

### Board Of Examiners Of Private Investigators & Private Security Agencies Rules and Regulations

#### 1.0 Firearm's Policy

1.1 No person licensed under 24 **Del.C.** 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these

three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

#### 1.2 Firearms - approved type of weapons

1.2.1 9mm

1.2.2 .357

1.2.3 .38

1.2.4 .40

1.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

1.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

1.5 All individuals must qualify with the same type of weapon that he/she will carry.

1.6 All ammunition will be factory fresh (no re-loads).

1.7 The minimum passing score is 75%. All licenses are valid for a period of one (1) year.

Adopted 11/04/1994

**See 3 DE Reg 960 (1/1/00)**

#### 2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

#### 3.0 Personnel Rosters and Job Assignments

3.1 Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sec, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith 01/25/60 WM 01/25/99 SG

Helen E. White 03/17/71 BF 03/17/00 FA

John F. Henry 05/23/43 M 05/23/00 PI

James D. Williams 12/03/40 WM 06/30/99 MG

Frank G. Montgomery 07/24/55 BM 06/30/99 LH

Anne L. Murray 10/20/40 WF 06/30/99 CO

SG Security Guard

FA Firearm's

PI Private Investigator

MG Delaware Manager

LH License Holder

CO Corporate Officer

3.2 Job site lists shall include the name, address,

location, and hours of coverage. For example:

The DuPont Industry  
Barley Mill Road  
2200 - 0600 Hours, Monday, Wednesday, and

Friday

Adopted 11/04/1994

**See 3 DE Reg 960 (1/1/00)**

#### **4.0 Record Book; Right of Inspection**

All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

Adopted 11/04/1994

**See 3 DE Reg 960 (1/1/00)**

#### **5.0 Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97**

5.1 No person licensed under 24 **Del.C.** Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

5.2 Advertisement and other forms of publications:

5.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

5.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

5.2.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

**See 3 DE Reg 960 (1/1/00)**

#### **6.0 Qualified Manager**

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

Adopted 11/04/1994

#### **7.0 Employment Notification**

7.1 It shall be the responsibility of each person licensed as a security guard under 24 **Del.C.** Ch. 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact as well as the Director of the Board of Examiners.)

7.2 Employers Responsibility

7.2.1 A licensed private security agency, after investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.2.2 A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

7.2.2.1 The name of any employee arrested;

7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

**See 4 DE Reg. 361 (8/1/00)**

#### **8.0 Criminal Offenses**

In addition to those qualifications set forth in 24 **Del.C.** §1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

Adopted 11/04/1994

#### **9.0 Private Investigators**

9.1 A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

9.2 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.

9.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

## 10.0 Licensing Fees

### 10.1 Class A License - Private Investigative Agency

#### 10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1 \$230 for 2 years to expire

June 30th of odd years

10.1.1.1.2 \$5,000 Bond

10.1.1.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.1.1.2 Corporation - Has Employees

10.1.1.2.1 \$345 for 2 years to expire

June 30th of odd years

10.1.1.2.2 \$10,000 Bond

10.1.1.2.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.1.2 Out-of-State

10.1.2.1 License Holder - Individual and Corporation

10.1.2.1.1 \$345 for 2 years to expire

June 30th of odd years

10.1.2.1.2 \$10,000 Bond

10.1.2.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.1.2.2 Delaware Manager

10.1.2.2.1 \$230 for 2 years to expire

June 30th of odd years

10.1.2.1.2 \$5,000 Bond

### 10.2 Class B License - Private Security Agency

#### 10.2.1 In-State License Holder

10.2.1.1 Individual - No Employees - Not Corporation

10.2.1.1.1 \$230 for 2 years to expire

June 30th of odd years

10.2.1.1.2 \$5,000 Bond

10.2.1.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.2.1.2 Corporation - Has Employees

10.2.1.2.1 \$345 for 2 years to expire

June 30th of odd years

10.2.1.2.2 \$10,000 Bond

10.2.1.2.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.2.2 Out-of-State

10.2.2.1 License Holder - Individual and Corporation

10.2.2.1.1 \$345 for 2 years to expire

June 30th of odd years

10.2.2.1.2 \$10,000 Bond

10.2.2.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.2.2.2 Delaware Manager

10.2.2.2.1 \$230 for 2 years to expire

June 30th of odd years

10.2.2.2.2 \$5000 Bond

10.3 Class C License - Private Investigative & Private Security Agency

#### 10.3.1 In-State License Holder

10.3.1.1 Individual - No Employees - Not Corporation

10.3.1.1.1 \$345 for 2 years to expire

June 30th of odd years

10.3.1.1.2 \$10,000 Bond

10.3.1.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.3.1.2 Corporation - Has Employees

10.3.1.2.1 \$520 for 2 years to expire

June 30th of odd years

10.3.1.2.2 \$15,000 Bond

10.3.1.2.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.3.2 Out-of-State

#### 10.3.2.1 Individual and Corporation

##### 10.3.2.1.1 License Holder

10.3.2.1.1.1 \$520 for 2 years to expire June 30th of odd years

10.3.2.1.1.2 \$15,000 Bond

10.3.2.1.1.3 \$1,000,000 Liability

Insurance per occurrence

#### 10.3.2.1.2 Delaware Manager

10.3.2.1.2.1 \$345 for 2 years to expire June 30th of odd years

10.3.2.1.2.2 \$10,000 Bond

10.4 Class D License - Armored Car Agency License

#### 10.4.1 License Holder

##### 10.4.1.1 Corporation - Has Employees

10.4.1.1.1 \$345 for 2 years to expire June 30th of odd years

10.4.1.1.2 Banking - Commissioner

License as required by 5 Del.C. 3203

#### 10.4.1 License Holder

10.4.1.1 \$345 for 2 years to expire June



30th of odd years

10.4.1.2 Banking Commissioner License  
as required by Title 5 Chapter 32 Section 3203

10.4.1.3 \$10,000 Bond

10.4.1.4 \$1,000,000 Liability Insurance per  
occurrence

10.4.2 Delaware Manager

10.4.2.1 \$230 for 2 years to expire on June  
30th of odd years

10.4.2.2 \$5,000 Bond

## **11.0 Use Of Animals**

11.1 The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998

**See 3 DE Reg 960 (1/1/00)**

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## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 **Del.C.** §10103)

### **Order**

Pursuant to 29 **Del.C.** §10113(b) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission ("the Commission") hereby issues this Order adopting an amendment to Commission Rules 15.01.2 and adopt a new Rule 15.12. Following notice and a public hearing held on September 30, 2002, the Commission makes the following findings and conclusions:

### **Summary Of Evidence And Information Submitted**

1. The Commission posted public notice of the proposed rule amendments in the September 1, 2002 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The proposal contained proposed amendments to Rule 15.01.2 and a proposed new Rule 15.12. The proposed amendment to Rule 15.01.2 would: amend subsection (c) to permit the use of aminocaproic acid in horses; amend subsection (g) to limit the use of bleeder medication to one hour before post time; amend subsection (h) to require trainers to declare the use of aminocaproic acid or salix at the time of entry; amend subsection (i) to require veterinarians report administration of all bleeder medications; amend subsection (j) to require the race program denote medications in the past performance charts; amend subsection (k) to require horses in the medication program remain on the medication for sixty days; amend subsection (l) to enact penalties for failure to properly

declare the use of bleeder medications. The proposed new Rule 15.12 would prohibit the possession or use of substances or medications for which there is no recognized analytical method including erythropoietin and substances which endanger the health and welfare of a horse, or are not approved by the FDA.

2. The Commission received no written public comments prior to the public hearing. The Commission also received no comments at the public hearing on September 30, 2002.

### **Findings Of Fact And Conclusions**

3. The public was given notice and an opportunity to provide the Commission with comments in writing and at a public hearing.

4. The Commission finds that the proposed amendments to the Commission's Rules are in the best interests of racing and will be beneficial for the horsemen and the horses. The Commission proposed these rules after extensive study. The Commission has received no comments indicating that the rules are not necessary for the effective regulation of thoroughbred racing in Delaware. The Commission concludes that the proposed Rules should be adopted in their proposed form.

5. This Order will be published in the November 1, 2002 Register of Regulations. The effective date of the Order will be December 1, 2002. A copy of the enacted Rules is attached as Exhibit #1 to this Order.

**IT IS SO ORDERED** this 2nd day of October, 2002

Bernard Daney, Chairman

Duncan Patterson, Commissioner

H. James Decker, Commissioner

Carolyn Wilson, Commissioner

## **15.0 Medication, Testing Procedures**

### **15.01.2 Foreign Substances:**

No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which

shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

**Micrograms per milliliter Penalties**

0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(f) The test level for oxyphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

**Micrograms per milliliter Penalties**

0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(g) No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.02.

(h) If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

(i) A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

(j) The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

(k) Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

(l) The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

**15.12 Prohibited Practices**

The following conduct shall be prohibited for all licensees:

a. The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing.

b. The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 1005  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))

**Regulatory Implementing Order****1005 Membership In Fraternities And Sororities****I. Summary Of The Evidence And Information  
Submitted**

The Secretary of Education seeks to repeal the regulation 1005 Membership in Fraternities and Sororities in order to allow local school districts flexibility in developing their own policies on this issue. Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 26, 2002, in the form hereto attached as Exhibit A and no comments were received concerning this regulation.

**II. Findings Of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to allow local school districts flexibility in developing their own policies on this issue.

**III. Decision To Repeal The Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal the regulation. Therefore, pursuant to 14 Del. C. §122, the regulation attached hereto as Exhibit "B" is hereby repealed.

**IV. Text And Citation**

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation cited as 14 DE Admin. Code §1105 shall be removed from the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C. §122, on October 7, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 7th day of October 2002.

**Department Of Education**

Valerie A. Woodruff, Secretary of Education

~~**1005 Membership in Fraternities and Sororities**~~

~~1.0 No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization.~~

~~1.1 The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.~~

~~1.2 Nothing in this regulation shall be deemed as prohibiting the local board of education or Charter School from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.~~

~~1.3 Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult leadership and supervision.~~

~~1.4 Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:~~

~~1.4.1 establishment of the purposes and criteria for membership in the organization;~~

~~1.4.2 establishment of guidelines to be followed in the selection of members; and~~

~~1.4.3 establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This procedure assures that students are made aware of the reasons for nonadmittance to membership selectivity.~~

~~See 1 DE Reg. 723 (12/1/98)~~

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**Regulatory Implementing Order****1105 School Transportation****I. Summary Of The Evidence And Information  
Submitted**

The Secretary of Education seeks the approval of the

State Board of Education to amend regulation 1105 School Transportation. The amendment is necessary in order to implement the new procedures required following passage of H. B. 584 relating to drug and alcohol testing of school bus drivers and aides. Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 26, 2002 in the form hereto attached as Exhibit A. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for persons with Disabilities. In response to the concern expressed about the definition of the word "employer", the definition now clearly references the school bus contractors. As to the concerns about random testing and testing based on reasonable cause, the amendments to the regulation call for the employer to comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States. The federal regulations contain affirmative substantive provisions requiring random testing and testing based on reasonable cause and set out the procedures for such testing.

## II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to implement the new procedures required following passage of H. B. 584 relating to drug and alcohol testing of school bus drivers and aides.

## III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §2901, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del. C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §1105 in the Regulations of the Department of Education.

## V. Effective Date Of Order

The actions herein above referred to were taken by the Secretary pursuant to 14 Del.C. §2901, on October 17, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** the 17th day of October 2002

## Department Of Education

Valerie A. Woodruff, Secretary of Education  
Approved this 17<sup>th</sup> day of October 2002

## State Board Of Education

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert J. Gilsdorf  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

## 1105 School Transportation

### 1.0 Responsibilities of Local Superintendents:

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

- 1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.
- 1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.
- 1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.
- 1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.
- 1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.
- 1.6 Promote public understanding of, and support for the district's school transportation program.
- 1.7 Assume prime responsibility for student conduct.

### 2.0 Conditions for School Bus Contractors:

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

- 2.1 Follow all applicable federal, state, and local school bus regulations and policies.
- 2.2 Communicate effectively with the district transportation supervisor.
- 2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.
- 2.4 Pay drivers and aides and provide substitute drivers and aides.

**3.0 Responsibilities of School Bus Drivers:**

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

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

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

- 3.2.1 Operate the school bus in a safe and efficient manner.
- 3.2.2 Conduct pre-trip and post-trip checks on the vehicle.
- 3.2.3 Establish and maintain rapport with passengers.
- 3.2.4 Maintain discipline among passengers.
- 3.2.5 Meet emergency situations effectively.
- 3.2.6 Communicate effectively with district and school staff.
- 3.2.7 Maintain effective contact with the public.
- 3.2.8 Complete reports as required by the state or school district.
- 3.2.9 Complete required training programs satisfactorily.
- 3.2.10 Refrain from using profane or indecent language or tobacco while on duty.
- 3.2.11 Dress appropriately.
- 3.2.12 Pickup and drop-off students at designated stops.
- 3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.
- 3.2.14 Report suspected cases of child abuse to the school principal or designated official.
- 3.2.15 Notify the district transportation supervisor of any school bus accident.

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

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

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

- 4.1.1 Be at least 18 years of age.
- 4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level: and meet the same requirements (pre-licensing) specified for school bus drivers in the Del. C.
- 4.1.3 File with the district transportation supervisor a notarized affidavit ~~(the same as the school bus~~

~~driver affidavit)~~ attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers, ~~and subsequently, as a condition of continued employment, submit to drug testing pursuant to the drug testing policy established by the Department of Education.~~

4.1.5 ~~The bus aide shall never have been convicted of the manufacture, delivery, or possession with intent to deliver a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV, or V of Chapter 47, Title 16 of the Delaware Code in this State or any other jurisdiction.~~

4.1.6 ~~The bus aide shall never have been convicted of any other felony in this state or any other jurisdiction in the last five years.~~

4.1.7 ~~The bus aide shall never have been convicted of any crime against a child in this State or any other jurisdiction.~~

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

- 4.2.1 Assist in loading and unloading of students, including lift operation.
- 4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.
- 4.2.3 Ensure that all students remain seated at all times.
- 4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.
- 4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.
- 4.2.6 Perform record keeping tasks related to student attendance and bus assignment.
- 4.2.7 Monitor and report student misbehavior according to established procedure.
- 4.2.8 Assist the driver in keeping the interior of the bus clean.
- 4.2.9 Assist students with disabilities with personal needs associated with their disabilities.
- 4.2.10 Assist in bus evacuation drills.
- 4.2.11 Work cooperatively with all school personnel and parents.
- 4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

**5.0 Student Conduct on School Buses:**

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

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

5.2 Be at their bus stop on time for pickup.

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

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

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

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

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

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

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

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

5.11 Observe classroom conduct when on the bus.

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

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

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

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

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

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

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

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

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education

educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

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

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

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

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

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

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

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

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

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

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

parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

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

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

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

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

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

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

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

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

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

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

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

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

**7.0 Accident Reports:**

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

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

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

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

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

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

Disposition of any litigation.

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

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

**8.0 Transportation Benefits:**

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

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

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

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

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

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

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the

relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

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

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

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

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

#### **9.0 Bus Capacities:**

Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

#### **10.0 Loading and Unloading:**

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

#### **11.0 Unique Hazards:**

Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council

representatives, and legislators, it shall be presented in writing to the local school authorities.

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

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

11.2 The request to the Unique Hazards Committee must include:

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

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

11.2.3 Number and grades of children involved.

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

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

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

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

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

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

11.5 Unique Hazards Committee Recommendations Appeal Process

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

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



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

### **12.0 Contingency Plans:**

Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

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

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

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

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

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

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

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

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

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

of Education and the State Board of Education.

13.6 Reimbursement for buses when there are Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors shall be paid the normal rate of pay as provided for in their contract, less the allowance for operation including fuel, oil, tires, and maintenance.

13.6.2 Contractors with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.3 School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.

13.6.4 Districts with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

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

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

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

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

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

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

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

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

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

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

14.1.7 Salary/wages including attendants (aide)

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

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

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

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

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

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

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

14.3.4 Post-secondary classes

14.3.5 Federal programs

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

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

14.3.8 Charter school transportation outside of the school district.

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

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

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

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

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

15.2.2 When public service is not available and it

is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

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

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

#### **16.0 Cost Records:**

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

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

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

16.4 Cost of accidents, including bus repairs.

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

#### **17.0 Bus Replacement Schedules:**

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

17.1 The following age and mileage requirements apply:

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

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

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

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

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

In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to

and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

**18.0 School Bus Inspections:**

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

**19.0 Transportation for Students with Disabilities:**

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

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

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

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

person on an annual basis or at such times as indicated above.)

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

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

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

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

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

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

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

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

**20.0 Transportation for Alternative Programs:**

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

**21.0 Drugs and Alcohol:**

The illegal use, sale, or possession of intoxicants, narcotics, prescription drugs, or other controlled substances, or being under the influence of the same, by a school bus driver or aide (hereinafter referred to as employee) while on the job or on school property, or on school buses or vehicles shall result in immediate suspension without pay and recommendation for job termination.

21.1 The Delaware Department of Education, in order to promote the health and safety of all employees and students, shall routinely conduct drug/alcohol testing of all employees to determine fitness for duty. The following procedures shall be instituted in implementing the drug/alcohol testing program:

21.1.1 District supervisory personnel or supervisory employees of the school bus contractors who determine whether an employee must be drug/alcohol tested based on "reasonable cause" shall receive a minimum of one (1) hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse.

21.1.2 Pre-employment Testing: No employee will be hired unless that person passes a drug test.

21.1.3 Random Testing: At least 50% of all employees shall be drug/alcohol tested and 10% (as required by federal DOT) of all employees shall be alcohol tested every 12 months. The employees for testing shall be selected by using a random number table that is matched with an employee's social security number.

21.1.4 Testing Based on Reasonable Cause: Whenever there is reasonable cause to believe that an employee is using a prohibited drug/alcohol, such employee shall be drug/alcohol tested. The decision to test will be based on a reasonable and articulate belief that the employee is using a prohibited drug/alcohol on the basis of specific, contemporaneous physical, behavioral or performance indicators of probable drug/alcohol use. The supervisor of the employee shall make the decision to test with the assistance of a district employee or supervisory employee of the school bus contractor trained in detecting possible drug/alcohol use.

21.1.5 Supervisors and employees shall all receive at least a one hour seminar educating them about: the critical problem of alcohol and drug abuse in the work place; the drugs to be tested for; how the drug testing will be conducted; drug screening; security and chain-of-custody procedures for the sample; federally approved drug testing facilities are used; medical review doctors receive the results; and employee assistance program offerings.

21.1.6 If an employee is under medical treatment involving a controlled substance or medication which might impair response and affect fitness for duty, documentation should be on file in the office of the District Transportation Supervisor of the driver's fitness to drive a school bus. A telephone call shall be made to the physician's office by the

company/agency responsible for the impairment screening, substantiating that the documentation is a true and correct statement of the driver's fitness issued by the physician. A notation of the time, date and person obtaining that substantiation shall be duly noted. Determination as to the driver's fitness for duty shall be made only after such substantiation is made.

21.1.7 Any employee failing a drug/alcohol test without documentation of acceptable medical cause shall be immediately suspended without pay and recommended for termination. Refusal to be tested pursuant to these regulations shall also be grounds for termination of employment.

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

**21.0 Drugs and Alcohol Testing****21.1 Content:**

21.1.1 Pursuant to 14 Del.C. 2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

"CDL" means a commercial drivers license issued pursuant to [Chapter 26 of Title 21 of the Delaware Code 21 Del.C. Chapter 26.]

"Department" means the Delaware Department of Education.

"DOT" means the United States Department of Transportation.

"Drug" means the controlled substances for which tests are required under the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

"Employer" [means school bus contractors or] school districts and charter schools when they directly employ school bus drivers ~~f, and/or school bus contractors~~.

"Negative result" means a verified negative drug test result or an alcohol test result lower than the Federal

standard as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

“Positive result” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

### 21.3 Federal Regulations

Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

#### 21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator [Medical Review Officer ~~(AC/TP)~~ (C/TPA/MRO)], as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

#### 21.4.2 The Department shall:

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional [~~ASAP~~] (SAP)] evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

### 21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-

employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control [~~(ACC)~~ (CCF)] forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer.

21.5.5 Positive results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

### 21.6 Random Testing

21.6.1 Employers shall provide the [~~C/TPA~~ C/TPA/MRO] a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The [~~C/TPA~~ C/TPA/MRO] shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer.

21.6.6 Notification of positive results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter

shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer.

21.7.3 Notification of positive results shall be forwarded from the [~~C/TPA~~ C/TPA/MRO] to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION  
Statutory Authority: 16 Delaware Code,  
Section 1101 (16 Del. C. §1101)**

**Regulations Pertaining to Group Homes For Persons  
with Mental Illness**

**Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Group Homes for Persons with Mental Illness. On May 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on June 3 and June 5, 2002.

The Department of Health and Social Services, Division of Long Term Care Residents Protection reviewed and evaluated the comments received at the June hearings. Those proposed regulations which were not revised following the June hearings were published as final regulations in the September Register of Regulations along with a Summary of Evidence.

In response to comments at the June Hearings, DLTCRP revised seven proposed regulations and published the revised proposed regulations in the September Register of Regulations. A public hearing on the seven proposed regulations was held October 2, 2002.

An additional written comment as well as verbal comments were received at the October 2 hearing. DLTCRP reviewed and evaluated those comments as discussed in the accompanying Summary of Evidence.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Group Homes for Persons with Mental Illness are adopted effective November 10, 2002.

Vincent P. Meconi, Secretary  
10.11.02

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

A comment objected to the use of the term "a means of communication" included in the description of equipment required in vehicles used to transport residents. The comment indicated that the term was too vague and stated that a means of communication could refer to a pencil and paper. It is extremely unlikely that a provider would be unable to understand the intent of the regulation as written.

A comment suggested that a contradiction exists between the requirement in Regulation 61.506 that a provider shall complete an assessment using a format approved by the Division of Substance Abuse and Mental Health and the requirement in the previously published final Regulation 61.801 related to a physical examination of a resident. The regulations complement each other rather than contradict each other; and it should be noted that Regulation 61.801 provides an exception to the requirement for a physical examination if the prospective residents "have had one within one (1) year of admission and their medical records are available to their current primary care physician."

Other comments at the public hearing related to previously adopted regulations which were not the subject of the public hearing. Individuals seeking clarification of previously adopted regulations should contact the Division of Long Term Care Residents Protection with regard to licensing issues and the Division of Substance Abuse and Mental Health with regard to treatment issues.

**REGULATIONS PERTAINING TO GROUP HOMES  
FOR PERSONS WITH MENTAL ILLNESS**

61.403A1b Clinician: A clinician shall be a person with a doctoral or master's degree in clinical or counseling psychology, clinical socialwork, vocational/psychiatric rehabilitation or education from an accredited college or university; a registered nurse with a certification in mental health nursing from the American Nurses Association; or a person with a bachelor's degree with five (5) years experience in mental health service delivery with at least two (2) years experience in residential services.

61.403B2i Familiarization with community mental health services available in the county in which the group home is located;

61.403B4 A service provider need not require training in discrete areas in which the staff person has demonstrated competency through satisfactory job performance or previous experience to the satisfaction of the service provider and the Department.

61.506 The service provider shall complete an assessment, using a format approved by the Division of Substance Abuse and Mental Health, prior to each resident's admission to the group home with the assistance of the group home's psychiatrist.

61.602C Each resident shall have his/her progress and continuing treatment needs thoroughly reassessed at least once every six (6) months. The reassessment will be conducted by the resident's treatment team, which shall include a psychiatrist.

61.603 The service provider shall designate a clinician or associate clinician to be the primary clinician for each resident who shall:

61.1110 All vehicles used to transport residents by the service provider shall be equipped with a seat belt for each resident, a means of communication and shall comply with applicable safety and licensing standards established by the Delaware Division of Motor Vehicles. The service provider shall maintain liability insurance as required by Delaware law. A driver of a vehicle used to transport residents shall have a valid license.

**PLEASE NOTE: NO CHANGES WERE TO THE REMAINDER OF THE REGULATION, THEREFORE IT IS NOT BEING REPRODUCED HERE.**

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 2906(b) (16 Del.C. §2906(b))

**Nature Of The Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Clean Indoor Air Act Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 29.

On September 1, 2002 (Volume 6, Issue 3), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2002, or be presented at public hearings on September 25 & 26, 2002, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

**Findings Of Fact:**

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the September 1, 2002, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Clean Indoor Air Act Regulations are adopted and shall become effective November 27, 2002, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary  
October 11, 2002

**Summary Of Evidence  
State Of Delaware Clean Indoor Air Act Regulations**

Two public hearings were held, one on September 25, 2002 at 7:00 p.m., in room A114, Delaware Technical and Community College, Stanton Campus, 400 Stanton-Christiana Road, Newark, Delaware; and the other on

September 26, 2002 at 7:00 p.m., in the Department of Natural Resources and Environmental Control (DNREC) Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Clean Indoor Air Act Regulations. Announcements regarding the public hearings were advertised in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Kevin Charles from Health Systems Protection (HSP) Section of the Division of Public Health (DPH) made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at both public hearings and four letters were received commenting on the proposed regulations during the public comment period (September 1 through October 1, 2002). In addition to members of the general public, organizations that commented include:

- Bayview Inn
- Alfred I. DuPont Hospital for Children
- Capitol Billiards
- Hi Ho Tavern
- FORCES DELAWARE (Delmarva Smokers)
- WT Smithers
- Bank Shots
- Healthy Delaware Foundation
- Dover Downs, Inc.
- Delaware Hotel & Lodging Association
- Route 40 Corridor Alliance
- Shawnee Country Club
- Clayton Tavern

All public comments and the DHSS (Agency) responses are as follows:

- **There was a request that regulations developed to implement the Clean Indoor Air Act include that a waiver will be granted for any facility that meets the following requirements:**
  1. The facility is used only for the purpose of smoking as defined by the Act.
  2. The facility is physically separate from any facility used by the general public.
  3. The facility is prominently designated by signage to be only for the purpose of smoking.
  4. The facility is prominently designated by signage to restricted from admission by minors.
  5. No business, social, or other use may be conducted in the facility.

**Agency Response:** The department does not intend to adopt conditions to grant waivers from the Clean Indoor Air Act (CIAA). The waiver provisions of the CIAA Regulations

are clear in Section 99.106 and are reflective of the law. A waiver request must be in writing to the agency, must provide compelling reasons to grant such a waiver, and granting such a waiver must not significantly affect the health and comfort of non consumers of tobacco products. Each waiver request will be considered on a case-by-case basis.

- **There were general questions about the law: Who will enforce the law? Will you hire special people to enforce the law? Will there be people out writing tickets?**

**Agency Response:** In public places the law will be enforced by the Department of Health and Social Services and in the work environment the Department of Labor will enforce the law. There will not be people writing tickets, and no special people will be hired to enforce this law. The enforcement process will be complaint driven and an investigation will be conducted to clarify and substantiate violations of the CIAA. There will be an 800 number established for CIAA complaints and each credible complaint will be investigated and followed-up. Credible complaints include those where a verifiable contact information is provided by a complainant. The department will not act on anonymous complaints.

- **Who will get fined if someone is smoking in an establishment?**

**Agency Response:** Based on the investigation, if substantiated, the smoker may be fined and/or the owner if that person did not make a good faith effort to prevent smoking in their establishment.

- **What if the person smoking refuses to stop smoking in my establishment?**

**Agency Response:** If the owner/management has made a good faith effort to inform the patron of the smoking violation and has asked them to cease and desist, the owner has the right to ask the patron to leave the establishment. If patron refuses to leave upon request, then it may become a matter of trespassing or disorderly conduct and law enforcement may have to be involved. DHSS is working with the state's law enforcement community to develop a list of actions that owners or management can follow to address smokers who unknowingly light up to smoke as well as those who are openly defiant of the law. It is important to note that DHSS does not advocate, nor expect owners/management to become physically involved with patrons over this law. The Department's intention is to work with owners/management of these facilities and law enforcement before and after the implementation of this law.



- **Are bars going to be allowed to sell cigarettes?**

*Agency Response:* The Clean Indoor Air Act does not prohibit the sale of cigarettes in bars.

- **There are some restaurants that do not allow employees to leave the building due to security concerns. Would these employees be permitted to file a grievance with the Department of Labor and would this be a reason that an indoor smoking area would be permitted?**

*Agency Response:* During the public hearing, this person was referred to the Department of Labor for both of these issues.

- **Is there any lessening of the regulation for handicapped patrons?**

*Agency Response:* The law does not make exceptions for those with disabilities.

- **There were some clarification questions about the definition of enclosed indoor area in the regulations and how it applies to covered patios and areas covered by canopies.**

*Agency Response:* Patios that are covered with canopies or other material that are partially open or partially closed to the outside are not considered enclosed indoor areas, thus smoking is not prohibited in these areas by the regulation.

- **Are you going to send out a booklet to all owners of restaurants, bars, taprooms of what we're suppose to do, of your rules and regulations to make sure everybody knows what you want us to do?**

*Agency Response:* Yes. There is an on-going effort to do outreach to facilities so they understand how to comply with the law. This includes four informational workshops planned for October and information packets that will be mailed to businesses to help them understand how to comply with the law.

- **If a waiver is requested, will there be a written response?**

*Agency Response:* Yes, DHSS will respond in writing to all written waiver requests.

- **An owner of a billiard hall, which does not serve alcohol, wanted to know how the CIAA applies to a private club? Can I convert my business to a private**

**club, charge a membership fee to by a member of my billiard club? Can I legally do that in Delaware?**

*Agency Response:* The Department is requesting an opinion from the Attorney General regarding the application of the law to private clubs in the state. Due to the importance of ensuring that the intent of the law as it relates to private clubs is correctly reflected in the regulations, the department will defer any answers to such questions until such time as the Attorney General has had an opportunity to issue an opinion.

- **Another business owner wanted to now how this law applies to private country clubs?**

*Agency Response:* See above.

- **There was another question asking whether the Act would ban smoking during regular business operations of the American Legion Post, the Veterans of Foreign (VFW) Post and the Elk's Clubs in Delaware.**

*Agency Response:* If the establishment meets the definition of "Fraternal Benefit Society" in 18 DE Code, sec. 6201, then it is exempt from smoking restrictions.

- **There was a comment that DHSS attempted to rewrite the bill and went beyond their delegated scope of responsibility when developing Section 99.202 of the regulation. Section 99.202 states that: "No owner of any indoor enclosed area subject to 16 Delaware Code, Chapter 29 and/or person(s) responsible for the management of such area or employees thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301."**

*Agency Response:* Based on our Deputy Attorney General's review of the law and Section 99.202 of these proposed regulations, it was determined that DHSS does have the authority to require responsible parties to take reasonable steps to prevent smoking in non-smoking indoor enclosed areas.

- **Section 99.107.3, the definition of "Enclosed Indoor Area" should be amended to provide the following after the word "enclosed": "except for normal means of access and egress through doors or passageways." As the proposed regulations are worded, only a space which had no means of access or egress would qualify as an enclosed area. The intent was to differentiate an enclosed area from an area more**

akin to a lobby or one only defined by a railing or a partial partition.

*Agency Response:* Based on this comment, Section 99.107.3, the definition of "Enclosed Indoor Area" was amended for clarity purposes.

- **Section 99.107.5, the definition of "Private Social Function" should be reworded as follows: "means a function to which the public is neither invited or generally permitted access and which is held in a separate enclosed indoor area."** The reason for the change is to make it clear that it is the private nature of the function and not the non-public nature of the enclosed area that is determinative. Many private functions are held in hotel meeting rooms and ballrooms, which are areas to which the public is invited, although not at the time of the particular private function. It is also important that the regulations recognize that there are cases where the public may come briefly into a private function without being an invitee. This happens in hotels when a prospective user of a space may be shown the space discreetly even while another client's function is underway. The prospective user is certainly not an invitee, but this kind of routine and brief introduction of the public should not cause the function to lose its status as a "private social function", thus the suggested wording "generally permitted".

*Agency Response:* Based on this comment, Section 99.107.5, the definition of "Private Social Function" was amended for clarity purposes.

- **Section 99.201A: The definitions of the scope of the prohibition go beyond the provisions of the statute. SB 99 provides in Section 7 that §2903, Chapter 29, Title 16, Delaware Code now reads as follows: ". . .smoking shall not be permitted and no person shall smoke in any indoor enclosed area to which the general public is invited or in which the general public is permitted (emphasis supplied)." The proposed regulations broaden this clear definition and substitute a vague and ambiguous standard of "open to the public or generally accessible to the public." The proposed regulations should be amended to use the language of the statute.**

*Agency Response:* Based on this comment, Section 99.201A, has been amended to match the statutory language used in the Act.

- **In regards to Section 99. 202 ad Section 99.5, generally: The practical problem of enforcement in a hotel setting will arise as a result of guests who ignore pro-**

hibitions on smoking in non-smoking sleeping rooms. Most hotel rooms are already non-smoking and usually have signage to that effect on the door and/or on the desk or dresser, as well as not having ashtrays in the room. When checking in, guests are told that the room they have been assigned is a non-smoking room. Despite all this, guests who want to smoke will and do in whatever room they're in, regardless of signs, etc. However, hotels are private and catering to guests is our lifeblood. We do not want to be in the position of having to have hotel employees intrude and police private conduct in our non-smoking rooms. In order to avoid problems of interpretation regarding what "permit" or "authorize" means under Section 99.202 in these hotel sleeping room cases, we recommend that language be added to make it clear that a hotel and its employees meets its obligations not to permit or authorize smoking in its non-smoking sleeping rooms by posting the signs required by Section 99.401. I suggest that Section 99.401 be amended to add the following language: "A hotel or other lodging facility that posts the signs required by this Section at non-smoking guest sleeping rooms and advises guests upon check-in that such rooms are non-smoking shall be deemed to have complied with Section 99.202 with respect to such rooms."

*Agency Response:* As a point of clarification, Section 99.401 of the regulations calls for signs that read "Warning: Smoking Permitted" at or in the rooms of a hotel where smoking is permitted. While we recognize it is in the best interest of the hotel and its guests to clearly identify non-smoking rooms by signage and notifying guests upon check-in, these actions in and of themselves may not be satisfactory in all situations. For example, if a guest in a non-smoking room, next to a another non-smoking room in which the occupant is smoking complains to the front desk, it would be reasonable to expect hotel management to contact the occupant smoking in a non-smoking room and advise them of the law and not to smoke. Not only would this be a reasonable and an appropriate action on the hotel's part, it would protect non-smokers from the effects of second-hand smoke and be in the best interest of the hotel. While hotel management is not expected to disrupt their guest's privacy, they are expected to take reasonable actions to not permit smoking in prohibited areas according to the CIAA.

There were general comments against the law and how it takes away smokers' rights and freedom. There were also comments about facility owners who have spent significant amount of money on air cleaners specifically to reduce smoke in their facility. Others insisted the law would also hurt business by deterring smokers from frequenting non-

smoking establishments. Some asked, why weren't other model laws followed like Massachusetts, which says the townships decide whether you smoke or don't smoke in establishments. In Maryland, you can smoke in the bars but not in the restaurant proper. There were also comments refuting published statistical data available on smoking related deaths and second-hand smoke deaths.

There were general comments for the law, how it will protect the public's health from the damaging effects of second-hand smoke. Others said the law is good for businesses, because more people would be apt to frequent establishments that are smoke-free. Some in favor of the law said in a year or two, non-smoking in public places will be the social norm and that education and awareness is the key to successful implementation of this law.

Minor amendments were made to the proposed regulations based on public comment; these amendments are not substantive in nature. Additionally, some grammatical amendments were made to the proposed regulations.

The public comment period was open from September 1, 2002 to October 1, 2002.

Verifying documents are attached to the Hearing Officer's record. These regulation have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**State Of Delaware  
Clean Indoor Air Act Regulations**

**Section 99.1 GENERAL PROVISIONS**

99.101 Preamble

These Regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 Delaware Code Chapter 29 §2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

99.102 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

99.103 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

99.104 Date of Effect

These regulations shall be effective November 27, 2002

99.105 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 Delaware Code Chapter 29.

99.106 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

99.107 Definitions

The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

For the purposes of these Regulations:

99.107.1 "Department" means the Delaware Health and Social Services (DHSS) as defined in Title 29, Section 7901. of the Delaware Code.

99.107.2 "Environmental tobacco smoke" (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

99.107.3 "Enclosed Indoor Area" means an indoor area that is neither open nor partially enclosed [7, except for normal means of access and egress through doors or passageways.]

99.107.4 "Fraternal Benefit Society" means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 Delaware Code 6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

99.107.5 "Private social function" means a function [to which the public is neither invited or generally permitted access and which is] held in separate indoor

enclosed indoor area ~~[to which the public is neither invited nor permitted access.]~~

99.107.6 "Public transportation of children" means transportation which involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

99.107.7 "Secretary" means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

99.107.8 "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

99.107.9 "Volunteer fire company" means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

### **99.2 SMOKING PROHIBITIONS**

99.201 Except as is provided in 99.301 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any of the following areas:

A. Any enclosed indoor area ~~[open to the public or portion thereof generally accessible to the public to which the general public is invited or in which the general public is permitted.]~~

B. Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines[.]

C. Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

D. In private homes or private residences when such homes or residences are being used for child care or day care[.]

99.202 No owner of any indoor enclosed area subject to 16 Delaware Code Chapter 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301.

### **99.3 SMOKING PROHIBITIONS INAPPLICABLE**

99.301 Smoking prohibitions shall not apply in the following:

A. Private homes, private residences and private automobiles,

B. Any indoor area where private social functions are being held when seating arrangements are under the control

of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

C. Limousines under private hire

D. A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).

E. Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.

F. Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Delaware Code §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

### **99.4 POSTING OF SIGNS**

99.401 Failure to Properly Post and Maintain Signs

Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 Delaware Code Chapter 29 shall post signs which indicate "Warning: Smoking Permitted" prominently to indicate those locations where smoking is permitted pursuant to Regulation 99.301. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in Regulation 99.50[2 1] of the Clean Indoor Air Act Regulations.

### **99.5 COMPLIANCE AND ENFORCEMENT PROCEDURES**

99.501 Administrative Penalties

Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.

99.502 Right to Administrative Hearing

Upon due notice that the Department intends to assess an administrative penalty, as indicated in 99.501, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

99.503 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less

than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del. C. Ch. 60)

**Secretary's Order No.: 2002-A-0053  
RE:Reporting Requirements Under  
7 Del. C. §6028**

**Date of Issuance: September 19, 2002  
Effective Date of the Amendment: November 11, 2002**

**I. Background:**

A public hearing was held on June 27, 2002, to receive comment on proposed revisions to a regulation enacted under 7 Del. C. §6028 entitled "Reporting of a Discharge of a Pollutant or Air Contaminant". In preparation for the hearing, AQM conducted a stakeholder meeting on October 11, 2001, followed by workshops on December 4 and December 6, 2001. These revisions are intended to update the list of substances and reportable quantities, to clarify reporting requirements (including those arising under recent statutory amendments), and to establish a mandatory follow-up written report for all reportable releases. Proper notice of the hearing was provided as required by law. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated September 18, 2002, and that memorandum is expressly incorporated herein by reference.

**II. Findings & Recommendations:**

All of the findings and conclusions contained in the Hearing Officer's Report dated September 18, 2002 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

**III. Order:**

In view of the above, I hereby order that the proposed revisions to the regulation enacted under 7 Del. C. §6028

entitled "Reporting of a Discharge of a Pollutant or Air Contaminant" be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's Report.

**IV. Reasons:**

The Department has provided an accurate summary and reasoned analysis of all relevant comments, together with a rational proposed course of action based on the record developed in this matter. Additionally, this rulemaking will further the policies and purposes of 7 Del.C. Ch. 60 by expanding the scope of potentially harmful substances and establishing reasonable reporting requirements to safeguard the public health and environment, while taking into account industry concerns.

Nicholas A. DiPasquale, Secretary

**Amendment to Reporting of a Discharge of a Pollutant or  
an Air Contaminant**

**Section 1 General Provisions**

1.1 The purpose of this Regulation is to describe the requirements ~~to~~ for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del. C., Section 6028.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection ~~at any Department office~~ in accordance with 29 Del.C., Chapter 100 and Department of Natural Resources and Environmental Control (Department) Freedom of Information Act (FOIA) regulations except where such information is of confidential nature as defined in 7 Del. C., Section 6014.

1.3 The list of chemicals and substances subject to the reporting requirements of this Regulation and the associated Delaware Reportable Quantity (DRQ) for each chemical and substance is contained in Section 3. The Department may, after providing proper public notice and an opportunity for public hearing, add or delete chemicals or substances or change the DRQ of any chemical or substance. ~~for the listed chemicals.~~

1.4 The reporting requirements under this ~~Section~~ Regulation are in addition to and not in lieu of, any other discharge reporting requirement found in any other state, federal, county or local government statutes, permits, regulations or ordinances. ~~, such as the provisions found in the "Delaware Regulations Governing Hazardous Waste" at Sections 264.56 and 265.56.~~

1.5 ~~[Reserved] Emissions normally reported on Excess Emission Reports (EER's) when required by state or federal permits or regulations are exempt from the requirements of this regulation~~

~~1.6 Continuous discharges are exempt from the~~

requirements of this regulation.

#### 1.7 1.6 Definitions

A. ~~"Continuous Discharge"~~ a discharge that occurs without interruption or abatement or that is routine, anticipated and intermittent during normal operations or treatment processes. Episodic discharges such as those associated with accidents, equipment malfunctions, emergency shutdowns, or pipe ruptures, however, are not routine or regular and do not come within the definition of continuous.

"**Delaware Reportable Quantity**" (DRQ) – means the reportable quantity of chemicals, ~~compounds~~, substances or mixtures listed in Section 3 of this regulation notwithstanding any reporting requirements by other state, federal, county or local government statutes, regulations or ordinances. To be reportable, the DRQ is based on the total quantity discharged over a rolling 24 hour period.

B. "**Discharge**" means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing into the environment of any chemical or substance listed in Section 3 but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, waterborne vessel or pipeline pumping station engine. Discharge includes any environmental release. ~~To be reportable, a discharge/DRQ is based on any 24hour period.~~

C. "**Environmental Emergency Notification and Complaint Number**" – means the 24hour DNREC telephone number(s) used for reporting the discharge of a pollutant or an air contaminant.

D. "**Environmental Release**" – means any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.

E. "**Extremely Hazardous Substance**" – means substances listed in 40 CFR Part 355 Appendices A and B as amended May 7, 1996.

F. "**Heating oil**" means petroleum that is of one of nine technical grades. These are: No. 1; No.2; No.4light; No.4heavy; No.5light; No.5heavy; No.6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene or diesel when used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

G. ~~"Medical Treatment"~~ includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical

treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

"**Motor Fuel**" means petroleum or petroleum based substance that is motor gasoline, aviation gasoline, jet fuel, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

H. "**Petroleum Substance**" - means oil of any kind or in any form, including but not limited to petroleum, fuel oil, heating oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Vegetable based oils such as soybean oil are not included.

I. "**Sewage**" - means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

## Section 2 Reporting Requirements

### 2.1 Applicability

A. Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land, or disposal of solid waste in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or discharge while immediately upon discovery of said discharge and after activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.

B. Discharge ~~or disposal~~ in compliance with a validly issued state or federal permit(s) or in compliance with other state and federal regulations is exempt from ~~this~~ the reporting requirements of this Regulation.

C. An owner or operator responsible for a transportation related discharge may meet the requirements of this Regulation by providing the information indicated in 2.4 to the 911 operator and, if applicable, to the responding Department representative at the scene. For the purposes of this paragraph, a "transportation related discharge" means a discharge during transportation when the stored chemical or substance is moving under active shipping papers and has not reached the ultimate consignee.

D. This Regulation does not apply to the proper application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et. seq. as amended August 3, 1996).

E. Any discharge that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8 (b) is

exempt from reporting requirements of this regulation except:

- i. Initial notifications as required by 40 CFR part 302.8 (d) and (e).
- ii. "statistically significant increase" as defined in 40 CFR 302.8(b).
- iii. notification of a "new release" as defined in 40 CFR 302.8(g) (1), or
- iv. notification of a change in the normal range of the release as required under 40 CFR 302.8(g) (2).

Telephone notification required by 40 CFR 302.8 to the State of Delaware State Emergency Response Commission (SERC) shall be fulfilled by notifying the Department. Written notification reports required by 40 CFR 302.8 and sent to the EPA regional office shall serve as written notification to the State of Delaware SERC when copied to the Department. (Reference: 40 CFR 302.8 as promulgated on July 24, 1990).

2.2 Discharges of an air contaminant or pollutant (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements of this Regulation Sections 2.1 and 2.3. Should such a wholly contained discharge be discharged outside the building at a later time for any reason, that eventual discharge, when exceeding the DRQ, shall activate these reporting requirements.

2.3 [Reserved] When an owner, operator or responsible representative of a facility obtains knowledge that a discharge of any listed or unlisted chemical in any quantity results in injuries outside the workplace which require medical treatment or result in death to anyone affected by the discharge, the incident must be reported under 2.4 and if required by the Department, under 2.5, and this notice shall be made at the time this knowledge is obtained. This provision does not apply if it takes longer than 7 days to learn about the injury, but it does apply whenever the knowledge of a death attributable to a discharge is obtained.

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or 2.3 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must containing the following information which details the facts and circumstances of the discharge to the extent known the maximum extent practicable at the time of notice: and so long as no delay in notice or emergency response results:

- A. Facility name and/or location of the discharge.
- B. Type of incident, e.g. discharge, fire, explosion, associated with discharge and whether assistance from outside emergency responders, e.g. 911, has been requested.
- C. The chemical or substance involved with the incident of discharge including the Chemical Abstract

System (CAS) number for the chemical or of the constituent chemicals when a mixture is discharged.

D. An indication of whether the chemical or chemicals are an extremely hazardous substance. ~~as defined under the SARA Section 302 (EHS) list or Table I of the Delaware Regulation for the Management of Extremely Hazardous Substances.~~

E. An estimate of the quantity of any such chemical(s) or substance(s) or compound(s) that was discharged into the environment.

F. The beginning time and the duration of the discharge.

G. The medium or media, e.g. soil, groundwater, surface water, air, etc., into which the discharge occurred.

H. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

I. Proper precautions to take as a result of the discharge, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

J. Name of the reporting person and a callback phone number. The name(s) and telephone number(s) of the person(s) to be contacted for further information.

K. An indication of whether or not this is a complete report. Incomplete reports must be completed when the information is available but in no case more than 24 hours later than the initial contact. Such other information as the Department may require.

2.5 (A) Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department updating the information required under section 2.4 and including the following additional information to the extent known:

Part I.

- i. Actions taken to respond to and contain the release in the form of a chronology.
- ii. Any known or anticipated acute or chronic health risks associated with the release, and
- iii. Where appropriate, advice regarding medical attention necessary for exposed individuals.

Part II.

- iv. The facts and circumstances leading to the environmental release including a detailed identification of the pathway through which the discharge to the environment occurred and potential environmental impacts.
- v. Measures proposed to prevent such a discharge from occurring in the future and to remedy the deficiencies, if any, in the prevention, detection, response containment, cleanup or removal plan components.
- vi. Such other information which the Department

may require.

Except where Part II information is of confidential nature as defined in 7 Del. C., § 6014, all written information obtained through this subsection shall be made available to Local Emergency Planning Committees (LEPCs) and the public.

(B) The Department reserves the right to require a written report for any environmental release, regardless of the substance or quantity, if there is concern for public health and safety or environmental welfare has been adversely affected. At the Department's discretion, the Department may require said person to file a written follow-up report, within 30 days or any shorter time as required by validly issued state or federal permits or by any pertinent regulations, setting forth all details contained in Sections 2.4 and 2.5.

The written report shall be in a format approved by the Department and submitted to the appropriate addresses for report submissions provided by the Department. The Department may establish procedures for notification and submission of written reports by computerized and electronic methods, including but not limited to, the submission of information through the internet.

If not already required SARA Section 304, and at the Department's discretion, the Department may require said person to file a written report, within 30 days or any shorter time as required by validly issued state or federal permits or by any other pertinent regulations, setting forth all details contained in Section 2.4, updating as necessary, and providing further information as detailed below:

A. Name, address and phone number of the owner or operator.

B. Actions taken to respond to and contain the discharge in the form of a chronology.

C. Any known or anticipated acute or chronic health risks associated with the discharge.

D. Where appropriate, advice regarding medical attention necessary for exposed individuals.

E. Anticipated environmental impact.

F. An evaluation of all pertinent prevention and response plans and policies in light of the discharge and the owner's or operator's response thereto.

G. detailed identification of the pathway through which the discharge to the environment occurred with drawings, if necessary, to clearly explain this path.

H. Measures proposed to prevent such a discharge from occurring in the future and to remedy the shortcomings in the prevention, detection, response containment, cleanup or removal plan components.

### **Section 3 Chemicals, ~~Compounds and~~ Substances and Mixtures and Associated Reportable Quantities.**

3.1 The purpose of this Section is to detail those chemicals, ~~compounds~~, substances and mixtures applicable

to the reporting requirements of this Regulation and to identify the DRQ at which reporting of the chemical ~~compound~~ or substance release or discharge is required.

3.2 ~~The list~~ Table A attached to this Section contains all chemicals and chemical categories and DRQ's that are subject to these reporting requirements of this Regulation. Notification of the discharge of a DRQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, zinc or any other solid substance on the DRQ list is not required if the mean diameter of the particles discharged is larger than 100 micrometers (0.004 inches).

3.3 When any incident of discharge occurs involving more than one (1) chemical or chemical category listed in this Section, the DRQ for the total discharge shall be ~~is~~ the lowest DRQ of any constituent of that total, unless the mixture is known ~~to the responsible person~~. In this case, the word "known" means that a determination of constituent levels may be ~~is made~~ either by direct testing or by application calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, ~~where the constituent levels have been determined~~, the discharge is subject to these notification requirements only when a ~~component~~ constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ.

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 § 6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation, including and the written requirements of Section 2.5 (B).

3.5 In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements unless the petroleum substance is contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. For discharges of petroleum substances that are contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater or are confined to the location of the discharge on an impervious surface, the following shall apply:

A. Discharges of 25 gallons or more on land of motor fuel, jet fuel, heating oil, used oil or used petroleum substances must be reported.

B. Discharges of 150 gallons or more to land of any other petroleum substance not listed above or not uniquely identified on the Section 3 list, must be reported.



**Section 3 Table A**  
**Delaware List Of Chemicals And Reportable Quantities**  
**In Pounds In Alphabetical Order**

CAS	NAME	DRQ
	DE * Infectious waste	ALL*
	DE * Petroleum subs., other than heating oil, motor fuel, used oil	150 gal.*
	DE * Petroleum substances, heating oil, motor fuel, used oil	25 gal.*
	DE *10,000 gallons sewage	10,000 gal*.
71751412	DE Abamectin	100
83329	Acenaphthene	100
208968	Acenaphthylene	5000
30560191	DE Acephate	100
75070	Acetaldehyde	1000
75876	Acetaldehyde, trichloro-	5000
60355	Acetamide	100
64197	Acetic acid	5000
108247	Acetic anhydride	5000
67641	Acetone	5000
75865	Acetone cyanohydrin	10
1752303	Acetone thiosemicarbazide	1000
75058	Acetonitrile	5000
98862	Acetophenone	5000
53963	2-Acetylaminofluorene	1
506967	Acetyl bromide	5000
75365	Acetyl chloride	5000
74862	DE Acetylene	1000
591082	1-Acetyl-2-thiourea	1000
62476599	DE Acifluorfen, sodium salt	100
107028	Acrolein	1
79061	Acrylamide	5000
79107	Acrylic acid	5000
107131	Acrylonitrile	100
814686	Acrylyl chloride	100
124049	Adipic acid	5000
111693	Adiponitrile	1000
15972608	DE Alachlor	100
116063	Aldicarb	1
1646884	Aldicarb sulfone	1
309002	Aldrin	1
1116707	DE Alkylaluminums	500
28057489	DE d-trans-Allethrin	100
107119	Allylamine	50
107186	Allyl alcohol	100
107051	Allyl chloride	1000
7429905	DE Aluminum (fume or dust)	100
1344281	DE Aluminum oxide (fibrous forms)	100
20859738	Aluminum phosphide	100

10043013	Aluminum sulfate	5000
834128	DE Ametryn	100
117793	DE 2-Aminoanthraquinone	10
60093	DE 4-Aminoazobenzene	10
92671	4-Aminobiphenyl	1
82280	DE 1-Amino-2-methylantraquinone	10
54626	Aminopterin	500
504245	4-Aminopyridine	1000
78535	Amiton	500
3734972	Amiton oxalate	100
33089611	DE Amitraz	100
61825	Amitrole	10
7664417	Ammonia	50
6484522	DE Ammonium nitrate	500
7790989	DE Ammonium perchlorate	500
13446101	DE Ammonium permaganate	500
631618	Ammonium acetate	5000
1863634	Ammonium benzoate	5000
1066337	Ammonium bicarbonate	5000
7789095	Ammonium bichromate	10
1341497	Ammonium bifluoride	100
10192300	Ammonium bisulfite	5000
1111780	Ammonium carbamate	5000
506876	Ammonium carbonate	5000
12125029	Ammonium chloride	5000
7788989	Ammonium chromate	10
3012655	Ammonium citrate, dibasic	5000
13826830	Ammonium fluoborate	5000
12125018	Ammonium fluoride	100
1336216	Ammonium hydroxide	1000
14258492	Ammonium oxalate	5000
6009707	Ammonium oxalate	5000
5972736	Ammonium oxalate	5000
131748	Ammonium picrate	10
16919190	Ammonium silicofluoride	1000
7773060	Ammonium sulfamate	5000
12135761	Ammonium sulfide	100
10196040	Ammonium sulfite	5000
3164292	Ammonium tartrate	5000
14307438	Ammonium tartrate	5000
1762954	Ammonium thiocyanate	5000
7783188	Ammonium thiosulfate	5000
7803556	Ammonium vanadate	1000
300629	Amphetamine	1000
628637	Amyl acetate	5000
123922	iso-Amyl acetate	5000
626380	sec-Amyl acetate	5000
625161	tert-Amyl acetate	5000
101053	DE Anilazine	100

62533	Aniline	5000
88051	Aniline, 2,4,6-trimethyl-	500
90040	o-Anisidine	100
104949	<b>DE</b> p-Anisidine	100
134292	<b>DE</b> o-Anisidine hydrochloride	10
120127	Anthracene	5000
7440360	Antimony	5000
7647189	Antimony pentachloride	1000
7783702	Antimony pentafluoride	500
28300745	Antimony potassium tartrate	100
7789619	Antimony tribromide	1000
10025919	Antimony trichloride	1000
7783564	Antimony trifluoride	1000
1309644	Antimony trioxide	1000
1397940	Antimycin A	1000
86884	Antu	100
12674112	Aroclor 1016	1
11104282	Aroclor 1221	1
11141165	Aroclor 1232	1
53469219	Aroclor 1242	1
12672296	Aroclor 1248	1
11097691	Aroclor 1254	1
11096825	Aroclor 1260	1
7440382	Arsenic	1
7778394	Arsenic acid	1
1327522	Arsenic acid	1
1303328	Arsenic disulfide	1
1303282	Arsenic pentoxide	1
1327533	Arsenic trioxide	1
1303339	Arsenic trisulfide	1
7784341	Arsenous trichloride	1
7784421	Arsine	10
1332214	Asbestos (friable)	1
1912249	<b>DE</b> Atrazine	10
115026	Azaserine	1
2642719	Azinphos-ethyl	100
319857	beta-BHC	1
319868	delta-BHC	1
101279	<b>DE</b> Barban	1
7440393	Barium	100
542621	Barium cyanide	10
22781233	Bendiocarb	1
22961826	Bendiocarb phenol	1
1861401	Benfluralin	100
17804352	Benomyl	1
225514	Benz[c]acridine	100
98873	Benzal chloride	5000
55210	Benzamide	100
56553	Benz[a]anthracene	10

98168	Benzenamine, 3-(trifluoromethyl)-	500
71432	Benzene	10
100141	Benzene, 1-(chloromethyl)-4-nitro-	500
510156	Benzeneacetic acid, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-hydroxy-.ethyl ester	10
98055	Benzeneearsonic acid	10
122098	Benzeneethanamine, alpha, alpha-dimethyl-	5000
98099	Benzenesulfonyl chloride	100
92875	Benzidine	1
3615212	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	500
205823	<b>DE</b> Benzo(j)fluoranthene	10
207089	Benzo(k)fluoranthene	5000
205992	Benzo(b)fluoranthene	1
65850	Benzoic acid	5000
98077	Benzoic trichloride	10
205992	Benzo[b]fluoranthene	1
100470	Benzonitrile	5000
189559	Benzo(rst)pentaphene	10
191242	Benzo[ghi]perylene	5000
218019	Benzo(a)phenanthrene	100
50328	Benzo[a]pyrene	1
98884	Benzoyl chloride	1000
94360	<b>DE</b> Benzoyl peroxide	100
100447	Benzyl chloride	100
140294	Benzyl cyanide	500
7440417	Beryllium	10
7787475	Beryllium chloride	1
7787497	Beryllium fluoride	1
7787555	Beryllium nitrate	1
13597994	Beryllium nitrate	1
191242	Benzo(g,h,i)perylene	5000
15271417	Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-(((methylamino)carbonyl)oxy)imino)-(1-alpha,2-beta,4-alpha,5-alpha,6E))-	500
82657043	<b>DE</b> Bifenthrin	100
92524	Biphenyl	100
111911	Bis(2-chloroethoxy) methane	1000
111444	Bis(2-chloroethyl) ether	10
542881	Bis(chloromethyl) ether	10
534076	Bis(chloromethyl) ketone	10
108601	Bis(2-chloro-1-methylethyl) ether	1000
97745	<b>DE</b> Bis(dimethylthiocarbamoyl) sulfide	1
38661722	<b>DE</b> 1,3-Bis(methylisocyanate)cyclohexane	100
10347543	<b>DE</b> 1,4-Bis(methylisocyanate)cyclohexane	100
56359	<b>DE</b> Bis(tributyltin) oxide	100
4044659	Bitoscanate	500
10294345	Boron trichloride	500
7637072	Boron trifluoride	10

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353424	Boron trifluoride compound with methyl ether (1:1)	1000
314409	<b>DE</b> Bromacil	100
53404196	<b>DE</b> Bromacil, lithium salt	100
28772567	Bromadiolone	100
7726956	Bromine	100
13863417	Bromine chloride	100
7789382	Bromine pentafluoride	100
598312	Bromoacetone	1000
35691657	<b>DE</b> 1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	100
353593	<b>DE</b> Bromochlorodifluoromethane	100
75252	Bromoform	100
74839	Bromomethane	1000
101553	4-Bromophenyl phenyl ether	100
106967	3-Bromopropyne	500
7787715	<b>DE</b> Bromotrifluoride	500
598732	Bromotrifluoroethylene	1000
75638	Bromotrifluoromethane	100
1689845	<b>DE</b> Bromoxynil	100
1689992	<b>DE</b> Bromoxynil octanoate	100
52517	<b>DE</b> Bronopol	100
357573	Brucine	100
106990	1,3-Butadiene	10
106978	<b>DE</b> Butane	1000
123739	2-Butenal, (e)-	100
25167673	<b>DE</b> Butene	1000
590181	<b>DE</b> 2-Butene-cis	1000
624646	<b>DE</b> 2-Butene-trans	1000
106989	<b>DE</b> 1-Butene	1000
107017	<b>DE</b> 2-Butene	1000
75912	<b>DE</b> tert-Butyl hydroperoxide	500
614459	<b>DE</b> tert-Butyl perbenzoate	500
107711	<b>DE</b> tert-Butyl peroxyacetate	500
927071	<b>DE</b> tert-Butyl peroxyvalerate	1000
123864	Butyl acetate	5000
110190	iso-Butyl acetate	5000
105464	sec-Butyl acetate	5000
540885	tert-Butyl acetate	5000
141322	<b>DE</b> Butyl acrylate	100
71363	n-Butyl alcohol	5000
78922	<b>DE</b> sec-Butyl alcohol	100
75650	<b>DE</b> tert-Butyl alcohol	100
109739	Butylamine	1000
78819	iso-Butylamine	1000
513495	sec-Butylamine	1000
13952846	sec-Butylamine	1000
75649	tert-Butylamine	1000
2008415	<b>DE</b> Butylate	1
85687	Butyl benzyl phthalate	100

106887	<b>DE</b> 1,2-Butylene oxide	100
123728	<b>DE</b> Butyraldehyde	100
107926	Butyric acid	5000
79312	iso-Butyric acid	5000
75605	Cacodylic acid	1
7440439	Cadmium	10
543908	Cadmium acetate	10
7789426	Cadmium bromide	10
10108642	Cadmium chloride	10
1306190	Cadmium oxide	100
2223930	Cadmium stearate	1000
7778441	Calcium arsenate	1
52740166	Calcium arsenite	1
75207	Calcium carbide	10
13765190	Calcium chromate	10
156627	Calcium cyanamide	1000
592018	Calcium cyanide	10
26264062	Calcium dodecylbenzenesulfonate	1000
7778543	Calcium hypochlorite	10
56257	Cantharidin	100
105602	<b>DE</b> Caprolactam	5000
133062	Captan	10
51832	Carbachol chloride	500
26419738	Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl) methylene)amino)-	1
136301	<b>DE</b> Carbamodithioic acid, dibutyl-, sodium salt	1
148185	<b>DE</b> Carbamodithioic acid, diethyl-, sodium salt	1
1929777	<b>DE</b> Carbamothioic acid, dipropyl-, S-propyl ester	1
52888809	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	1
63252	Carbaryl	100
10605217	Carbendazim	1
1563662	Carbofuran	10
1563388	<b>DE</b> Carbofuran phenol	1
75150	Carbon disulfide	100
353584	Carbon fluoride	100
630080	<b>DE</b> Carbon monoxide	1000
353504	Carbonic difluoride	1000
109615	Carbonochloridic acid, propylester	500
56235	Carbon tetrachloride	10
463581	Carbonyl sulfide	100
786196	Carbophenothion	500
55285148	Carbosulfan	1
5234684	<b>DE</b> Carboxin	100
120809	Catechol	100
9004700	<b>DE</b> Cellulose nitrate	500
2439012	<b>DE</b> Chinomethionat	100
133904	Chloramben	100
305033	Chlorambucil	10
57749	Chlordane	1

115286	DE	Chlorendic acid	10
470906		Chlorfenvinfos	500
90982324		Chlorimuron ethyl	100
0	DE	Chlorinated Benzenes	5000
0	DE	Chlorinated Naphthalene	5000
0	DE	Chlorinated Phenol	100
7782505		Chlorine	10
10049044		Chlorine dioxide	100
7791211	DE	Chlorine monoxide	100
13637633		Chlorine pentafluoride	1
7790912		Chlorine trifluoride	100
24934916		Chlormephos	500
999815		Chlormequat chloride	100
494031		Chlornaphazine	100
97007	DE	1-Chloro-2,4-Dinitrobenzene	500
59507		p-Chloro-m-cresol	5000
107200		Chloroacetaldehyde	1000
79118		Chloroacetic acid	100
532274		2-Chloroacetophenone	100
0	DE	Chloroalkyl ethers	1
4080313	DE	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	100
106478		p-Chloroaniline	1000
108907		Chlorobenzene	100
124481		Chlorodibromomethane	100
96106	DE	Chlorodiethylaluminum	500
75683	DE	1-Chloro-1,1-difluoroethane	100
75456	DE	Chlorodifluoromethane	100
75003		Chloroethane	1000
107073		Chloroethanol	500
627112		Chloroethyl chloroformate	1000
110758		2-Chloroethyl vinyl ether	1000
67663		Chloroform	10
74873		Chloromethane	100
107302		Chloromethyl methyl ether	10
563473	DE	3-Chloro-2-methyl-1-propene	10
91587		2-Chloronaphthalene	5000
3691358		Chlorophacinone	100
95578		2-Chlorophenol	100
104121	DE	p-Chlorophenyl isocyanate	100
7005723		4-Chlorophenyl phenyl ether	5000
76062		Chloropicrin	10
126998	DE	Chloroprene	100
542767		3-Chloropropionitrile	1000
590216	DE	1-Chloropropylene	1000
557982	DE	2-Chloropropylene	2000
7790945		Chlorosulfonic acid	1000
63938103	DE	Chlorotetrafluoroethane	100
354256	DE	1-Chloro-1,1,2,2-tetrafluoroethane	100
2837890	DE	2-Chloro-1,1,1,2-tetrafluoroethane	100

1897456	DE	Chlorothalonil	100
95692	DE	p-Chloro-o-toluidine	10
3165933		4-Chloro-o-toluidine, hydrochloride	100
75887	DE	2-Chloro-1,1,1-trifluoroethane	100
75729		Chlorotrifluoromethane	100
460355	DE	3-Chloro-1,1,1-trifluoropropane	100
1982474		Chloroxuron	500
2921882		Chlorpyrifos	1
5598130	DE	Chlorpyrifos methyl	100
64902723	DE	Chlorsulfuron	100
1066304		Chromic acetate	1000
11115745		Chromic acid	10
7738945		Chromic acid	10
10025737		Chromic chloride	1
10101538		Chromic sulfate	1000
7440473		Chromium	5000
10049055		Chromous chloride	1000
4680788	DE	C.I. Acid Green 3	100
6459945	DE	C.I. Acid Red 114	10
569642	DE	C.I. Basic Green 4	100
989388	DE	C.I. Basic Red 1	100
1937377	DE	C.I. Direct Black 38	10
28407376	DE	C.I. Direct Blue 218	100
2602462	DE	C.I. Direct Blue 6	10
16071866	DE	C.I. Direct Brown 95	10
2832408	DE	C.I. Disperse Yellow 3	100
3761533	DE	C.I. Food Red 5	10
81889	DE	C.I. Food Red 15	100
3118976	DE	C.I. Solvent Orange 7	100
97563	DE	C.I. Solvent Yellow 3	100
842079	DE	C.I. Solvent Yellow 14	100
492808	DE	C.I. Solvent Yellow 34	100
128665	DE	C.I. Vat Yellow 4	100
7440484	DE	Cobalt	10
10210681		Cobalt carbonyl	10
62207765		Cobalt, ((2,2'-(1,2-ethanediybis(nitriomethylidyne))bis(6-fluorophenylato))(2-)-N,N',O,O')-	100
7789437		Cobaltous bromide	1000
544183		Cobaltous formate	1000
14017415		Cobaltous sulfamate	1000
0		Coke Oven Emmissions	1
64868		Colchicine	10
7440508		Copper	5000
544923		Copper cyanide	10
137291	DE	Copper, bis(dimethylcarbamodithioato-S,S')-	1
56724		Coumaphos	10
5836293		Coumatetralyl	500
8001589		Creosote	1

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120718	DE	p-Cresidine	10
108394		m-Cresol	100
95487		o-Cresol	100
106445		p-Cresol	1000
1319773		Cresol (isomers and mixture)	100
535897		Crimidine	100
4170303		Crotonaldehyde	100
98828		Cumene	5000
80159		Cumene hydroperoxide	10
135206	DE	Cupferron	10
142712		Cupric acetate	100
12002038		Cupric acetoarsenite	1
7447394		Cupric chloride	10
3251238		Cupric nitrate	100
5893663		Cupric oxalate	100
7758987		Cupric sulfate	10
10380297		Cupric sulfate, ammoniated	100
815827		Cupric tartrate	100
21725462	DE	Cyanazine	100
57125		Cyanides (soluble salts and complexes) not otherwise specified	10
460195		Cyanogen	100
506683		Cyanogen bromide	1000
506774		Cyanogen chloride	10
506785		Cyanogen iodide	1000
2636262		Cyanophos	1000
675149		Cyanuric fluoride	1
1134232	DE	Cycloate	1
110827		Cyclohexane	1000
2556367	DE	1,4-Cyclohexane diisocyanate	100
108930	DE	Cyclohexanol	100
108941		Cyclohexanone	5000
66819		Cycloheximide	100
108918		Cyclohexylamine	10000
131895		2-Cyclohexyl-4,6-dinitrophenol	100
50180		Cyclophosphamide	10
75194	DE	Cyclopropane	1000
68359375	DE	Cyfluthrin	100
68085858	DE	Cyhalothrin	100
94757		2,4-D Acid	100
1929733		2,4-D Esters	100
1928387		2,4-D Esters	100
25168267		2,4-D Esters	100
53467111		2,4-D Esters	100
1928616		2,4-D Esters	100
2971382		2,4-D Esters	100
94804		2,4-D Esters	100
94791		2,4-D Esters	100
1320189		2,4-D Esters	100
94111		2,4-D Ester	100

20830813		Daunomycin	10
533744	DE	Dazomet	1
53404607	DE	Dazomet, sodium salt	100
94826	DE	2,4-DB	100
72548		DDD	1
72559		DDE	1
3547044		DDE	5000
50293		DDT	1
17702419		Decaborane(14)	500
1163195	DE	Decabromodiphenyl oxide	100
8065483		Demeton	500
919868		Demeton-S-methyl	500
13684565		Desmedipham	100
1928434	DE	2,4-D 2-ethylhexyl ester	10
53404378	DE	2,4-D 2-ethyl-4-methylpentyl ester	10
110225	DE	Diacetyl peroxide (55% solution)	500
10311849		Dialifor	100
2303164		Diallate	100
615054	DE	2,4-Diaminoanisole	10
39156417	DE	2,4-Diaminoanisole sulfate	10
101804		4,4'-Diaminodiphenyl ether	10
496720		Diaminotoluene	10
823405		Diaminotoluene	10
95807		2,4-Diaminotoluene	10
25376458		Diaminotoluene (mixed isomers)	10
333415		Diazinon	1
334883		Diazomethane	100
226368	DE	Dibenz(a,h)acridine	10
224420		Dibenz(a,j)acridine	10
53703		Dibenz[a,h]anthracene	1
194592	DE	7H-Dibenzo(c,g)carbazole	10
5385751	DE	Dibenzo(a,e)fluoranthene	100
132649		Dibenzofuran	100
192654	DE	Dibenzo(a,e)pyrene	10
189640		Dibenzo(a,h)pyrene	10
191300	DE	Dibenzo(a,l)pyrene	10
94360	DE	Dibenzoyl peroxide	500
19287457		Diborane	10
96128		1,2-Dibromo-3-chloropropane	1
10222012	DE	2,2-Dibromo-3-nitropropionamide	100
124732	DE	Dibromotetrafluoroethane	100
110054		tert-Dibutyl peroxide	500
84742		Dibutyl phthalate	10
1918009		Dicamba	1000
1194656		Dichlobenil	100
117806		Dichlone	1
99309	DE	Dichloran	100
7572294		Dichloroacetylene	10
95501		1,2-Dichlorobenzene	100

541731	1,3-Dichlorobenzene	100
106467	1,4-Dichlorobenzene	100
25321226	Dichlorobenzene (mixed isomers)	100
91941	3,3'-Dichlorobenzidine	1
612839	DE 3,3'-Dichlorobenzidine dihydrochloride	10
64969342	DE 3,3'-Dichlorobenzidine sulfate	10
75274	Dichlorobromomethane	5000
110576	trans-1,4-Dichlorobutene	500
764410	1,4-Dichloro-2-butene	1
1649087	DE 1,2-Dichloro-1,1-difluoroethane	100
75718	Dichlorodifluoromethane	5000
156605	1,2-Dichloroethylene	1000
540590	DE 1,2-Dichloroethylene	100
1717006	DE 1,1-Dichloro-1-fluoroethane	100
75434	Dichlorofluoromethane	100
75092	Dichloromethane	1000
149746	Dichloromethylphenylsilane	1000
12756492 5	DE Dichloropentafluoropropane	100
12890321 9	DE 2,2-Dichloro-1,1,1,3,3-pentafluoropropane	100
422480	DE 2,3-Dichloro-1,1,1,2,3-pentafluoropropane	100
422446	DE 1,2-Dichloro-1,1,2,3,3-pentafluoropropane	100
422560	DE 3,3-Dichloro-1,1,1,2,2-pentafluoropropane	100
507551	DE 1,3-Dichloro-1,1,2,2,3-pentafluoropropane	100
13474889	DE 1,1-Dichloro-1,2,2,3,3-pentafluoropropane	100
431867	DE 1,2-Dichloro-1,1,3,3,3-pentafluoropropane	100
13601379 1	DE 1,3-Dichloro-1,1,2,3,3-pentafluoropropane	100
11151256 2	DE 1,1-Dichloro-1,2,3,3,3-pentafluoropropane	100
97234	DE Dichlorophene	100
120832	2,4-Dichlorophenol	100
87650	2,6-Dichlorophenol	100
696286	Dichlorophenylarsine	1
26638197	Dichloropropane	1000
8003198	Dichloropropane - Dichloropropene (mixture)	100
78999	1,1-Dichloropropane	1000
78875	1,2-Dichloropropane	1000
142289	1,3-Dichloropropane	5000
26952238	Dichloropropene	100
10061026	DE trans-1,3-Dichloropropene	10
78886	2,3-Dichloropropene	100
75990	2,2-Dichloropropionic acid	5000
542756	1,3-Dichloropropylene	100
4109960	DE Dichlorosilane	100
76142	DE Dichlorotetrafluoroethane	100
90454185	DE Dichloro-1,1,2-trifluoroethane	100
34077877	DE Dichlorotrifluoroethane	100
812044	DE 1,1-Dichloro-1,2,2-trifluoroethane	100

354234	DE 1,2-Dichloro-1,1,2-trifluoroethane	100
306832	DE 2,2-Dichloro-1,1,1-trifluoroethane	100
62737	Dichlorvos	10
51338273	DE Dicofof methyl	100
115322	Dicofol	10
141662	Dicrotophos	100
77736	Dicyclopentadiene	100
60571	Dieldrin	1
1464535	Diepoxybutane	10
111422	Diethanolamine	100
38727558	DE Diethatyl ethyl	100
109897	Diethylamine	100
91667	N,N-Diethylaniline	1000
692422	Diethylarsine	1
814493	Diethyl chlorophosphate	500
13419037 7	DE Diethyldiisocyanatobenzene	100
117817	Di(2-ethylhexyl) phthalate	100
3288582	O,O-Diethyl S-methyl dithiophosphate	5000
311455	Diethyl-p-nitrophenyl phosphate	100
84662	Diethyl phthalate	1000
56531	Diethylstilbestrol	1
64675	Diethyl sulfate	10
557200	DE Diethylzinc	1000
35367385	DE Diflubenzuron	100
75376	DE Difluoroethane	1000
71636	Digitoxin	100
2238075	Diglycidyl ether	1000
101906	Diglycidyl resorcinol ether	10
20830755	Digoxin	10
94586	Dihydrosafrole	10
4128738	DE 4,4'-Diisocyanatodiphenyl ether	100
75790873	DE 2,4'-Diisocyanatodiphenyl sulfide	100
105646	DE Diisopropyl peroxydicarbonate	500
55914	Diisopropylfluorophosphate	100
105748	DE Diluaroyl peroxide	500
115264	Dimefox	500
55290647	DE Dimethipin	100
60515	Dimethoate	10
119904	3,3'-Dimethoxybenzidine	100
20325400	DE 3,3'-Dimethoxybenzidine dihydrochloride	10
91930	DE 3,3'-Dimethoxybenzidine-4,4'-diisocyanate	100
11198409 9	DE 3,3'-Dimethoxybenzidine hydrochloride	10
75183	Dimethyl sulfide	1
124403	Dimethylamine	1000
2300665	DE Dimethylamine dicamba	100
60117	4-Dimethylaminoazobenzene	10
121697	N,N-Dimethylaniline	100
57976	7,12-Dimethylbenz[a]anthracene	1

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119937		3,3'-Dimethylbenzidine	10
612828	DE	3,3'-Dimethylbenzidine dihydrochloride	10
41766750	DE	3,3'-Dimethylbenzidine dihydrofluoride	10
79447		Dimethylcarbamyl chloride	1
2524030		Dimethyl chlorothiophosphate	500
75785		Dimethyldichlorosilane	500
91974	DE	3,3'-Dimethyl-4,4'-diphenylene diisocyanate	100
139253	DE	3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate	100
68122		N,N-Dimethylformamide	100
57147		1,1-Dimethyl hydrazine	10
105679		2,4-Dimethylphenol	100
576261		2,6-Dimethylphenol	100
99989		Dimethyl-p-phenylenediamine	10
131113		Dimethyl phthalate	5000
463821	DE	2,2-Dimethylpropane	1000
77781		Dimethyl sulfate	100
644644		Dimetilan	1
602017	DE	2,3-Dinitroaniline	500
97029	DE	2,4-Dinitroaniline	500
25154545		Dinitrobenzene (mixed isomers)	100
99650		m-Dinitrobenzene	100
528290		o-Dinitrobenzene	100
100254		p-Dinitrobenzene	100
88857		Dinitrobutyl phenol	1000
534521		4,6-Dinitro-o-cresol	10
25550587		Dinitrophenol	10
51285		2,4-Dinitrophenol	10
329715		2,5-Dinitrophenol	10
573568		2,6-Dinitrophenol	10
619158	DE	2,5-Dinitrotoluene	500
618858	DE	3,5-Dinitrotoluene	500
25321146		Dinitrotoluene (mixed isomers)	10
121142		2,4-Dinitrotoluene	10
606202		2,6-Dinitrotoluene	100
610399		3,4-Dinitrotoluene	10
39300453	DE	Dinocap	100
1420071		Dinoterb	500
117840		n-Dioctylphthalate	5000
123911		1,4-Dioxane	100
78342		Dioxathion	500
82666		Diphacinone	10
957517	DE	Diphenamid	100
122394	DE	Diphenylamine	100
122667		1,2-Diphenylhydrazine	10
152169		Diphosphoramidate, octamethyl-	100
2164070	DE	Dipotassium endothall	100
142847		Dipropylamine	5000
136458	DE	Dipropyl isocinchomerate	100

85007		Diquat	1000
2764729		Diquat	1000
138932	DE	Disodium cyanodithioimidocarbonate	100
97778	DE	Disulfiram	1
298044		Disulfoton	1
514738		Dithiazanine iodide	500
541537		2,4-Dithiobiuret	100
330541		Diuron	100
27176870		Dodecylbenzenesulfonic acid	1000
2439103	DE	Dodine	100
120365	DE	2,4-DP	10
2702729	DE	2,4-D sodium salt	10
316427		Emetine, dihydrochloride	1
959988		alpha - Endosulfan	1
33213659		beta - Endosulfan	1
115297		Endosulfan	1
1031078		Endosulfan sulfate	1
145733		Endothall	1000
2778043		Endothion	500
72208		Endrin	1
7421934		Endrin aldehyde	1
106898		Epichlorohydrin	100
51434		Epinephrine	1000
2104645		EPN	100
50146		Ergocalciferol	1000
379793		Ergotamine tartrate	500
74840	DE	Ethane	1000
1622328		Ethanesulfonyl chloride, 2-chloro-	500
76131	DE	Ethane, 1,1,2-trichloro-1,2,2,-trifluoro-	100
30558431		Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-,methyl ester	1
10140871		Ethanol, 1,2-dichloro-, acetate	1000
5952261		Ethanol, 2,2'-oxybis-, dicarbamate	1
563122		Ethion	10
13194484		Ethoprop	1000
110805		2-Ethoxyethanol	1000
19393670		Ethyl methylketone peroxide	500
141786		Ethyl acetate	5000
107006	DE	Ethyl acetylene	1000
140885		Ethyl acrylate	1000
100414		Ethylbenzene	1000
538078		Ethylbis(2-chloroethyl)amine	500
541413	DE	Ethyl chloroformate	100
759944	DE	Ethyl dipropylthiocarbamate	1
74851	DE	Ethylene	1000
111546		Ethylenebisdithiocarbamic acid, salts & esters	5000
107153		Ethylenediamine	5000
60004		Ethylenediamine-tetraacetic acid (EDTA)	5000
106934		Ethylene dibromide	1

107062	Ethylene dichloride	100
371620	Ethylene fluorohydrin	1
107211	Ethylene glycol	5000
151564	Ethyleneimine	1
75218	Ethylene oxide	10
96457	Ethylenethiourea	10
60297	Ethyl ether	100
75343	Ethylidene Dichloride	1000
75081	DE Ethyl mercaptan	1000
97632	Ethyl methacrylate	1000
62500	Ethyl methanesulfonate	1
109955	Ethyl nitrite	100
542905	Ethyl thiocyanate	10000
14324551	DE Ethyl Ziram	1
52857	Famphur	1000
22224926	Fenamiphos	10
60168889	DE Fenarimol	100
13356086	DE Fenbutatin oxide	100
122145	Fenitrothion	1
66441234	DE Fenoxaprop ethyl	100
72490018	DE Fenoxycarb	100
39515418	DE Fenpropathrin	100
115902	Fensulfothion	500
55389	Fenthion	100
51630581	DE Fenvalerate	100
14484641	DE Ferbam	1
1185575	Ferric ammonium citrate	1000
55488874	Ferric ammonium oxalate	1000
2944674	Ferric ammonium oxalate	1000
7705080	Ferric chloride	1000
7783508	Ferric fluoride	100
10421484	Ferric nitrate	1000
10028225	Ferric sulfate	1000
10045893	Ferrous ammonium sulfate	1000
7758943	Ferrous chloride	100
7782630	Ferrous sulfate	1000
7720787	Ferrous sulfate	1000
69806504	DE Fluazifop butyl	100
4301502	Fluometil	100
2164172	DE Fluometuron	100
206440	Fluoranthene	100
86737	Fluorene	5000
7782414	Fluorine	10
640197	Fluoroacetamide	100
144490	Fluoroacetic acid	10
359068	Fluoroacetyl chloride	10
51218	Fluorouracil	500
7789211	DE [Fluosulfonic acid]	25
69409945	DE Fluvalinate	100

133073	DE Folpet	100
72178020	DE Fomesafen	100
944229	Fonofos	500
50000	Formaldehyde	100
107164	Formaldehyde cyanohydrin	1000
23422539	Formetanate hydrochloride	1
64186	Formic acid	5000
2540821	Formothion	100
17702577	Formparanate	1
21548323	Fosthietan	500
3878191	Fuberidazole	100
110178	Fumaric acid	5000
110009	Furan	100
109999	Furan, tetrahydro-	1000
98011	Furfural	5000
13450903	Gallium trichloride	500
765344	Glycidylaldehyde	10
70257	Guanidine, N-methyl-N'-nitro-N-nitroso-	10
86500	Guthion	1
76448	Heptachlor	1
1024573	Heptachlor epoxide	1
118741	Hexachlorobenzene	10
87683	Hexachloro-1,3-butadiene	1
319846	alpha-Hexachlorocyclohexane	10
77474	Hexachlorocyclopentadiene	10
67721	Hexachloroethane	100
1335871	DE Hexachloronaphthalene	100
70304	Hexachlorophene	100
1888717	Hexachloropropene	1000
757584	Hexaethyl tetraphosphate	100
684162	Hexafluoroacetone	100
4835114	Hexamethylenediamine, N,N'-dibutyl-	500
822060	DE Hexamethylene-1,6-diisocyanate	100
680319	Hexamethylphosphoramide	1
110543	Hexane	5000
51235042	DE Hexazinone	100
67485294	Hydramethylnon	100
302012	Hydrazine	1
1615801	Hydrazine, 1,2-diethyl-	10
540738	Hydrazine, 1,2-dimethyl-	1
10034932	DE Hydrazine sulfate	10
1333740	DE Hydrogen	10
10035106	Hydrogen bromide	1000
7647010	Hydrogen chloride; Hydrochloric acid	5000
74908	Hydrogen cyanide	10
7664393	Hydrogen fluoride; hydrofluoric acid	100
7722841	Hydrogen peroxide	100
7783075	Hydrogen selenide	10
7783064	Hydrogen sulfide	100



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123319		Hydroquinone	100
7803498	DE	Hydroxylamine	500
35554440	DE	Imazalil	100
193395		Indeno(1,2,3-cd)pyrene	100
55406536	DE	3-Iodo-2-propynyl butylcarbamate	1
13463406		Iron, pentacarbonyl-	10
297789		Isobenzan	100
75285		Isobutane	1000
78831		Isobutyl alcohol	5000
78842		Isobutyraldehyde	100
78820		Isobutyronitrile	1000
102363		Isocyanic acid, 3,4-dichlorophenyl ester	500
465736		Isodrin	1
25311711	DE	Isufenphos	100
78784		Isopentane	1000
78591		Isophorone	5000
4098719		Isophorone diisocyanate	100
78795		Isoprene	100
42504461		Isopropanolamine dodecylbenzene sulfonate	1000
75351		Isopropyl amine	1000
625558		Isopropyl formate	100
75310		Isopropylamine	1000
75296	DE	Isopropyl chloride	1000
108236		Isopropyl chloroformate	1000
80057	DE	4,4'-Isopropylidenediphenol	100
119380		Isopropylmethylpyrazolyl dimethylcarbamate	1
120581		Isosafrole	100
143500		Kepone	1
463514		Ketene	10
77501634	DE	Lactofen	100
78977		Lactonitrile	1000
303344		Lasiocarpine	10
7439921		Lead	10
301042		Lead acetate	10
7784409		Lead arsenate	1
7645252		Lead arsenate	1
10102484		Lead arsenate	1
7758954		Lead chloride	10
13814965		Lead fluoborate	10
7783462		Lead fluoride	10
10101630		Lead iodide	10
10099748		Lead nitrate	10
7446277		Lead phosphate	10
1072351		Lead stearate	10
56189094		Lead stearate	10
52652592		Lead stearate	10
7428480		Lead stearate	10
1335326		Lead subacetate	10

15739807		Lead sulfate	10
7446142		Lead sulfate	10
1314870		Lead sulfide	10
592870		Lead thiocyanate	10
21609905		Leptophos	500
541253		Lewisite	10
58899		Lindane	1
330552	DE	Linuron	100
554132	DE	Lithium carbonate	100
14307358		Lithium chromate	10
7580678		Lithium hydride	100
121755		Malathion	100
110167		Maleic acid	5000
108316		Maleic anhydride	5000
123331		Maleic hydrazide	5000
109773		Malononitrile	1000
12427382	DE	Maneb	100
7439965	DE	Manganese	100
15339363		Manganese, bis(dimethylcarbamodithioato-S,S')-	1
12108133		Manganese, tricarbonyl methylcyclopentadienyl	100
93652	DE	Mecoprop	10
148823		Melphalan	1
950107		Mephosfolan	500
149304	DE	2-Mercaptobenzothiazole	100
2032657		Mercaptodimethur	10
1600277		Mercuric acetate	500
7487947		Mercuric chloride	500
592041		Mercuric cyanide	1
10045940		Mercuric nitrate	10
21908532		Mercuric oxide	500
7783359		Mercuric sulfate	10
592858		Mercuric thiocyanate	10
7782867		Mercurous nitrate	10
10415755		Mercurous nitrate	10
7439976		Mercury	1
628864		Mercury fulminate	10
150505	DE	Merphos	100
10476956		Methacrolein diacetate	1000
760930		Methacrylic anhydride	500
126987		Methacrylonitrile	1000
920467		Methacryloyl chloride	10
30674807		Methacryloyloxyethyl isocyanate	10
10265926		Methamidophos	100
137428	DE	Metham sodium	1
74828	DE	Methane	1000
558258		Methanesulfonyl fluoride	1000
67561		Methanol	5000
91805		Methapyrilene	5000

20354261	DE	Methazole	100
950378		Methidathion	500
16752775		Methomyl	100
94746	DE	Methoxone	10
3653483	DE	Methoxone sodium salt	10
72435		Methoxychlor	1
109864	DE	2-Methoxyethanol	100
151382		Methoxyethylmercuric acetate	500
75221		Methyl chloroformate	1
624920		Methyl disulfide	1
453189		Methyl fluoroacetate	1
421205		Methyl fluorosulfate	1
96333	DE	Methyl acrylate	100
563462	DE	2-Methyl-1-butene	1000
563451	DE	3-Methyl-1-butene	1000
80637		Methyl 2-chloroacrylate	500
79221		Methyl chlorocarbonate	1000
56495		3-Methylcholanthrene	10
3697243	DE	5-Methylchrysene	10
75790840	DE	4-Methyldiphenylmethane-3,4-diisocyanate	100
101144		4,4'-Methylenebis(2-chloroaniline)	10
101611	DE	4,4'-Methylenebis(N,N-dimethyl)benzenamine	10
5124301	DE	1,1'-Methylene bis(4-isocyanatocyclohexane)	100
101688		Methylenebis(phenylisocyanate)	5000
74953		Methylene bromide	1000
101779		4,4'-Methylenedianiline	10
115106	DE	Methyl ether	1000
78933		Methyl ethyl ketone	5000
1338234		Methyl ethyl ketone peroxide	10
107313		Methyl formate	1000
60344		Methyl hydrazine	10
74884		Methyl iodide	100
108101		Methyl isobutyl ketone	5000
624839		Methyl isocyanate	10
556616		Methyl isothiocyanate	500
74931		Methyl mercaptan	100
502396		Methylmercuric dicyanamide	500
80626		Methyl methacrylate	1000
924425		N-Methylolacrylamide	100
298000		Methyl parathion	100
3735237		Methyl phenkapton	500
676971		Methyl phosphonic dichloride	100
115117	DE	2-Methylpropene	1000
109068		2-Methylpyridine	5000
872504	DE	N-Methyl-2-pyrrolidone	100
1634044		Methyl tert-butyl ether	1000
556649		Methyl thiocyanate	1000
56042		Methylthiouracil	10

75796		Methyltrichlorosilane	500
78944		Methyl vinyl ketone	1
9006422	DE	Metiram	100
1129415		Metolcarb	1
21087649	DE	Metribuzin	100
7786347		Mevinphos	10
315184		Mexacarbate	1000
90948	DE	Michler's ketone	10
50077		Mitomycin C	10
2212671	DE	Molinate	1
1313275	DE	Molybdenum trioxide	100
76153	DE	Monochloropentafluoroethane	100
6923224		Monocrotophos	10
75047	DE	Monoethylamine	100
74895		Monomethylamine	100
150685	DE	Monuron	100
2763964		Muscimol	1000
505602		Mustard gas	500
88671890	DE	Myclobutanil	100
142596	DE	Nabam	100
300765		Naled	10
91203		Naphthalene	100
3173726	DE	1,5-Naphthalene diisocyanate	100
1338245		Naphthenic acid	100
130154		1,4-Naphthoquinone	5000
134327		alpha-Naphthylamine	100
91598		2-Naphthylamine	10
7440020		Nickel	100
15699180		Nickel ammonium sulfate	100
13463393		Nickel carbonyl	10
7718549		Nickel chloride	100
37211055		Nickel chloride	100
0	DE	Nickel Compounds/Nickel Coated Catalysts	200
557197		Nickel cyanide	10
12054487		Nickel hydroxide	10
14216752		Nickel nitrate	100
7786814		Nickel sulfate	100
54115		Nicotine	100
54115		Nicotine, and salts	100
65305		Nicotine sulfate	100
1929824	DE	Nitrapyrin	100
7697372		Nitric acid	1000
10102439		Nitric oxide	10
139139	DE	Nitrioltriacetic acid	10
90092	DE	m-Nitroaniline	500
88744	DE	o-Nitroaniline	500
100016		p-Nitroaniline	5000
99592	DE	5-Nitro-o-anisidine	100
98953		Nitrobenzene	1000

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92933	4-Nitrobiphenyl	10
1122607	Nitrocyclohexane	500
79243	Nitroethane	500
1836755	<b>DE</b> Nitrofen	10
10102440	Nitrogen dioxide	10
51752	Nitrogen mustard	10
10102439	Nitrogen oxide	10
10544726	Nitrogen tetraoxide	10
55630	Nitroglycerin	10
75525	<b>DE</b> Nitromethane	500
25154556	Nitrophenol (mixed isomers)	100
554847	m-Nitrophenol	100
88755	2-Nitrophenol	100
100027	4-Nitrophenol	100
79469	2-Nitropropane	10
5522430	<b>DE</b> 1-Nitropyrene	10
924163	N-Nitrosodi-n-butylamine	10
1116547	N-Nitrosodiethanolamine	1
55185	N-Nitrosodiethylamine	1
62759	N-Nitrosodimethylamine	10
86306	N-Nitrosodiphenylamine	100
156105	<b>DE</b> p-Nitrosodiphenylamine	100
621647	N-Nitrosodi-n-propylamine	10
759739	N-Nitroso-N-ethylurea	1
684935	N-Nitroso-N-methylurea	1
615532	N-Nitroso-N-methylurethane	1
4549400	N-Nitrosomethylvinylamine	10
59892	N-Nitrosomorpholine	1
16543558	<b>DE</b> N-Nitrosornicotine	10
100754	N-Nitrosopiperidine	10
930552	N-Nitrosopyrrolidine	1
1321126	Nitrotoluene	1000
99081	m-Nitrotoluene	1000
88722	o-Nitrotoluene	1000
99990	p-Nitrotoluene	1000
99558	5-Nitro-o-toluidine	100
991424	Norbormide	100
27314132	<b>DE</b> Norflurazon	100
2234131	<b>DE</b> Octachloronaphthalene	100
29082744	<b>DE</b> Octachlorostyrene	1
8014957	Oleum (fuming sulfuric acid)	1000
0	Organorhodium Complex (PMN-82-147)	10
19044883	<b>DE</b> Oryzalin	100
20816120	Osmium tetroxide	1000
630604	Ouabain	100
23135220	Oxamyl	1
78717	Oxetane, 3,3-bis(chloromethyl)-	500
301122	<b>DE</b> Oxydemeton methyl	100
19666309	<b>DE</b> Oxydiazon	100

2497076	Oxydisulfoton	500
42874033	<b>DE</b> Oxyfluorfen	100
7783417	Oxygen difluoride	1
10028156	Ozone	1
30525894	Paraformaldehyde	1000
123637	Paraldehyde	1000
1910425	Paraquat dichloride	10
2074502	Paraquat methosulfate	10
56382	Parathion	10
1114712	<b>DE</b> Pebulate	1
40487421	<b>DE</b> Pendimethalin	1
19624227	Pentaborane	1
608935	Pentachlorobenzene	1
608935	Pentachlorobenzene	10
76017	Pentachloroethane	10
87865	Pentachlorophenol	10
2570265	Pentadecylamine	100
504609	1,3-Pentadiene	100
109660	<b>DE</b> Pentane	1000
109671	<b>DE</b> 1-Pentene	1000
646048	<b>DE</b> 2-Pentene, (E)-	1000
627203	<b>DE</b> 2-Pentene, (Z)-	1000
57330	<b>DE</b> Pentobarbital sodium	100
79210	Peracetic acid	100
7601903	<b>DE</b> Perchloric acid	1000
594423	Perchloromethyl mercaptan	100
7616946	Perchloryl fluoride	100
52645531	<b>DE</b> Permethrin	100
62442	Phenacetin	100
85018	Phenanthrene	5000
108952	Phenol	1000
64006	Phenol, 3-(1-methylethyl) - methylcarbamate	1
4418660	Phenol, 2,2'-thiobis[4-chloro-6-methyl-	100
26002802	<b>DE</b> Phenothrin	100
58366	Phenoxarsine, 10,10'-oxydi-	500
95545	<b>DE</b> 1,2-Phenylenediamine	100
108452	1,3-Phenylenediamine	100
106503	p-Phenylenediamine	5000
615281	<b>DE</b> 1,2-Phenylenediamine dihydrochloride	100
624180	<b>DE</b> 1,4-Phenylenediamine dihydrochloride	100
123615	<b>DE</b> 1,3-Phenylene diisocyanate	100
104494	<b>DE</b> 1,4-Phenylene diisocyanate	100
59881	Phenylhydrazine hydrochloride	1000
62384	Phenylmercuric acetate	100
90437	<b>DE</b> 2-Phenylphenol	100
2097190	Phenylsilatrane	100
103855	Phenylthiourea	100
57410	<b>DE</b> Phenytoin	10
298022	Phorate	10

4104147	Phosacetim	100
947024	Phosfolan	100
75445	Phosgene	10
732116	Phosmet	10
13171216	Phosphamidon	100
7803512	Phosphine	100
2703131	Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	500
50782699	Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester	100
2665307	Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenyl ester	500
7664382	Phosphoric acid	5000
3254635	Phosphoric acid, dimethyl 4-(methylthio) phenyl ester	500
2587908	Phosphorothioic acid, O,O-dimethyl-5-(2-(methylthio)ethyl)ester	500
7723140	Phosphorus	1
10025873	Phosphorus oxychloride	1000
10026138	Phosphorus pentachloride	500
1314563	Phosphorus pentoxide	1
7719122	Phosphorus trichloride	1000
85449	Phthalic anhydride	5000
57476	Physostigmine	1
57647	Physostigmine, salicylate (1:1)	1
1918021	<b>DE</b> Picloram	100
88891	<b>DE</b> Picric acid	100
124878	Picrotoxin	500
110894	Piperidine	1000
120547	<b>DE</b> Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	1
51036	<b>DE</b> Piperonyl butoxide	100
23505411	Pirimifos-ethyl	1000
29232937	<b>DE</b> Pirimiphos methyl	100
1336363	Polychlorinated biphenyls	1
9016879	<b>DE</b> Polymeric diphenylmethane diisocyanate	100
7784410	Potassium arsenate	1
10124502	Potassium arsenite	1
7778509	Potassium bichromate	10
7758012	<b>DE</b> Potassium bromate	10
7789006	Potassium chromate	10
151508	Potassium cyanide	10
128030	Potassium dimethyldithiocarbamate	1
1310583	Potassium hydroxide	1000
51026289	<b>DE</b> Potassium N-hydroxymethyl-N-methyldithiocarbamate	1
137417	<b>DE</b> Potassium N-methyldithiocarbamate	1
7722647	Potassium permanganate	100
506616	Potassium silver cyanide	1
41198087	<b>DE</b> Profenofos	100
2631370	Promecarb	1
7287196	<b>DE</b> Prometryn	100

23950585	Pronamide	5000
1918167	<b>DE</b> Propachlor	100
463490	<b>DE</b> Propadiene	1000
74986	<b>DE</b> Propane	1000
107120	Propanenitrile	10
1120714	Propane sultone	10
709988	<b>DE</b> Propanil	100
2312358	Propargite	10
107197	Propargyl alcohol	1000
106967	Propargyl bromide	1
31218834	<b>DE</b> Propetamphos	100
122429	Propham	1
60207901	<b>DE</b> Propiconazole	100
57578	beta-Propiolactone	10
123386	Propionaldehyde	1000
79094	Propionic acid	5000
123626	Propionic anhydride	5000
70699	Propiophenone, 4'-amino	100
114261	Propoxur	100
627134	<b>DE</b> m-Propyl nitrate	500
107108	n-Propylamine	5000
115071	<b>DE</b> Propylene	100
75569	Propylene oxide	100
75558	Propyleneimine	1
74997	<b>DE</b> Propyne	1000
2275185	Prothoate	100
129000	Pyrene	5000
121299	Pyrethrins	1
121211	Pyrethrins	1
8003347	Pyrethrins	1
110861	Pyridine	1000
140761	Pyridine, 2-methyl-5-vinyl-	500
1124330	Pyridine, 4-nitro-, 1-oxide	500
53558251	Pyriminil	100
91225	Quinoline	5000
106514	Quinone	10
82688	Quintozene	100
76578148	<b>DE</b> Quizalofop-ethyl	100
50555	Reserpine	5000
10453868	<b>DE</b> Resmethrin	100
108463	Resorcinol	5000
81072	Saccharin and salts	100
94597	Safrole	100
14167181	Salcomine	500
107448	Sarin	1
7783008	Selenious acid	10
12039520	Selenious acid, dithallium(1+) salt	1000
7782492	Selenium	100
7783791	Selenium hexafluoride	10

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7446084	Selenium oxide	10
7791233	Selenium oxychloride	500
7488564	Selenium sulfide	10
144343	<b>DE</b> Selenium, tetrakis(dimethylthiocarbamate)	1
630104	Selenourea	1000
563417	Semicarbazide hydrochloride	1000
74051802	<b>DE</b> Sethoxydim	100
7803625	<b>DE</b> Silane	1000
3037727	Silane, (4-aminobutyl)diethoxymethyl-	1000
7440224	Silver	1000
506649	Silver cyanide	1
7761888	Silver nitrate	1
122349	<b>DE</b> Simazine	100
7440235	Sodium	10
7631892	Sodium arsenate	1
7784465	Sodium arsenite	1
26628228	Sodium azide (Na(N3))	1000
10588019	Sodium bichromate	10
1333831	Sodium bifluoride	100
7631905	Sodium bisulfite	5000
124652	Sodium cacodylate	100
7775113	Sodium chromate	10
143339	Sodium cyanide	10
1982690	<b>DE</b> Sodium dicamba	100
128041	<b>DE</b> Sodium dimethylthiocarbamate	1
25155300	Sodium dodecylbenzenesulfonate	1000
7681494	Sodium fluoride	1000
62748	Sodium fluoroacetate	10
16721805	Sodium hydrosulfide	5000
1310732	Sodium hydroxide	1000
10022705	Sodium hypochlorite	100
7681529	Sodium hypochlorite	100
124414	Sodium methylate	1000
7632000	Sodium nitrite	100
131522	Sodium pentachlorophenate	100
132274	<b>DE</b> Sodium o-phenylphenoxide	10
7558794	Sodium phosphate, dibasic	5000
10140655	Sodium phosphate, dibasic	5000
10039324	Sodium phosphate, dibasic	5000
7785844	Sodium phosphate, tribasic	5000
10124568	Sodium phosphate, tribasic	5000
7601549	Sodium phosphate, tribasic	5000
10361894	Sodium phosphate, tribasic	5000
7758294	Sodium phosphate, tribasic	5000
10101890	Sodium phosphate, tribasic	5000
10028247	Sodium Phosphate, dibasic	5000
13410010	Sodium selenate	100
10102188	Sodium selenite	100
7782823	Sodium selenite	100

10102202	Sodium tellurite	500
900958	Stannane, acetoxetriphenyl-	500
7803523	Stibine	10
18883664	Streptozotocin	1
7789062	Strontium chromate	10
57249	Strychnine	10
57249	Strychnine, and salts	10
60413	Strychnine, sulfate	10
100425	Styrene	1000
96093	Styrene oxide	100
95067	<b>DE</b> Sulfallate	1
3689245	Sulfotep	100
3569571	Sulfoxide, 3-chloropropyl octyl	500
7446095	Sulfur dioxide	100
7664939	Sulfuric acid	1000
12771083	Sulfur monochloride	1000
5714227	Sulfur pentafluoride	10
1314803	Sulfur phosphide	100
7783600	Sulfur tetrafluoride	10
7446119	Sulfur trioxide	20
2699798	<b>DE</b> Sulfuryl fluoride	100
35400432	<b>DE</b> Sulprofos	100
93765	2,4,5-T acid	1000
3813147	2,4,5-T amines	5000
6369966	2,4,5-T amines	5000
6369977	2,4,5-T amines	5000
2008460	2,4,5-T amines	5000
1319728	2,4,5-T amines	5000
61792072	2,4,5-T esters	1000
25168154	2,4,5-T esters	1000
93798	2,4,5-T esters	1000
1928478	2,4,5-T esters	1000
2545597	2,4,5-T esters	1000
13560991	2,4,5-T salts	1000
77816	Tabun	10
34014181	<b>DE</b> Tebuthiuron	100
13494809	Tellurium	1
7783804	Tellurium hexafluoride	10
3383968	<b>DE</b> Temephos	100
5902512	<b>DE</b> Terbacil	100
13071799	Terbufos	100
79947	<b>DE</b> Tetrabromobisphenol A	1
1634022	<b>DE</b> Tetrabutylthiuram disulfide	1
95943	1,2,4,5-Tetrachlorobenzene & Isomers	5000
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1
630206	1,1,1,2-Tetrachloroethane	100
79345	1,1,2,2-Tetrachloroethane	100
127184	Tetrachloroethylene	100
354143	<b>DE</b> 1,1,2,2-Tetrachloro-1-fluoroethane	100

354110	DE	1,1,1,2-Tetrachloro-2-fluoroethane	100
58902		2,3,4,6-Tetrachlorophenol	10
961115	DE	Tetrachlorvinphos	100
64755	DE	Tetracycline hydrochloride	100
78002		Tetraethyl lead	10
107493		Tetraethyl pyrophosphate	10
597648		Tetraethyltin	100
116143	DE	Tetrafluoroethylene	500
10086472		Tetrafluoro hydrazine	100
7696120	DE	Tetramethrin	100
75741		Tetramethyllead	100
75763	DE	Tetramethylsilane	1000
509148		Tetranitromethane	10
1314325		Thallic oxide	100
7440280		Thallium	1000
563688		Thallium(I) acetate	100
10102451		Thallium(I) nitrate	100
10031591		Thallium sulfate	100
7446186		Thallium(I) sulfate	100
6533739		Thalious carbonate	100
7791120		Thalious chloride	100
2757188		Thalious malonate	100
148798	DE	Thiabendazole	100
62555		Thioacetamide	10
28249776	DE	Thiobencarb	100
2231574		Thiocarbazine	1000
139651	DE	4,4'-Thiodianiline	10
59669260		Thiodicarb	1
39196184		Thiofanox	100
297972		Thionazin	100
7719097		Thionyl chloride	10
23564069	DE	Thiophanate ethyl	100
23564058		Thiophanate-methyl	1
108985		Thiophenol	100
79196		Thiosemicarbazide	100
62566		Thiourea	10
5344821		Thiourea, (2-chlorophenyl)-	100
614788		Thiourea, (2-methylphenyl)-	500
137268		Thiram	10
1314201	DE	Thorium dioxide	100
7550450		Titanium tetrachloride	100
108883		Toluene	1000
584849		Toluene-2,4-diisocyanate	100
91087		Toluene-2,6-diisocyanate	100
26471625		Toluene diisocyanate (unspecified isomer)	100
95534		o-Toluidine	100
106490		p-Toluidine	100
636215		o-Toluidine hydrochloride	100
8001352		Toxaphene	1

32534955		2,4,5-TP esters	100
93721		2,4,5-TP acid	100
43121433	DE	Triadimefon	100
2303175		Triallate	1
1031476		Triamiphos	500
68768		Triazuquone	100
24017478		Triazofos	500
10120048	DE	Tribenuron methyl	100
0			
1983104	DE	Tributyltin fluoride	100
2155706	DE	Tributyltin methacrylate	100
78488		S,S,S-Tributyltrithiophosphate	100
52686		Trichlorfon	100
76028		Trichloroacetyl chloride	500
120821		1,2,4-Trichlorobenzene & Isomers	100
1558254		Trichloro(chloromethyl)silane	10
27137855		Trichloro(dichlorophenyl)silane	500
71556		1,1,1-Trichloroethane	1000
79005		1,1,2-Trichloroethane	100
79016		Trichloroethylene	100
115219		Trichloroethylsilane	500
75694		Trichlorofluoromethane	5000
327980		Trichloronate	500
25167822		Trichlorophenol	10
15950660		2,3,4-Trichlorophenol	10
933788		2,3,5-Trichlorophenol	10
933755		2,3,6-Trichlorophenol	10
95954		2,4,5-Trichlorophenol	10
88062		2,4,6-Trichlorophenol	10
609198		3,4,5-Trichlorophenol	10
98135		Trichlorophenylsilane	500
96184	DE	1,2,3-Trichloropropane	10
10025782		Trichlorosilane	1000
57213691	DE	Triclopyr triethylammonium salt	100
27323417		Triethanolamine dodecylbenzene sulfonate	1000
998301		Triethoxysilane	500
121448		Triethylamine	5000
79389		Trifluorochloroethylene	1000
1582098		Trifluralin	10
26644462		Triforine	100
2487903		Trimethoxysilane	10
75503		Trimethylamine	100
95636	DE	1,2,4-Trimethylbenzene	100
75774		Trimethylchlorosilane	1000
16938220	DE	2,2,4-Trimethylhexamethylene diisocyanate	100
15646965	DE	2,4,4-Trimethylhexamethylene diisocyanate	100
824113		Trimethylolpropane phosphite	100
540841		2,2,4-Trimethylpentane	1000
2655154	DE	2,3,5-Trimethylphenyl methylcarbamate	100

1066451		Trimethyltin chloride	500
	DE	1,2,4-Trinitrobenzene	500
99354		1,3,5-Trinitrobenzene	10
602293	DE	2,3,4-Trinitrotoluene	500
	DE	2,3,5-Trinitrotoluene	500
	DE	2,3,6-Trinitrotoluene	500
610253	DE	2,4,5-Trinitrotoluene	500
118967	DE	2,4,6-Trinitrotoluene	500
	DE	3,4,5-Trinitrotoluene	500
639587		Triphenyltin chloride	500
76879	DE	Triphenyltin hydroxide	1000
555771		Tris(2-chloroethyl)amine	100
126727		Ethanamine, 1,1-dimethyl-2-phenyl-	10
72571		Trypan blue	10
66751		Uracil mustard	10
541093		Uranyl acetate	100
10102064		Uranyl nitrate	100
36478769		Uranyl nitrate	100
51796		Urethane	100
2001958		Valinomycin	1000
7440622	DE	Vanadium (except when contained in an alloy)	100
1314621		Vanadium pentoxide	1000
27774136		Vanadyl sulfate	1000
50471448	DE	Vinclozolin	100
108054		Vinyl acetate	5000
689974	DE	Vinyl acetylene	1000
593602		Vinyl bromide	100
75014		Vinyl chloride	1
109922	DE	Vinyl ethyl ether	1000
75025	DE	Vinyl fluoride	1000
75354		Vinylidene chloride	100
75387	DE	Vinylidene fluoride	1000
107255	DE	Vinyl methyl ether	1000
81812		Warfarin	100
81812		Warfarin, & salts, conc.>0.3%	100
129066		Warfarin sodium	100
108383		m-Xylene	100
95476		o-Xylene	100
106423		p-Xylene	100
1330207		Xylene	100
1300716		Xylenol	1000
87627	DE	2,6-Xylidine	10
28347139		Xylylene dichloride	100
7440666		Zinc	1000
557346		Zinc acetate	1000
14639975		Zinc ammonium chloride	1000
14639986		Zinc ammonium chloride	1000
52628258		Zinc ammonium chloride	1000
1332076		Zinc borate	1000

7699458		Zinc bromide	1000
3486359		Zinc carbonate	1000
7646857		Zinc chloride	1000
557211		Zinc cyanide	10
58270089		Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyloxy)imino)Pentanenitrile)-, (T-4)-	100
7783495		Zinc fluoride	1000
557415		Zinc formate	1000
7779864		Zinc hydrosulfite	1000
7779886		Zinc nitrate	1000
127822		Zinc phenolsulfonate	5000
1314847		Zinc phosphide	100
16871719		Zinc silicofluoride	5000
7733020		Zinc sulfate	1000
12122677	DE	Zineb	100
137304		Ziram	1
13746899		Zirconium nitrate	5000
16923958		Zirconium potassium fluoride	1000
14644612		Zirconium sulfate	5000
10026116		Zirconium tetrachloride	5000

This consolidated chemical list includes chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Chemicals listed under 112(r) of the Clean Air Act (CAA), Section 311 of the Clean Water Act of 1980, State of Delaware's Accidental Release Prevention Regulation, and EPCRA Section 313 are included with Delaware Reportable Quantities (DRQs). Some substances are listed as commonly known synonyms more than once or with different CAS numbers. For other synonyms and CAS numbers search the EPA Chemical Registry System (CRS) under chemical names or CAS numbers. The EPA CSR search page can be found on the internet at: [http://oaspub.epa.gov/crs/SEARCH\\$.STARTUP](http://oaspub.epa.gov/crs/SEARCH$.STARTUP)

**Note: Substances with no DE designation must also be reported to the National Reporting Center (NRC) under federal reporting requirements with reportable quantities equal to the DRQ. The column with designation 'DE' means that the substance DRQ does not agree with the federal reportable quantity under CERCLA or EPCRA requirements to report to the (NRC). Check the EPA Lists of Lists or the NRC internet webpage to determine if and what reportable release quantity must be reported to the NRC independently of the State of Delaware Reporting requirements.**

\* No mandatory written report is required under Section 2.5 of the 6028 Reporting Regulation.

RCRA Codes	NAME	DRQ
D001	Unlisted hazardous wastes characteristic of ignitability	100
D002	Unlisted hazardous wastes characteristic of corrosivity	100
D003	Unlisted hazardous wastes characteristic of reactivity	100

D004	Arsenic	1
D005	Barium	1000
D006	Cadmium	10
D007	Chromium	10
D008	Lead	10
D009	Mercury	1
D010	Selenium	10
D011	Silver	1
D012	Endrin	1
D013	Lindane	1
D014	Methoxychlor	1
D015	Toxaphene	1
D016	2,4-D	100
D017	2,4,5-TP	100
D018	Benzene	10
D019	Carbon tetrachloride	10
D020	Chlordane	1
D021	Chlorobenzene	100
D022	Chloroform	10
D023	o-Cresol	100
D024	m-Cresol	100
D025	p-Cresol	100
D026	Cresol	100
D027	1,4-Dichlorobenzene	100
D028	1,2-Dichloroethane	100
D029	1,1-Dichloroethylene	100
D030	2,4-Dinitrotoluene	10
D031	Heptachlor (and epoxide)	1
D032	Hexachlorobenzene	10
D033	Hexachlorobutadiene	1
D034	Hexachloroethane	100
D035	Methyl ethyl ketone	5000

D036	Nitrobenzene	1000
D037	Pentachlorophenol	10
D038	Pyridine	1000
D039	Tetrachloroethylene	100
D040	Trichloroethylene	100
D041	2,4,5-Trichlorophenol	10
D042	2,4,6-Trichlorophenol	10
D043	Vinyl chloride	1
F001	Spent halogenated solvents used in degreasing	10
F001a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F001b	(b) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100
F001c	(c) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F001d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F001e	(e) Carbon tetrachloride (CAS No. 56-23-5, RCRA Waste No. U211)	10
F001f	(f) Chlorinated fluorocarbons	5000
F002	Spent halogenated solvents	10
F002a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F002b	(b) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F002c	(c) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100
F002d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F002e	(e) Chlorobenzene (CAS No. 108-90-7, RCRA Waste No. U037)	100
F002f	(f) 1,1,2-Trichloro-1,2,2-trifluoroethane (CAS No. 76-13-1)	5000
F002g	(g) o-Dichlorobenzene (CAS No. 95-50-1, RCRA Waste No. U070)	100
F002h	(h) Trichlorofluoromethane (CAS No. 75-69-4, RCRA Waste No. U121)	5000
F002i	(i) 1,1,2-Trichloroethane (CAS No. 79-00-5, RCRA Waste No. U227)	100
F003	Spent non-halogenated solvents and still bottoms from recovery:	100
F003a	(a) Xylene (CAS No. 1330-20-7)	1000
F003b	(b) Acetone (CAS No. 67-64-12)	5000
F003c	(c) Ethyl acetate (CAS No. 141-78-6)	5000
F003d	(d) Ethylbenzene (CAS No. 100-41-4)	1000
F003e	(e) Ethyl ether (CAS No. 60-29-7)	100



F003f	(f) Methyl isobutyl ketone (CAS No. 108-10-1,)	5000
F003g	(g) n-Butyl alcohol (CAS No. 71-36-3)	5000
F003h	(h) Cyclohexanone (CAS No. 108-94-1)	5000
F003i	(i) Methanol (CAS No. 67-56-1, RCRA Waste No. U154)	5000
F004	Spent non-halogenated solvents and still bottoms from recovery:	100
F004a	(a) Cresols/cresylic acid (CAS No. 1319-77-3, RCRA Waste No. U052)	100
F004b	(b) Nitrobenzene (CAS No. 98-95-3, RCRA Waste No. U169)	1000
F005	Spent non-halogenated solvents and still bottoms from recovery:	100
F005a	(a) Toluene (CAS No. 108-88-3, RCRA Waste No. U220)	1000
F005b	(b) Methyl ethyl ketone (CAS No. 78-93-3, RCRA Waste No. U159)	5000
F005c	(c) Carbon disulfide (CAS No. 75-15-0, RCRA Waste No. P022)	100
F005d	(d) Isobutanol (CAS No. 78-83-1, RCRA Waste No. U140)	5000
F005e	(e) Pyridine (CAS No. 110-86-1, RCRA Waste No. U196)	1000
F006	Wastewater treatment sludges from electroplating operations (w/some exceptions)	10
F007	Spent cyanide plating bath solns. from electroplating	10
F008	Plating bath residues from electroplating where cyanides are used	10
F009	Spent stripping/cleaning bath solns. from electroplating where cyanides are used	10
F010	Quenching bath residues from metal heat treating where cyanides are used	10
F011	Spent cyanide soln. from salt bath pot cleaning from metal heat treating	10
F012	Quenching wastewater sludges from metal heat treating where cyanides are used	10
F019	Wastewater treatment sludges from chemical conversion aluminum coating	10
F020	Wastes from prod. or use of tri/tetrachlorophenol or derivative intermediates	1
F021	Wastes from prod. or use of pentachlorophenol or intermediates for derivatives	1
F022	Wastes from use of tetra/penta/hexachlorobenzenes under alkaline conditions	1
F023	Wastes from mat. prod. on equip. previously used for tri/tetrachlorophenol	1
F024	Wastes from production of chlorinated aliphatic hydrocarbons (C1-C5)	1
F025	Lights ends, filters from prod. of chlorinated aliphatic hydrocarbons (C1-C5)	1
F026	Waste from equipment previously used to prod. tetra/penta/hexachlorobenzenes	1
F027	Discarded formulations containing tri/tetra/pentachlorophenols or derivatives	1
F028	Residues from incineration of soil contaminated w/ F020,F021,F022,F023,F026,F027	1
F032	Wastewaters, process residuals from wood preserving using chlorophenolic solns.	1

F034	Wastewaters, process residuals from wood preserving using creosote formulations	1
F035	Wastewaters, process residuals from wood preserving using arsenic or chromium	1
F037	Petroleum refinery primary oil/water/solids separation sludge	1
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge	1
K001	Wastewater treatment sludge from creosote/pentachlorophenol wood preserving	1
K002	Wastewater treatment sludge from prod. of chrome yellow and orange pigments	10
K003	Wastewater treatment sludge from prod. of molybdate orange pigments	10
K004	Wastewater treatment sludge from prod. of zinc yellow pigments	10
K005	Wastewater treatment sludge from prod. of chrome green pigments	10
K006	Wastewater treatment sludge from prod. of chrome oxide green pigments	10
K007	Wastewater treatment sludge from prod. of iron blue pigments	10
K008	Oven residue from prod. of chrome oxide green pigments	10
K009	Dist. bottoms from prod. of acetaldehyde from ethylene	10
K010	Dist. side cuts from prod. of acetaldehyde from ethylene	10
K011	Bottom stream from wastewater stripper in acrylonitrile prod.	10
K013	Bottom stream from acetonitrile column in acrylonitrile prod.	10
K014	Bottoms from acetonitrile purification column in acrylonitrile prod.	5000
K015	Still bottoms from the dist. of benzyl chloride	10
K016	Heavy ends or dist. residues from prod. of carbon tetrachloride	1
K017	Heavy ends from the purification column in epichlorohydrin prod.	10
K018	Heavy ends from the fractionation column in ethyl chloride prod.	1
K019	Heavy ends from the dist. of ethylene dichloride during its prod.	1
K020	Heavy ends from the dist. of vinyl chloride during prod. of the monomer	1
K021	Aqueous spent antimony catalyst waste from fluoromethanes prod.	10
K022	Dist. bottom tars from prod. of phenol/acetone from cumene	1
K023	Dist. light ends from prod. of phthalic anhydride from naphthalene	5000
K024	Dist. bottoms from prod. of phthalic anhydride from naphthalene	5000
K025	Dist. bottoms from prod. of nitrobenzene by nitration of benzene	10
K026	Stripping still tails from the prod. of methyl ethyl pyridines	1000
K027	Centrifuge/dist. residues from toluene diisocyanate prod.	10

K028	Spent catalyst from hydrochlorinator reactor in prod. of 1,1,1-trichloroethane	1
K029	Waste from product steam stripper in prod. of 1,1,1-trichloroethane	1
K030	Column bottoms/heavy ends from prod. of trichloroethylene and perchloroethylene	1
K031	By-product salts generated in the prod. of MSMA and cacodylic acid	1
K032	Wastewater treatment sludge from the prod. of chlordane	10
K033	Wastewater/scrubwater from chlorination of cyclopentadiene in chlordane prod.	10
K034	Filter solids from filtration of hexachlorocyclopentadiene in chlordane prod.	10
K035	Wastewater treatment sludges from the prod. of creosote	1
K036	Still bottoms from toluene reclamation distillation in disulfoton prod.	1
K037	Wastewater treatment sludges from the prod. of disulfoton	1
K038	Wastewater from the washing and stripping of phorate production	10
K039	Filter cake from filtration of diethylphosphorodithioic acid in phorate prod.	10
K040	Wastewater treatment sludge from the prod. of phorate	10
K041	Wastewater treatment sludge from the prod. of toxaphene	1
K042	Heavy ends/residues from dist. of tetrachlorobenzene in 2,4,5-T prod.	10
K043	2,6-Dichlorophenol waste from the prod. of 2,4-D	10
K044	Wastewater treatment sludge from manuf. and processing of explosives	10
K045	Spent carbon from treatment of wastewater containing explosives	10
K046	Wastewater sludge from manuf.,formulating,loading of lead-based initiating compd	10
K047	Pink/red water from TNT operations	10
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	10
K049	Slop oil emulsion solids from the petroleum refining industry	10
K050	Heat exchanger bundle cleaning sludge from petroleum refining industry	10
K051	API separator sludge from the petroleum refining industry	10
K052	Tank bottoms (leaded) from the petroleum refining industry	10
K060	Ammonia still lime sludge from coking operations	1
K061	Emission control dust/sludge from primary prod. of steel in electric furnaces	10
K062	Spent pickle liquor generated by steel finishing (SIC codes 331 and 332)	10
K064	Acid plant blowdown slurry/sludge from blowdown slurry from primary copper prod.	10
K065	Surface impoundment solids at primary lead smelting facilities	10

K066	Sludge from treatment of wastewater/acid plant blowdown from primary zinc prod.	10
K069	Emission control dust/sludge from secondary lead smelting	10
K071	Brine purification muds from mercury cell process in chlorine production	1
K073	Chlorinated hydrocarbon waste from diaphragm cell process in chlorine production	10
K083	Distillation bottoms from aniline extraction	100
K084	Wastewater sludges from prod. of veterinary pharm. from arsenic compds.	1
K085	Distillation or fractionation column bottoms in prod. of chlorobenzenes	10
K086	Wastes/sludges from prod. of inks from chromium and lead-containing substances	10
K087	Decanter tank tar sludge from coking operations	100
K088	Spent potliners from primary aluminum reduction	10
K090	Emission control dust/sludge from ferrochromiumsilicon prod.	10
K091	Emission control dust/sludge from ferrochromium prod.	10
K093	Dist. light ends from prod. of phthalic anhydride by ortho-xylene	5000
K094	Dist. bottoms in prod. of phthalic anhydride by ortho-xylene	5000
K095	Distillation bottoms in prod. of 1,1,1-trichloroethane	100
K096	Heavy ends from dist. column in prod. of 1,1,1-trichloroethane	100
K097	Vacuum stripper discharge from the chlordane chlorinator in prod. of chlordane	1
K098	Untreated process wastewater from the prod. of toxaphene	1
K099	Untreated wastewater from the prod. of 2,4-D	10
K100	Waste leaching soln from emission control dust/sludge in secondary lead smelting	10
K101	Dist. tar residue from aniline in prod. of veterinary pharm. from arsenic compd.	1
K102	Residue from activated carbon in prod. of veterinary pharm. from arsenic compds.	1
K103	Process residues from aniline extraction from the prod. of aniline	100
K104	Combined wastewater streams generated from prod. of nitrobenzene/aniline	10
K105	Aqueous stream from washing in prod. of chlorobenzenes	10
K106	Wastewater treatment sludge from mercury cell process in chlorine prod.	1
K107	Column bottoms from separation in prod. of UDMH from carboxylic acid hydrazides	10
K108	Condensed column overheads and vent gas from prod. of UDMH from -COOH hydrazides	10
K109	Spent filter cartridges from purif. of UDMH prod. from carboxylic acid hydrazides	10
K110	Condensed column overheads from separation in UDMH prod. from -COOH hydrazides	10
K111	Product washwaters from prod. of dinitrotoluene via nitration of toluene	10

K112	Reaction by-product water from drying in toluenediamine prod from dinitrotoluene	10
K113	Condensed liquid light ends from purification of toluenediamine during its prod.	10
K114	Vicinals from purification of toluenediamine during its prod from dinitrotoluene	10
K115	Heavy ends from toluenediamine purification during prod. from dinitrotoluene	10
K116	Organic condensate from solvent recovery system in prod. of toluene diisocyanate	10
K117	Wastewater from vent gas scrubber in ethylene bromide prod by ethene bromination	1
K118	Spent absorbent solids in purification of ethylene dibromide in its prod.	1
K123	Process waste water from the prod. of ethylenebisdithiocarbamic acid and salts	10
K124	Reactor vent scrubber water from prod of ethylenebisdithiocarbamic acid and salts	10
K125	Filtration/other solids from prod. of ethylenebisdithiocarbamic acid and salts	10
K126	Dust/sweepings from the prod. of ethylenebisdithiocarbamic acid and salts	10
K131	Wastewater and spent sulfuric acid from the prod. of methyl bromide	100
K132	Spent absorbent and wastewater solids from the prod. of methyl bromide	1000
K136	Still bottoms from ethylene dibromide purif. in prod. by ethene bromination	1
K141	Process residues from coal tar recovery in coking	1
K142	Tar storage tank residues from coke prod. from coal or recovery of coke by-prods	1
K143	Process residues from recovery of light oil in coking	1
K144	Wastewater residues from light oil refining in coking	1
K145	Residues from naphthalene collection and recovery from coke by-products	1
K147	Tar storage tank residues from coal tar refining in coking	1
K148	Residues from coal tar distillation, including still bottoms, in coking	1
K149	Distillation bottoms from the prod. of chlorinated toluenes/benzoyl chlorides	10
K150	Organic residuals from Cl gas and HCl recovery from chlorinated toluene prod.	10
K151	Wastewater treatment sludge from production of chlorotoluenes/benzoyl chlorides	10
K156	Organic waste from production of carbamates and carbamoyl oximes	1
K157	Wastewaters from production of carbamates and carbamoyl oximes (not sludges)	1
K158	Bag house dusts & filter/separation solids from prod of carbamates, carb oximes	1
K159	Organics from treatment of thiocarbamate waste	1
K160	Solids from production of thiocarbamates and treatment of thiocarbamate wastes	1
K161	Purif. solids/bag house dust/sweepings from prod of dithiocarbamate acids/salts	1
K169	Crude oil storage tank sediment from petroleum operations	10

K170	Clarified slurry oil tank sediment from petroleum refining operations	1
K171	Spent hydrotreating catalyst from petroleum refining operations.	1
K172	Spent hydrorefining catalyst from petroleum refining operations.	1
K174	Wastewater treatment sludges from the production of vinyl chloride or ethylene dichloride monomer	1
K175	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer	1

Note: Delaware reportable quantities (DRQs) are based upon EPA RCRA waste streams and unlisted hazardous wastes reportable quantities (RQs) as published in EPA List of Lists as EPA publication Number: EPA 550-B-01-003.

The term hazardous waste substance includes RCRA listed and characteristic hazardous wastes. The establishments of RQs for hazardous waste differs from the methodology applied to individual hazardous substances, as the RQ for hazardous waste is based on the results of an analysis of hazardous constituents in the waste stream. When the RQ of each hazardous constituent is established, the lowest RQ of each of these constituents then becomes the adjusted RQ for the waste stream. In the event there are constituents in the hazardous waste that are not considered hazardous substances, a reference RQ is developed for these constituents in order to assign an appropriate RQ.

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**EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE  
DELAWARE TOURISM OFFICE  
TOURISM ADVISORY BOARD**

Statutory Authority: 73 Delaware Laws Ch. 312,  
Section 50 (June 25, 2002)

**Order Adopting and Promulgating Regulation**

AND NOW this 15<sup>th</sup> day of October, 2002, in accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III, 29 **Del.C.** Ch. 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002, Judy McKinney-Cherry, the Director of the Delaware Economic Development Office (“DEDO”) (of which the Delaware Tourism Office (“DTO”) is a subdivision) in cooperation with the Tourism Advisory Board (the “Board”) in accordance with 29 **Del.C.** §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 312, Section 50 and for the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Co-Op Advertising Program (as defined below) of the DTO.

**Nature Of Proceedings: Synopsis Of The Subject And Substance Of The Proposed Regulation:**

In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, 29 Del.C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), proposed to adopt a regulation for the administration of the Co-Op Advertising Program set forth in 73 Delaware Laws Ch. 312, Section 50 and for the application and award procedures of the Co-Op Advertising Program. The regulation describes the Co-Op Advertising Program, the eligibility criteria and application procedure for awards under the Co-Op Advertising Program, the procedure for making of awards and the uses to which Co-Op Advertising Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the August 1, 2002 issue of the *Delaware Register of Regulations* and in Delaware newspapers of general circulation on August 16 and August 19, 2002 in accordance with 29 Del.C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del.C. §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on September 18, 2002 at 9:30 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO adopting the proposed regulation.

**Summary Of Evidence and Information Submitted:**

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on September 18, 2002.

**Findings Of Fact and Conclusions:**

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) that up to \$160,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2003 pursuant to 30 Del.C. §6102(b) contained in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) should be used by DTO for a grant program where matching funds were required, i.e., the Co-Op Advertising Programs Program, and that DTO, in cooperation with the Board, should develop regulations to implement the Co-Op Advertising Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on September 18, 2002.

3. The Director of DEDO, as the head of the agency

that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29 Del.C. §5005(11) and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

**Decision and Order Concerning The Proposed Regulation**

**NOW THEREFORE**, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Judy McKinney-Cherry, Director, Delaware Economic Development Office

**APPROVED IN COOPERATION WITH DTO** by the members of the Tourism Advisory Board:

Kay Wheatley, Chairman  
Norma Lee Burton Derrickson  
Barbara Benson  
Frank Fantini  
Carol Harding  
Ed Sutor  
Xavier Teixido

**Co-op Advertising Program**

**1.0 Co-Op Advertising Program Description**

1.1 The purpose of the program is to attract overnight visitors to Delaware through increased visibility of Delaware's tourism product and the creation of a Delaware image.

1.2 The goal of the program is to allow tourism industry partners to participate in the Delaware Tourism Office's advertising campaign.

~~1.3 The definition of the program is advertising placed with any media that represents more than one organization and the cost of which is funded by all participants.~~

**2.0 Participation**

2.1 The Delaware Tourism Office will participate in co-op advertising and will fund a portion of the cost of the placement ~~not to exceed fifty percent (50%) of such cost, as set forth in Section 2.31.~~

2.2 Equal shares will be made available to Delaware tourism industry partners.

2.3 Participating for-profit organizations will be responsible for all the funds for any share purchased. Participating not-for-profit organizations will be eligible to receive one half of the funds for any share purchased from

~~Matching Grant Funds. For-profit organizations may participate in co-op advertising. For-profit organizations will be responsible for all the funds for any share of co-op advertising purchased.~~

~~2.4 Not for profit organizations may participate in co-op advertising. Not for profit organizations will be eligible to receive one half of the funds for any share of co-op advertising purchased from Matching Grant Funds and will be responsible for one half of the funds.~~

### **3.0 Co-Op Advertising Matching Grant Funds**

#### **3.1. Co-Op Advertising Matching Grant Funds Description**

3.1.1 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of programs available using the matching grant funds, one of which will be co-op advertising. ~~The Delaware Tourism Office in cooperation with the Governor's Tourism Advisory Board will determine the amount of funds allocated for each matching grant funds sub-program.~~

3.1.2 The grants are to be used to place advertising outside of the state of Delaware to attract overnight visitors to Delaware.

3.1.3 ~~Subject to the availability of funds, up to~~ One half of the cost of participation in the co-op advertisement will be paid from matching grant funds for not-for-profit organizations.

3.1.4 The same organization may apply to participate in more than one co-op advertisement.

#### **3.2 Eligibility for Matching Grants for Co-Op Advertising**

3.2.1 Not-for-profit tourism related businesses and organizations.

3.2.2 Only in-state tourism entities may apply.

3.2.3 The organization's main product or program must be intended to attract new visitors and overnight business.

#### **3.3 Matching Grant Awards**

3.3.1 There will be no attempt to balance the awards geographically, politically, or categorically.

### **4.0 Source of Matching Funds**

4.1 Matching funds are required for not-for-profit tourism related business. The organization's matching fund commitment is part of the application.

4.2 No other state grant funds may be used for the organization's match.

### **5.0 Application Requirements**

5.1 Applicants shall fill out the Co-Op Advertising Program application as prescribed by the Delaware Tourism Office. The application is available at 99 Kings Highway, Dover, DE 19901.

5.2 Incomplete applications will not be considered.

5.3 More than one application may be submitted per organization.

5.4 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. **[The application deadline will be designated in the program announcement.]** Applications may be submitted electronically, via fax or email.

5.5 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

### **6.0 Determination of Participation in Co-Op Advertising**

6.1 DTO personnel will select the organizations for each co-op advertisement placed from the eligible applications.

### **7.0 Process**

7.1 All completed applications that are received by the deadline will be reviewed, and selections will be announced one week later.

#### **7.2 Payments**

7.2.1 Participating organizations will pay DTO their share within 60 days of their selection. There will be no funds paid from DTO to the applicant. DTO will combine the funds from all sources into a single payment to the advertiser.

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**DELAWARE ECONOMIC DEVELOPMENT OFFICE  
DELAWARE TOURISM OFFICE  
TOURISM ADVISORY BOARD**

Statutory Authority: 73 Delaware Laws Ch. 312,  
Section 50 (June 25, 2002)

**Order Adopting and Promulgating Regulation:**

AND NOW this 15<sup>th</sup> day of October, 2002 in accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III, 29 **Del.C.** Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), Judy McKinney-Cherry the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), in accordance with 29 **Del.C.** §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 312, Section 50 and for the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Direct Grants Program (as defined below) of the DTO.

**Nature Of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:**

In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, 29 Del.C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), proposed to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Direct Grants Program") and for the application and award procedures of the Direct Grants Program. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the August 1, 2002 issue of the *Delaware Register of Regulations*, (August 1, 2002) and in Delaware newspapers of general circulation on August 16 and August 19, 2002 in accordance with 29 Del.C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del.C. §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on September 18, 2002 at 9:30 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO adopting the proposed regulation.

**Summary Of Evidence and Information Submitted:**

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on September 18, 2002.

**Findings of Fact and Conclusions:**

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) that up to \$40,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2003 pursuant to 30 Del.C. §6102(b) contained in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) should be used by DTO for a grant program where no matching funds were required, i.e., the Direct Grants Program, and that DTO, in cooperation with the Board, should develop regulations to implement the Direct Grant Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on September 18, 2002.

3. The Director of DEDO, as the head of the agency

that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29 Del.C. §5005(11) and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

**Decision and Order Concerning the Proposed Regulation**

**NOW THEREFORE**, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del. C. §10118(g).

Judy McKinney-Cherry, Director, Delaware Economic Development Office

**APPROVED IN COOPERATION WITH DTO** by the members of the Tourism Advisory Board:

Kay Wheatley, Chairman  
Norma Lee Burton Derrickson  
Barbara Benson  
Frank Fantini  
Carol Harding  
Ed Sutor  
Xavier Teixido

**Direct Grants Program**

**1.0 Program Description**

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. ~~Direct Grants are only toward not-for-profit tourism entities are eligible.~~ Only not-for-profit tourism entities with a marketing budget of \$15,000 or less are eligible for Direct Grants. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for Direct Grants is designated by the General Assembly in the operating budget. It is expected that there will be a number of direct grant programs awarded.

1.3 To be eligible, organizations must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of ~~Funds~~ Direct Grants:

1.5.1 It is expected that the Direct Grant funds will be used to actively market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware.

1.5.2 The same organization may apply for

more than one Direct Grant.

## **2.0 Award Determination:**

~~2.1 The organizations receiving awards will be selected by a panel composed of the following:~~

~~2.1.1 Delaware Tourism Office~~

~~2.1.2 Governor's Tourism Advisory Board~~

2.1 It is expected that the organizations receiving awards will be selected by a panel composed of employees or members of the following:

2.1.1 Delaware Tourism Office

2.1.2 Governor's Tourism Advisory Board

2.1.3. House Tourism Committee

## **3.0 Criteria:**

3.1 Organizations must demonstrate that their vision supports one or more of the attract goals of the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. The program must support the Delaware Tourism Office Marketing Plan. ~~DTO logo~~ brand must appear on all created collateral. There will be no attempt to balance the awards geographically, politically, or categorically.

## **4.0 Award Process**

4.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. Awards will be announced the following week.

4.2 Direct Grant Award Payments:

4.2.1 Payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. All requirements and criteria of the program need to be met.

## **5.0 Eligibility**

5.1 Not-for-profit tourism related businesses and organizations.

5.2 Submitting organizations must submit proof of not-for-profit status and the organization's complete operating budget.

5.3 Only in-state tourism entities may apply

5.4 The organization's main product or program must fit into the Industry's ~~5~~ Five-Year Strategic Plan.

## **6.0 Application Requirements**

6.1 Incomplete applications will not be considered (see application for required attachments).

6.2 More than one application may be submitted per organization.

6.3 All completed applications must sent to the

Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location.

6.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

## **7.0 Grant Awards**

7.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Direct Grant Program is to attract new visitors and overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities with a marketing budget of \$15,000 or less are able to submit direct grant proposals. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

## **8.0 Payments**

8.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

8.2 All invoices must be submitted to the Delaware Tourism Office.

## **9.0 Use of Funds**

9.1 Funds may not be used for:

9.1.1 General operating expenses including staff salaries.

9.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

9.1.3 Food and beverages

9.1.4 Equipment purchase and rental

9.1.5 Business directories

9.1.6 Postage and office supplies

9.1.7 Meeting expenses

9.1.8 Anything contrary to state law.

9.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

## **10.0 Project Completion Requirements**

10.1 At a minimum the following must be submitted for final payment:

10.1.1 Completed project report

10.1.2 Invoices must be submitted.

10.1.3 Marketing plan

10.1.4 The Delaware ~~Tourism Office name and logo~~ brand must be used as well as Delaware Tourism Office name, phone number and website address must appear on all created collateral

10.2 Other project completion requirements may be added at the time of the award based on project definition.

**11.0 Applicant Information**

11.1 Applicants shall fill out the Direct Grant Program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at 99 Kings Highway, Dover, DE 19901.

See 5 DE Reg. 1312 (12/1/01)

**DELAWARE ECONOMIC DEVELOPMENT OFFICE  
DELAWARE TOURISM OFFICE  
TOURISM ADVISORY BOARD**

Statutory Authority: 73 Delaware Laws Ch. 312,  
Section 50 (June 25, 2002)

**Order Adopting and Promulgating Regulation:**

AND NOW this 15<sup>th</sup> day of October, 2002, in accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, 29 Del.C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), Judy McKinney-Cherry the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), in accordance with 29 Del.C. §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 312, Section 50 and for the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Matching Grants Program (as defined below) of the DTO.

**Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:**

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), proposed to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Matching Grants Program") and for the application and award procedures of the Matching Grants Program. The regulation describes the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the August 1, 2002 issue of the *Delaware Register of Regulations*, (August 1, 2002) and in Delaware newspapers of general circulation on August 16 and August 19, 2002 in accordance with 29 Del. C.

§10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del. C. §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on September 18, 2002 at 9:30 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO, adopting the proposed regulation.

**Summary of Evidence and Information Submitted:**

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on September 18, 2002.

**Findings of Fact and Conclusions:**

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) that up to \$160,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2003 pursuant to 30 Del. C. §6102(b) contained in 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002) should be used by DTO for a grant program where matching funds were required, i.e., the Matching Grants Program, and that DTO, in cooperation with the Board, should develop regulations to implement the Matching Grant Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on September 18, 2002.

3. The Director of DEDO, as the head of the agency that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29 Del. C. §5005(11) and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

**Decision and Order Concerning the Proposed Regulation**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del. C. §10118(g).

Judy McKinney-Cherry, Director, Delaware Economic Development Office

**APPROVED IN COOPERATION WITH DTO** by the members of the Tourism Advisory Board:

Kay Wheatley, Chairman  
Norma Lee Burton Derrickson  
Barbara Benson



Frank Fantini, Carol Harding, Ed Sutor, Xavier Teixido

3.1.2 Governor's Tourism Advisory Board

3.1.3 House Tourism Committee

### **Matching Grants Program**

#### **1.0 Program Description**

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Matching Grants Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching grants proposals. However, for profit businesses are allowed to participate in partnership programs submitted by not-for-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for matching grants is designated by the Delaware General Assembly in the operating budget. It is expected that there will be a number of Matching ~~Funds~~ Grants Programs awarded. Four or more properties working together on a package will be able to receive a match of 2-to-1 instead of 1-to-1.

1.3 To be eligible, the applicant organization must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

##### **1.5 Use of Matching Grants:**

1.5.1 It is expected that the Matching Grant funds will be used to market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware:

1.5.2 The same organization may apply for more than one Matching Grants ~~Program grant~~.

1.5.3 The purpose is to attract visitors to Delaware and to bring in overnight business. Therefore, advertising applicants must show a plan to advertise out of state.

#### **2.0 Matching Funds:**

2.1 Matching funds are required. The organization's matching fund commitment is part of the application. The organization's matching fund commitment must be met for full payment of the grant. No other state grant funds may be used for the organization's match.

#### **3.0 Award Determination:**

~~3.1 The organizations receiving awards will be selected by a panel composed of the following:~~

~~3.1.1 Delaware Tourism Office~~

~~3.1.2 Governor's Tourism Advisory Board~~

3.1 It is expected that the organizations receiving awards will be selected by a panel composed of employees or members of the following:

3.1.1 Delaware Tourism Office

#### **4.0 Criteria:**

4.1 Organizations must demonstrate that their vision supports the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. There will be no attempt to balance the awards geographically, politically, or categorically.

#### **5.0 Award Process**

5.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. The awards will be announced a week later.

##### **5.2 Grant Award Payments:**

5.2.1 The payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. To receive final payment, all organizations will need to complete all project completion requirements.

#### **6.0 Eligibility**

6.1 Not-for-profit tourism related businesses and organizations.

6.2 Submitting organizations must submit proof of not-for-profit status.

6.3 For-profit tourism businesses may be part of programs submitted for grant programs; however, they must be a partner of a not-for-profit applicant organization and may not submit the application.

6.4 Only in-state tourism entities may apply.

6.5 The applicant organization's main product or program must be intended to attract new visitors and overnight business.

6.6 Partnerships between four or more tourism entities are encouraged. Partnerships will receive a 2-to-1 dollar match instead of a 1-to-1 dollar match.

#### **7.0 Application Requirements**

7.1 Incomplete applications will not be considered (see application for required attachments).

7.2 More than one application may be submitted per organization.

7.3 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. Applications may not be submitted electronically, via fax or email.

7.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.5 If the creation of a package is a proposal for a Matching ~~Funds Grants Program grant~~, the package must include ~~a hotel property~~ an accommodation.

7.6 All invoices must be received at the Delaware Tourism Office, 99 Kings Highway, Dover DE 19901.

### 8.0 Matching Funds

8.1 All funds must be raised and collected prior to payment of the award.

8.2 No other state grant funds may be used for the organization's match.

8.3 Staff salaries, volunteer labor and in kind donations do not qualify as a match.

### 9.0 Grant Awards

9.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Matching Grants Program is to attract new visitors and overnight business to Delaware. The goal of the Matching Grants Program is to increase the visibility of Delaware's tourism product. Four or more properties working together including at least one hotel, through a package will be able to receive a match of 2-to-1 instead of 1-to-1. Only not-for-profit entities are able to submit matching funds proposals. However, for-profit businesses are allowed to participate in partnership programs submitted by not-for-profit organizations. All package programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

### 10.0 Payments

10.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

10.2 All invoices must be sent to the Delaware Tourism Office.

### 11.0 Use of Funds

11.1 Funds may not be used for:

11.1.1 General operating expenses including staff salaries.

11.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

11.1.3 Food and beverages

11.1.4 Equipment purchase and rental

11.1.5 Business directories

11.1.6 Postage and office supplies

11.1.7 Meeting expenses

11.1.8 Anything contrary to state law.

11.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project

definition.

### 12.0 Project Completion Requirements

12.1 At a minimum the following must be submitted for final payment:

12.1.1 Completed project report

12.1.2 Invoices

12.1.3 Marketing plan

12.1.4 The Delaware ~~Tourism Office name and logo~~ brand must be used as well as Delaware Tourism Office name, phone number and website address must appear on all created collateral

12.2 Other project completion requirements may be added at the time of the award based on project definition.

### 13.0 Applicant Information

13.1 Applicants shall fill out the Matching Grants Program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at: 99 Kings Highway, Dover, DE 19901.

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## STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code,  
Sections 5210(4), 9602(b)(4)  
(29 Del. C. §§ 5210(4), 9602(b)(4))

### Order Adopting Rules and Regulations

AND NOW, this 30th day of September, 2002, in accordance with 29 Del.C. § 10118 and for the reasons stated hereinafter, the State Employee Benefits Committee of the State of Delaware (hereinafter "the Committee") enters this Order adopting amendments to the Group Health Care Insurance Eligibility and Coverage Rules.

#### I. Nature of the Proceedings

Pursuant to the Committee's authority under 29 Del.C. §§ 5210(4) and 9602(b)(4), the Committee proposed to revise its existing Group Health Care Insurance Eligibility and Coverage Rules in order to revise several sections of the rules regarding employee and dependent eligibility, and termination of coverage following divorce. Other proposed changes include insertion of new rules requiring submission of specified documentation to maintain coverage, and a new rule that clarifies that premiums are collected on a lag basis. Notice of the public hearing to consider the proposed amendments to the Group Health Care Insurance Eligibility and Coverage Rules was published in the Delaware Register of Regulations dated August 1, 2002, and two Delaware

newspapers of general circulation, in accordance with 29 **Del.C.** § 10115 (Committee Exhibits 1-3). The public hearing was held on September 5, 2002 at 1:00 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Committee was present. The Committee deliberated and voted on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. This is the Committee's Decision and Order **ADOPTING** the amendments to the Rules and Regulations as proposed.

## **II. Evidence and Information Submitted**

The Committee received no written comments in response to the notice of intention to adopt the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. At the September 5, 2002 hearing, the Committee received oral comments from Ms. Jill Floore of the Budget Office, Mr. George Bauder of the Delaware State Education Association, and Ms. Judy Anderson, also with the Delaware State Education Association.

Ms. Floore stated that she was presenting comments based upon internal meetings. She suggested a clarification to the proposed revisions to Rule 3.02 by adding the word "optional" in the last sentence so that it reads "failure to return the signed form(s) will result in termination of optional health care benefits." Ms. Floore also recommend a change to the proposed revision for Rule 4.05 by deleting the word "favorably" in the next to last line. Finally, Ms. Floore suggested a change to Rule 7.01 that would address an issue regarding public school employees and the maintenance of coverage through the summer months.

Mr. Bauder from the Delaware State Education Association stated that he strongly supported the suggested clarifications to Rules 3.02 and 4.05. Regarding Rule 3.02, he stated that it may be difficult to accomplish because there is so much fluidity in employment status as employees move from district to district. Mr. Bauder also joined in the comments regarding Rule 7.01 and expressed concern that any revision clearly provide that coverage for employees continue until the end of August. Ms. Anderson from the Delaware State Education Association requested a clarification regarding the impact of the amended rules on non-state participating agencies.

## **III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Group Health Care Insurance Eligibility and Coverage Rules and offered an adequate opportunity to provide the Committee with comments.

2. The proposed amendments to the Group Health Care Insurance Eligibility and Coverage Rules are necessary to clarify current rules and establish certain other requirements for eligibility and coverage. The proposed

amendments will assist employees and pensioners in understanding the requirements regarding group health care insurance eligibility and coverage.

3. The Committee concludes that it has statutory authority to promulgate rules and regulations for the general administration of the employee benefit coverages pursuant to 29 **Del.C.** § 9602(b)(4). The Committee further concludes that it has statutory authority to adopt rules and regulations for the general administration of the State employees group health insurance program in accordance with 29 **Del.C.** § 5210(4).

4. The Committee determined that the oral comments received during the hearing regarding Rule 7.01 did not address a published proposed revision to the rules, raised new substantive issues, and therefore should be addressed at a future meeting.

5. The Committee concludes that the suggested revisions made to Rule 3.02 and Rule 4.05 in oral comments by Ms. Jill Floore are not substantive and clarify the intent of the proposed revisions to those rules. The Committee, therefore, finds that it should adopt the proposed non-substantive changes to Rule 3.02 and Rule 4.05 and does so pursuant to 29 **Del.C.** §§ 10118(c), 10113.

6. For the foregoing reasons, the Committee concludes that it is necessary to adopt the proposed amendments to its Rules and Regulations.

## **IV. Decision and Order to Adopt Amendments**

**NOW, THEREFORE**, by unanimous vote of a quorum of the Committee, **IT IS ORDERED**, that the Group Health Care Insurance Eligibility and Coverage Rules are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations pursuant to 29 **Del.C.** § 10118(g).

### **By Order Of The State Employee Benefits Committee**

(As authenticated by a quorum of the Committee)

Lisa Blunt-Bradley, Chair, State Personnel Director  
Jennifer Davis, Acting Budget Director  
Russ Larson, Controller General  
Jack Markell, State Treasurer  
David Singleton, Secretary of Finance  
Donna Lee Williams, Insurance Commissioner

### **State Employee Benefits Committee Group Health Care Insurance**

#### **Employees Eligible To Participate**

(Used to determine who may enroll. See "Cost of Coverage" to determine the amount of State contributions, toward an

employee's coverage.)

1.00 Pursuant to the authority vested in the State Employee Benefits Committee by 29 Del. C. §§ 5210(4), 9602(b)(4), the State Employee Benefits Committee adopts these eligibility and coverage rules for the State of Delaware Group Health Insurance Program. In the event of a conflict with the Delaware Code, the Delaware Code takes precedence over these rules.

1.01 An Employee must meet one of the following definitions to be eligible for coverage under the State's plan:

- a. a permanent full-time employee (regularly scheduled 30 or more hours per week or 130 or more hours per month);
- b. an elected or appointed official as defined by 29 Del. C. § 5201;
- c. a permanent part-time employee (regularly scheduled to work less than 130 hours per month);
- d. a limited term employee (as defined by Merit Rule 12.0240);
- e. a pensioner receiving or eligible to receive a pension from the State;
- f. All per diem and contractual employees of the Delaware General Assembly who have been continuously employed for 5 years.

1.02 Those employees who meet the definition outlined in rule 1.01(a), (b), and (e) are considered "Regular officers, employees, or pensioners" as outlined by State Statute and are thus entitled to State Share contributions.

1.03 Temporary, casual and seasonal and substitutes are not eligible to participate in the state's plan.

1.04 Newly employed school teachers become eligible employees when they start employment not when they sign their contract. (Review the Coverage & Contribution Table for coverage start date - dependent upon the September hire date). Temporary teachers who are re-hired in September are eligible to elect coverage when re-hired. Temporary teachers who are re-hired in the next contract year are eligible to elect coverage when re-hired without fulfilling another 3-month waiting period.

### Dependents Eligible to Participate

2.01 An employee's dependents must meet one of the following definitions to be eligible for coverage under the State's plan:

- a. an employee's legal spouse (Delaware law does not recognize common law marriage. Ex-spouses may not be enrolled in the State's group health insurance program – even if a divorce decree requires an employee to provide coverage for an ex-spouse);

IMPORTANT NOTE: Spousal Coordination of Benefits Policy has been in effect since 1/1/93. The policy is for a spouse who is eligible for health coverage through his

or her own employer. Spouses who work full-time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Health Insurance Plan. Employees should refer to the individual benefit booklets for each plan for more detailed information.

- b. an unmarried dependent child under age 21 (age 24 if a full-time student), born to or legally adopted by an eligible employee or an eligible employee's legal spouse;~~and dependent on the employee, employee's legal spouse, or ex-spouse for at least fifty (50) percent of support;~~

c. an unmarried dependent child under age 21 (age 24 if a full-time student), not born to or legally adopted, but residing with an eligible employee or an eligible employee's legal spouse in a regular parent-child relationship and dependent upon the employee or employee's legal spouse for at least fifty (50) percent support. A statement of support form must be completed by the employee and forwarded with the application for coverage. If a natural parent resides in the same household as the insured employee or insured employee's spouse, it will be deemed that a regular parent child relationship does not exist;

d. an unmarried dependent child born to or legally adopted by an eligible employee or an eligible employee's legal spouse over age 21 and dependent upon an eligible employee or an eligible employee's spouse for support and incapable of self support because of a mental or physical disability which existed before the child reached age 21, or age 24 if a full-time student. The child must have been covered under your contract immediately preceding age 21, or age 24 if a full-time student.

e. an eligible dependent child covered under the health insurance plans of both spouses will be primary to the spouse's plan whose birthday is the first to occur during the calendar year. In the event the birth dates are the same, the dependent child will be primary to the parent with the longest service. In the event birth dates and length of service is the same, the dependent child will be primary to the male parent's plan.

### Coverage

3.01 Coverage of an eligible employee and his or her eligible dependents will become effective on the first of the month following date of hire provided the employee submits a signed application within thirty (30) days of the employee's date of hire or within (30) days of the employee becoming eligible for the State Share. Refer to COVERAGE & CONTRIBUTION TABLE for specific coverage date options for employees who elect coverage when eligible for State Share.

IMPORTANT: Spousal Coordination of Benefits Policy became effective 1/1/93 for a spouse who is eligible for health coverage through his or her own employer. Spouses

who work full-time and are eligible for health coverage through their employer, but do not enroll under their employers' health plan, will have a reduction in benefits under the State health insurance plan. Employees should refer to the individual benefit booklets for each plan for more detailed information.

3.02 Employees must sign an updated enrollment form and/or confirmation statement during each annual open enrollment period. Failure to return the signed form(s) will result in termination of [optional] health care benefits.

3.03 Employees who cover their spouse on their State of Delaware health care contract must complete a Spousal Coordination of Benefits Policy Form during the annual open enrollment period as well as anytime there is a change in the spouse's employment status. Failure to supply the Spousal Form along with the enrollment form and/or confirmation statement could result in the spouse's claims to be paid at 20%.

3.04 3.04 If an employee elects not to enroll in the State's Group Health Insurance Program, the employee must complete and sign an application/enrollment form acknowledging the desire not to enroll by noting "waive" on the appropriate form.

3.03 3.05 Eligible employees who fail to submit a completed and signed application/enrollment form within 30 days of their Start Date or their date of eligibility for State Share may not join the group until the next open enrollment period (usually May), unless the employee meets the requirements of Rule ~~[3.04 3.06]~~.

3.04 3.06 An employee who elects not to join the State's plan or elects not to enroll their spouse because their spouse has health coverage and later involuntarily loses the coverage, the State employee and/or spouse is eligible to join the State's plan within 30 days of the loss of coverage without waiting for the next open enrollment period. If such a change is not made in the time period specified, the eligible employee/and or spouse must wait until the next open enrollment period. An increase in employee contribution, change of benefits or change of carrier of the spouse's plan shall not constitute loss of coverage.

3.05 3.07 If an employee declines enrollment for themselves or their dependents (including the spouse) because of other health insurance coverage, the employee may in the future be able to enroll themselves or their dependents in the plan, provided that they request enrollment within 30 days after the other coverage ends. The eligible employee who is currently enrolled in the Basic plan, may increase from Basic to optional coverage upon the spouse's involuntary loss of coverage and addition to the state contract, provided application is made within 30 days of the loss of spouse's coverage. In addition, if the employee has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may be able to enroll themselves and their dependents provided that they request

enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

~~3.06~~ 3.08 When husband and wife are eligible State employees, the two employees, or each eligible pensioner, and all eligible dependents may elect to enroll under one family contract. When the employees are both active, and an employee & spouse or family contract is chosen, the spouse whose birthday occurs earlier in the calendar year shall sign an application for coverage form requesting coverage. A change of agency is considered re-enrollment. (In the event the birth dates are the same, length of service and/or gender will be applied as described in Section 2.01(e)). Beginning with the effective date of these rules, State Share contributions for all new enrollments will be charged to the agency or organization whose employee enrolls the family for coverage. All enrollments prior to February 1990 shall continue to be charged to the agency or organization as was previously determined.

Each employee, or each eligible pensioner, may elect to enroll under a separate contract. Eligible dependents may be enrolled under either contract, but no dependent shall be enrolled more than once under the State of Delaware Group Health Insurance Program.

The increment of cost of the options selected by the two employees, which exceeds the cost of two basic family plans, shall be deducted by the Director of State Personnel from salary or pension.

~~3.07~~ 3.09 When the spouse of an eligible employee is a retired State of Delaware employee receiving a pension, and enrolled under separate individual contracts, the agency and the Pension Office will carry the coverage for their respective employee/pensioner. If an Employee & Spouse, or a Family contract is chosen, the coverage will continue to be carried through the active employee's agency until such time that the Pensioner turns 65. The over age 65 spouse may continue to have the State's plan as primary payor of benefits with the contract to continue under the active employee's agency, or they may choose Medicare as the primary payor through the Pension Office.

### **Changes In Coverage**

4.01 An eligible employee who elects to be covered on their EMPLOYMENT COVERAGE DATE may change coverage when the employee first becomes eligible for the State Share payment. (Examples: (1) An employee who at hire enrolls in the "Basic" plan may change to "Comprehensive PPO" (or another optional coverage) when they begin State Share contribution, without waiting for the next open enrollment period. (2) An employee who at hire enrolls for "Individual" coverage may change to "Individual and Child(ren)", "Employee and Spouse", or "Family" coverage when he or she begins to receive State Share, without waiting for the next open enrollment period.

4.02 When a covered employee marries, coverage for the spouse will become effective on the date of marriage, or first (1st) of the month following the date of marriage provided the employee submits the application to add the new spouse within 30 days of the date of the marriage. Premiums are paid on a monthly basis and not pro-rated, therefore if an employee adds the new spouse effective the date of the marriage, the employee must remit the difference in employee contribution for the entire month. The employee must submit a signed application within thirty (30) days prior to or thirty days following the date of marriage. If such a change is not made in the time period specified, a covered employee must wait until the next open enrollment period to add the spouse. (Spousal Coordination of Benefits Policy form must be completed and received with application to add spouse to coverage).

4.03 Coverage for a child born to an employee or legal spouse who is covered under the State's plan will begin on the date of birth provided an application for the child is made within thirty (30) days of the date of birth and the required employee contribution, if any is paid. If such a change is not made in the time period specified, a covered employee must wait until the next open enrollment period to add the child. For an employee who has an existing Employee and Child(ren), or Family type contract, the 30-day time period does not apply. However, the application to add the newborn child must be made within a reasonable time period.

4.04 Coverage for an eligible dependent, other than a newborn child, who becomes an eligible dependent after the employee has been enrolled, becomes covered on the first (1st) day of the month following the acceptance of the application and applicable payment is made within 30 days of the date that the family member became eligible.

4.05 An employee who transfers to another agency or school district ~~that has higher health benefits than the one he or she is leaving may change the plan and coverage without waiting until the next open enrollment period~~ may change the plan and coverage without waiting until the next open enrollment period if the transfer ~~(favorably)~~ impacts the employee contribution to their health benefits provided the employee makes the required change within 30-days of the transfer.

4.06 Changes in coverage can only be made at the annual open enrollment period unless coverage is reduced to "Basic", or unless an employee is making a change due to divorce, marriage, birth of a child, addition of an eligible dependent, or transfer as previously outlined in this section. In the case of divorce, marriage, birth of a child, addition of eligible dependent, or transfer, the coverage status may change, but the plan cannot. The employee may change plans if their spouse has become a State of Delaware employee entitled to State Share and an Employee & Spouse or Family contract is chosen. An eligible employee may

change coverage and/or plan if no longer entitled to double state-share, provided application is made within thirty (30) calendar days of the qualifying event. An eligible employee may increase from Basic to optional coverage upon the spouse's involuntary loss of coverage and addition to the state contract, provided application is made within 30 days of the of the loss of the spouse's coverage.

4.07 An eligible employee or an employee's legal spouse (eligible to receive State Share) who reaches age 65 and becomes eligible for Medicare shall continue to be covered under the State's plan as the primary payor of benefits. Employees and dependents eligible for Medicare, by reason of age or disability, must apply for Medicare Part A at their first eligibility regardless of their coverage under the State's plan.

4.08 An employee who becomes eligible for pension may change their plan at the onset of receiving their pension.

4.09 An employee who is required by Court or administrative order to provide health insurance coverage for a child and the parent is eligible for family health coverage shall be permitted:

a. To enroll under family coverage any child who is eligible for such coverage (without regard to any enrollment season restriction).

b. If the parent is enrolled, but fails to make application to obtain coverage of the child, the agency shall enroll the child under such family coverage upon application by the child's other parent, the Division of Child Support Enforcement or Division of Social Services.

c. Not disenroll (or eliminate coverage of) any child unless the employer is provided satisfactory written evidence such as:

1. The Court or administrative order is no longer in effect, or

2. The child is or will be enrolled in comparable health coverage, which will take effect no later than the effective date of such disenrollment.

4.10 When a covered employee divorces, coverage for the ex-spouse will terminate on the date of divorce. Premiums are paid on a monthly basis and not prorated. The employee must remit the employee contribution for the plan, which included the spouse for the entire month. The employee must submit a signed application within thirty (30) days prior to or 30 days following the date of divorce. If double state share terminates as a result of the divorce, the employee must pay the employee contribution for the entire month that the divorce occurred.

#### Cost Of Coverage

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

5.01 "Regular officers and employees' begin earning State Share contributions on the first of the month following 90 days employment. See COVERAGE AND CONTRIBUTION TABLE for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.

5.02 Permanent part-time, limited term and per diem and contractual employees of the General Assembly as described in Section 1.01 are eligible to participate in the group, but are not eligible for State Share. Therefore, if they join the plan they must pay the full cost of the health plan they select. Payment must be collected by the organization and forwarded to the SPO Benefits Administration Accounting Unit by the first day of the month for which the employee's coverage becomes effective. If an existing full-time state employee takes a limited term position, State Share shall continue. Temporary, casual, and seasonal employees are not eligible to participate nor are they eligible for State Share.

5.03 When a husband and wife are both permanent full-time active employees, they shall earn state share contributions in accordance with the following:

a. If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or pension.

b. If they elect to enroll in one employee & spouse or family contract, the increment of cost of the option selected by the employee which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or pension.

5.04 When the spouse of an eligible employee is a retired State of Delaware employee receiving monthly pension, they may enroll as two individual contracts, employee and spouse contract, or a family contract. The increment of cost of the option selected by the employee which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or pension. (A notation should be made in the employee's file that their spouse is a State of Delaware Pensioner. The Pension Office should be notified if the active employee terminates State Service.)

5.05 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage until State Share begins.

5.06 If an employee selects coverage under an optional plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child(ren), employee & spouse, or family) under the "Basic" plan.

5.07 An employee who is eligible for the State

Share contribution may not receive the cash equivalent in lieu of the coverage itself.

5.08 ~~Coverage, employee contributions, and State Share occur on a "Pay As You Go" basis. (i.e. Deductions for May coverage take place from the first two pay advice's in May.)~~ As of July 1, 2001, premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub-group is responsible for reconciling premiums to assure proper employee/state share premiums have been remitted. Payments other than those made through the payroll system and all adjustments must be submitted in a timely manner to the SPO Benefits Accounting Unit. The Group Health Insurance Program will not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.

5.09 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three-(3) month waiting period. The employee must make application with their Human Resources Office for coverage within 30 days of return from leave of absence.

5.10 Any State employee who fails to make payment for his or her share of the cost of health coverage when he or she is eligible to continue coverage and does not have a pay advice from which payment can be deducted will have coverage canceled on the first (1st) day of the month following any month that an employee fails to pay the required share for the coverage selected.

(The Family and Medical Leave Act (FMLA) regulations provide that employees have a 30-day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Agency personnel representatives should continue the employee's health coverage for the 30-day period provided under FMLA. The personnel representative can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30-day grace period.)

5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible for State Share for that calendar month and any subsequent calendar month that the employee is in a non-pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than 5 days in one month, shall not entitle the employee to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was

the result of any of the following:

- a. an authorized leave of absence;
- b. a suspension without pay;
- c. termination or unauthorized leave of absence

for a period less than 30 calendar days.

5.12 The State Share will be paid for employees that are drawing Workers' compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for their share of their coverage that would normally be deducted from their pay advice.

5.13 Any employee who has paid the State Share in order to insure continuation of health coverage then later is found to have been eligible for receipt of State Share is to be refunded the amount that was not paid by the State. In accordance with Delaware Code Title 10, Chapter 81, Subsection 8111, there is a one-year statute of limitations that applies to such a refund and an employee must make application for the refund within this time limit. Refunds of less than \$1.00 will not be made.

5.14 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave.

5.15 All employees whose positions are involuntarily terminated after they have been employed for a full year who return to full-time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.

5.16 A temporary, casual, seasonal, limited term employee, or substitute who becomes a "Regular Officer or Employee" shall have his or her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part-time "Aggregate State Service" applied toward their three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal, limited term employee, or substitute must have worked each pay cycle for the 3 (three) months prior to hire eligibility for state share – or last 3 (three) full months of the school year prior to September hire.

5.17 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.

5.18 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive double State Share. The increment of cost, which exceeds the cost of two basic family plans, shall be deducted by the Director of State Personnel from salary.

5.19 Beginning July 1, 1994, a regular officer or employee called to active duty with Guard or Reserve for other than training purposes shall continue to receive state contributions toward health insurance coverage for a period of up to 180 days.

### Continuation Of Coverage

6.01 To continue optional coverage, a covered employee must pay the difference between the State Share contribution and the cost of the coverage selected; otherwise, their coverage will revert back to "Basic".

6.02 An employee granted an unpaid authorized leave of absence can maintain membership in the group health plan by paying the full cost of coverage (State Share plus employee contribution) during the period of the leave as long as that leave of absence does not exceed two (2) years. An employee who returns from an authorized leave of absence, whether he or she maintains coverage or not while on leave of absence, is authorized to receive State Share upon return. (Eligibility for State share begins upon return without fulfilling another three-month qualification period). An employee on FMLA leave is entitled to have pre-existing health insurance benefits (including the State of Delaware's share of the monthly cost) maintained while on an FMLA leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay their share during the leave period. Failure to make such contribution within 30 days of the due date will result in termination of coverage.

6.03 Optional coverage continues for teachers who are granted sabbatical leave provided they make the required payments for their share of the cost of their coverage; otherwise, their coverage reverts back to "Basic". (State Share continues while they are on sabbatical leave.)

6.04 Employees leaving State Service, except for termination due to gross misconduct, are eligible for continuation under Federal COBRA legislation. Employees should call CobraServ at 1-800-877-7994 for details of this continuation option.

6.05 An eligible employee or eligible dependent that loses coverage under the State's group health care insurance program may continue coverage under COBRA. Upon expiration of the covered individual's COBRA eligibility, the individual may apply directly to the insurance company for a direct billed contract.

### Termination Of Coverage

7.01 Coverage ends on the last day of the month in which the employee terminates employment. In the event an Employee fails to make the required contributions for any optional coverage selected, coverage will revert to "Basic" coverage on the first day of the month for which the Employee failed to make the required contribution. If an employee works one day in the month in which they terminate, they shall earn state share for the entire month.

7.02 Coverage (and dependent coverage, if applicable) ends as of the end of the month in which the employee ceases to be an eligible employee for coverage



(due to some change such as a reduction in the number of hours the employee works), or the end of the month in which an employee terminates employment.

7.03 Coverage of dependents, except for dependents of pensioners and dependents eligible for a survivor's pension, ends as of the last day of the month of the employee's death. Dependents who lose coverage as a result of the employee's death are eligible for continuation under Federal COBRA legislation. Contact CobraServ at 1-800-877-7994 for details of this continuation option.

7.04 ~~Ex-spouses are not eligible for coverage under the State's plan. Ex-spouse's coverage ends on the last day of the month following divorce by the employee completing an application form stating "divorce" as the reason for the change. Notification must be made in writing by the ex-spouse losing coverage within 60 days of the date of the divorce in order to preserve the spouses' rights under COBRA. Ex-spouses not employed by the state are not eligible for coverage under the State's plan. Coverage for the ex-spouse will terminate on the date of divorce. Premiums are paid on a monthly basis and not prorated. The employee must remit the employee contribution for the plan, which included the spouse for the entire month. The employee must submit a signed application within thirty (30) days prior to or thirty (30) days following the date of divorce. If double state share terminates as a result of the divorce, each state employee must pay the employee contribution for the entire month that the divorce occurred. The Group Health Insurance Program will not be responsible for payment of claims when a dependent is no longer eligible for coverage.~~

7.05 Coverage for a dependent child will end the earlier of the following:

- a. December 31st of the year in which he or she reaches age 21. If a full-time student coverage will end on the earlier of the following: (1) the end of the month in which the dependent child is no longer a full-time student, or (2) the end of the month in which the dependent child attains age 24.)
- b. The last day of the month in which the child marries;
- c. The date the child ceases to be dependent on you or your spouse for at least 50% support per Sections 2.01(c),(d).

(The Family and Medical Leave Act (FMLA) regulations provide that employees have a 30-day grace period for late premium payments. The Employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Agency personnel representatives should continue the employee's health coverage for the 30-day period provided under FMLA. The personnel representative can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30-day grace period.)

### **Reinstatement of Coverage**

8.01 Once an employee has requested that his or her coverage be canceled, he or she cannot rejoin the State's plan until the next annual open enrollment period unless such employee qualifies under the rules of the exceptions (see rules 3.03 or 5.10).

8.02 An employee who returns from an authorized leave of absence not exceeding 24 months in duration who does not maintain coverage while on leave of absence, is permitted to enroll upon return without waiting for the next open enrollment period, provided the employee submits a signed application within thirty (30) days of return and pays the required employee contribution, if any. Coverage ~~shall become effective the 1st of the month~~ will begin as of the date the employee returns from leave following completion of the application and payment of any required employee contribution. Premiums are paid on a monthly basis and are not prorated.

8.03 Employees whose positions are involuntarily terminated after they have been employed for a full year (or full school year) will be eligible for State Share if they return to full-time State employment within 24 months of the termination.

### **Miscellaneous**

9.01 It is the responsibility of the employee to keep his or her agency personnel representative informed of any change of address or in status which results in the adding or dropping of dependents (marriage, divorce, birth, death, adoption, etc.) that affects their health care coverage. In turn, it is the responsibility of the personnel representative to make the necessary changes in the PHRST system, or to notify the State Personnel Office Benefits Unit of these changes. Failure to do so may affect eligibility of coverage or extent of coverage for any participant and could impose an extreme hardship on an employee. The State of Delaware Group Health Insurance Program will not be responsible for payment of premiums and/or claims in the event of ineligibility and/or the absence of a signed enrollment form/confirmation statement in the employee file.

9.02 If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Rules and Regulations which can be given effect without the invalid provision or application, to that end the provisions of these Rules and Regulations are declared to be severable.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER THIRTY-FOUR**

**RE: TERMINATING DROUGHT EMERGENCY**

**WHEREAS**, I have been advised that the drought conditions described in Executive Order No. 32, issued August 2, 2002, and Executive Order No. 33, issued August 15, 2002, have abated to some degree; and

**WHEREAS**, I have been advised that mandatory water restrictions are no longer necessary to protect the property, public health, or safety of Delawareans;

**I, RUTH ANN MINNER, BY VIRTUE OF THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY DECLARE AND ORDER ON THIS ELEVENTH DAY OF OCTOBER, 2002;**

1. The state of emergency created by Executive Order No. 32 is hereby terminated, for the reasons stated above.

2. The specific rules, powers, authority, and sanctions described in Executive Orders No. 32 and 33 are not to be invoked to the extent that they are inconsistent with Delaware statute and common law, provided that prosecutions for violations of Executive Orders 32 and 33 shall remain valid.

3. Executive Order No. 29, creating a statewide drought warning, remains in effect, as do all of the rules described in that Order.

Ruth Ann Minner, Governor

Attest:

Richard J. Geisenberger, Assistant Secretary of State

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delaware Commission for Women	Ms. Michele D. Allen	9/25/05
	Ms. Jayne E. Armstrong	9/25/05
	Ms. Linda M. Brown	10/10/05
	Ms. Mary C. Davis	9/30/02
	Ms. Muriel E. Gilman	9/30/05
	Ms. Ann Grunert	9/24/05
	Ms. Catharine A. Kanefsky	9/27/05
	Ms. Carol Ann Weisenfeld	9/30/05
	Ms. Laura A. Yiengst	10/1/05
Delaware Open Space Council	Hon. Nathan Hayward III	10/3/06
	Mr. Paul H. Boswell	10/3/06
	Mr. Donald J. Lynch	10/3/06
	John Mackenzie, Ph.D.	10/3/06
	Mr. Harry K. Terry	10/3/06
	Ms. Lynn W. Williams	10/3/06
State Fire Prevention Commission	Mr. Dale A. Callaway	9/13/03
Technology Investment Council	Mr. Ronald P. Coupe	Pleasure of the Governor

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code  
Sections 311 and 2312 (18 Del.C. §§ 311, 2312)

**FORMS AND RATES BULLETIN 23****DATA REQUIREMENTS FOR FILINGS OF MANUAL  
RATES FOR ALL PROPERTY/CASUALTY LINES OF  
BUSINESS**

Revised September 23, 2002

All property/casualty filings submitted to the Delaware Insurance Department must contain sufficient information to allow the Insurance Department to independently calculate rate level indications, and thoroughly review any other proposed changes. Each rate filing should contain, but not necessarily be limited to, the following data:

**1. Earned Premium**

Earned premiums should be reported on an actual basis and on a current rate level basis for all coverages. An explanation of the current rate level calculation should also be provided.

**2. Loss & Loss Adjustment Expense**

The rate level calculations should be based on at least the latest three calendar/accident years of actual incurred loss and allocated loss adjustment expense (ALAE) data. The actual incurred loss and ALAE data should then be adjusted for trend, loss development and unallocated loss adjustment expense (ULAE). All pertinent calculations and background exhibits, including explanations of the methodologies used, should be provided to the Insurance Department. Loss development triangles should be provided for both paid and incurred loss and ALAE for Delaware and countrywide, with the countrywide data including only tort states. Separate ULAE factors should be calculated for liability and physical damage coverages.

**3. Permissible Loss and Loss Adjustment Expense  
(LAE) Ratio**

The permissible loss and LAE ratio should reflect countrywide incurred annual expense and countrywide premium on a collected level for the latest three calendar years with the exception of commission and premium tax, licenses and fees provisions. Provisions for commission and premium tax, licenses and fees are to be based on Delaware experience for the latest three calendar years. The actual expenses incurred and collected premium level underlying each ratio should be provided. In addition, investment income should also be reflected in the calculation of the permissible loss and LAE ratio.

**4. Investment Income**

Investment income should be calculated according to the "State X" Method.

**5. Rating System Changes**

All changes to the present rating system should be shown separately and the premium effect for each proposed change for each coverage should be calculated. All justification for the proposed rating system changes should also be included in the filing.

**6. Exceptions**

If there are any exceptions from the aforementioned points, they should be described in detail in the rate filing. Data supporting these deviations should be provided. For example, if a pure premium ratemaking methodology is utilized, full supporting data should be provided.

This Bulletin shall become effective immediately and shall be applied prospectively. Prior editions of this Bulletin are rescinded as of the effective date hereof and any filing submitted prior to September 1, 2002 shall not be required to meet the requirements of this revision. Filings made after September 1, 2002 shall be revised to meet the requirements of this revision on or before October 31, 2002. All filings received after October 31, 2002 that do not conform to the data requirements of this Bulletin, shall be returned and the filer shall not be permitted to submit rate revision filings for the pertinent line of business for a period of 6 months from the date the Delaware Insurance Department returned the filing.

Donna Lee H. Williams, Insurance Commissioner

NOTE: The Delaware Insurance Department assumes that the material in this Bulletin is self-explanatory. However, it recognizes that questions may arise. It is suggested that all questions be resolved prior to the submission of proposed rate changes. Questions should be submitted in writing to the Delaware Insurance Department, Attention: Rating Section, 841 Silver Lake Boulevard, Dover, Delaware 19904-2465.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PLUMBING EXAMINERS**

The Delaware Board of Plumbing Examiners in accordance with 24 **Del.C.** §1805(2) has proposed comprehensive changes to its rules and regulations. The changes implement the recommendations of the Joint Sunset Committee. The changes eliminate provisions that repeat the statute or exceed the statutory authority. The Council proposes a new definition of "Direct Supervision" in 3.1.2. The pre-examination application procedure is clarified. The reciprocity rule in 5.1 has been modified to indicate the standards for licensure in the licensee's state must be "equivalent to" and not the "same as" the standards in Delaware. Disciplinary proceedings are described by reference to the statute. The web address is included for convenient access to forms and information.

A public hearing will be held at 9:00 a.m. on December 3, 2002 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing Examiners, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE**

PLEASE TAKE NOTICE, that pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306(a)(1), the Delaware State Board of Veterinary Medicine proposes to add to its rules and regulations. The proposed addition concerns advertising and provision of emergency services. The proposed addition seeks to define unprofessional conduct for a veterinarian as advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency

service shall be specified as either "veterinarian on premises" or "veterinarian on call." The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond. prescribing medication without examining the animal(s) within a period of a year. The proposed regulation serves to implement or clarify Section 3313(a)(1) of 24 *Del. C.* Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, December 17, 2002 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

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**DEPARTMENT OF AGRICULTURE  
DELAWARE FOREST SERVICE**

**State Forest Regulations**

The Department proposes these regulations pursuant to 3 **Del.C.** 1008 and 1011. The State Forests of Delaware are open to the public for all legal forms of recreation and enjoyment. The following rules and regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These regulations are a total rewrite of those regulations proposed at 2 **DE Reg.** 348, (9/1/98).

The proposed regulations will be considered at a public hearing scheduled for *December 6, 2002 at 1:00 p.m.* at the Delaware Department of Agriculture Building Conference Room. Copies of the proposed regulations may be obtained from the State Forester's Office. Public comments may be submitted in writing to E. Austin Short, III on or before *December 6, 2002* and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4500.

**THOROUGHBRED RACING COMMISSION**

The Delaware Thoroughbred Racing Commission proposes to enact a new Rule 15.13. The proposed rule would provide as follows:

1) prohibit possession of an instrument used for shock wave therapy on the licensee's race track; 2) provide that no horse may be treated with any form of shock wave therapy within ten days of racing; 3) provide that the administration of shock wave therapy may only be performed by a licensed veterinarian who must document treatment in the daily medication report; and 4) impose penalties on trainers and veterinarians for violations.

The Commission will accept written comments from November 1, 2002 through January 5, 2003. The Commission will hold a public hearing on the proposed rule on January 6, 2003 at 10:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, at the Department of Agriculture.

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, November 15, 2002 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

**Regulations for Criminal History Checks and Drug  
Testing for Home Health Agencies**

**Public Notice**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies pursuant to 16 Del. C., Sections 1145(f) and 1146(f). These regulations address issues including criteria for unsuitability for employment, confidentiality and the responsibilities of employers, applicants and the Department with respect to criminal history checks and drug testing for applicants for employment by home health agencies and/or private healthcare givers in a resident's home or home of residence.

**Invitation For Public Comment**

Public hearings will be held as follows:

Monday, December 2, 2002, 10:00 AM  
Department of Natural Resources & Environmental  
Control  
89 Kings Highway  
Dover

Tuesday, December 3, 2002, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments on these proposed regulations should be sent to:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the December 3, 2002 public hearing.

**DIVISION OF PUBLIC HEALTH  
OFFICE OF EMERGENCY MEDICAL SERVICES  
Notice Of Public Hearing**

The Office of Emergency Medical Services, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware EMS Pre-Hospital Advanced Care Directive Regulations.

The public hearing will be held on Tuesday, November 26, 2002 at 9:00 AM in the Conference Room of the Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

Office of Emergency Medical Services  
Blue Hen Corporate Center, Suite 4-H  
655 Bay Road  
Dover, Delaware 19901  
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-

4710 by Friday, November 22, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Cash Assistance Program is proposing to amend Section 6103 of the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to provide an inpatient hospital care reimbursement methodology for interim payments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program

Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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### **DEPARTMENT OF INSURANCE**

#### **Notice of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Tuesday December 3, 2002, at 2:00 p.m. in the Executive Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 80 relating to the standards for prompt, fair and equitable settlement of claims for health care services.

The purpose for amending Regulation 80 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Tuesday December 3, 2002, at 2:00 p.m. and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Monday, December 2, 2002.

#### **Notice of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a PUBLIC HEARING will be held on Tuesday, December 3, 2002 at 9:30 a.m. in the Second Floor Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The Hearing is to consider implementation of Regulation 86 entitled "Standards for Safeguarding Customer Information."

The purpose of the Regulation is to establish standards for developing and implementing administrative, technical

and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

The Hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Wednesday, December 4, 2002, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Joan Zimmerman at (302) 739-4251, Ext. 157 no later than Monday, December 2, 2002.

#### **Public Notice**

Insurance Commissioner Donna Lee H. Williams hereby gives public notice of proposed Regulation 87 relating to the USE OF CREDIT INFORMATION by insurance companies issuing automobile and homeowners policies in the State of Delaware.

The purposes for promulgating Regulation 87 are:

- To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.
- To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.
- To assure that consumers, whether on initial application or renewal, are given notice when credit reports will be requested and reviewed in connection with a consumer's eligibility for and/or the continuance of insurance coverage and/or a consumer's tier or level of premium payment.
- To prohibit the practice of assigning a consumer to a premium level based solely on the consumer's credit rating or credit score.
- To assure that, if used, credit information obtained by the insurer shall be utilized consistently within the insurer's book of business even though one or more affiliated companies may decline to use credit information or to utilize credit scoring as a factor in its rate making.
- To assure that the consumer has adequate relief

from any adverse action taken by an insurer through the use of credit scoring.

Public hearings will be held in each county. Notice of the public hearings will be published on the Insurance Commissioner's webpage, [www.sate.de.us/incom](http://www.sate.de.us/incom) and in the Delaware State News and News Journal newspapers. Comments are being solicited from any interested party. Comments must be in writing and be received by the Department of Insurance no later than January 24, 2003. Written comments should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

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### **DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS**

#### **Clean Indoor Air Act Regulations Notice of Public Comment**

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

Friday, November 22, 2002, 9:00 a.m.  
Delaware Department of Education Cabinet Room  
Room 278, Second Floor  
Townsend Building  
401 Federal Street  
Dover, DE 19901

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#### **UNEMPLOYMENT INSURANCE APPEAL BOARD**

PLEASE TAKE NOTICE, pursuant to 29 *Del. C.* Chapter 101 and 19 *Del. C.* Section 3321(a), the Delaware Unemployment Insurance Appeal Board ("Board") proposes to revise its rules and regulations. The proposed revisions set forth procedural requirements which apply to appeals and hearings before the Board. .

A public hearing will be held on the proposed Rules and Regulations on Wednesday, December 4, 2002 at 9:00 a.m. in the First Floor Appeals Hearing Room at the Department of Labor, 4425 N. Market Street, Wilmington, DE 19809. 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 Helen McClure 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 Helen McClure at the above address or by calling (302) 761-8370.



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

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION****SAN # 2002-14**

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION****SAN # 2002-15****Title Of The Regulation**

Regulation No. 3, Section 11 (PM<sub>10</sub> and PM<sub>2.5</sub> Particulates), "Ambient Air Quality Standards"

**Brief Synopsis Of The Subject, Substance And Issues:**

The Department proposes to revert Delaware's Regulation 3, Section 11 Particulate Matter (PM<sub>10</sub>) air quality standards back to their pre-November, 1999 form. This action is necessary in response to the March 26, 2002 Court of Appeals decision that vacated EPA's standards that were set forth in the 62 FR 38711, dated July 18, 1997. That decision resulted in the standard contained in DNREC'S November 3, 1999 State Implementation Plan (SIP) submittal being less restrictive than the current PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS). As a result, EPA cannot approve Delaware's SIP revision containing a less restrictive PM<sub>10</sub> NAAQS standard than the 1987 standard.

The impacts of proposed amendments are minimal. The proposed changes will not change the annual and 24-hour average concentration standards of 50 ug/m<sup>3</sup> and 150 ug/m<sup>3</sup>, respectively. The changes are primarily a technical, procedural change in the Department's methodology of determining concentrations from monitored data.

**Notice Of Public Comment:**

The public comment period for this proposed regulation will extend through December 1, 2001. Interested parties may submit comments in writing to: John Sipple, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Tuesday, November 26, 2002 beginning at 6:00 pm in the DNREC R & R Auditorium, 89 Kings Highway, Dover DE.

**Title Of The Regulation:**

Regulation No. 24, Section 10, "Aerospace Coatings"

**Brief Synopsis Of The Subject, Substance And Issues:**

The Department proposes to revise Regulation No. 24, Section 10, to correct an error found in the recently promulgated regulation. Based on the EPA's final Aerospace Manufacturing and Rework MACT standard and EPA's final Control Technique Guideline (CTG) document "Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations" issued December 1997, the current definition of "Fire-Resistant (interior) Coating" is not currently reflected in Regulation 24. The definition will be changed to correctly differentiate between civilian aircraft subject to FAA fire worthiness requirements, and military aircraft and space applications subject to other flammability requirements.

**Notice Of Public Comment:**

The public comment period for this proposed regulation will extend through December 1, 2002. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Tuesday, November 26, 2002 beginning at 6:00 pm in the R & R Auditorium, 89 Kings Highway, Dover, Delaware.

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**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION****SAN # 2002-19****Title Of The Regulations:**

AMENDMENTS TO DELAWARE 2005 RATE-OF-PROGRESS PLAN, and AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION, toward attainment of the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties.

**Brief Synopsis Of The Subject, Substance And Issues:**

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP)

revision for every three years after 1996 to demonstrate how Delaware will achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors that form ground-level ozone. Delaware's 2005 Rate-of-Progress Plan, which covers the three-year period from 2003 to 2005, was submitted to EPA in December 2000. Under the CAAA, Delaware is also required to develop a SIP revision to demonstrate its capability of attaining the 1-hour ozone standard in 2005. This SIP revision, termed as the Phase II Attainment Demonstration, was amended and submitted to EPA in January 2000. The purpose of this action is (1) to amend the 2005 RPP, and (2) to amend the Phase II Attainment Demonstration to reflect mobile emission budgets using the Mobile 6 emission model. No other changes to the plans are proposed.

**Notice Of Public Comment:**

A public hearing will be held on November 26, 2002 beginning at 6:00 PM in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

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**DEPARTMENT OF  
TRANSPORTATION**

**OFFICE OF PUBLIC CARRIER REGULATION**

The Department of Transportation is currently considering changes to the Delaware Code and its current regulations pertaining to Public Carriers in the State of Delaware. These include taxis, limousines, and charter bus operations.

The Office of Public Carrier Regulation solicits information, comments and advice from public carriers and insurance agencies with respect to, but not limited to, the following issues:

- insurance rates
- operating or commercial distinctions between taxis and limousines
- raising insurance coverage requirements above the statutory minimums,
- varying rates according to type of carrier
- vehicle liability limits
- public liability limits
- premises liability limits, if applicable, and
- related topics

A review of the information, comments and advice offered will be gathered as part of a process to consider the drafting and introduction of legislation with respect to public carriers, as well as the drafting of amendments to the

existing regulations.

Those interested should provide written comments by November 30, 2002 by mail to the following address:

Office of Public Carrier Regulation  
Delaware Department of Transportation  
800 Bay Road  
P.O. Box 778  
Dover, DE 19903

If you have any questions regarding this matter, please contact the Office of Public Carrier Regulation, at 302-760-2098.

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**EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE  
DEPARTMENT OF HEALTH AND SOCIAL  
SERVICES AND THE TAX APPEAL BOARD**

**Title Of Regulation**

Neighborhood Assistance Act Tax Credit Program  
Regulation

**Nature Of Proceedings; Synopsis Of The Subject And  
Substance Of The Proposed Regulation**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the members of the Tax Appeal Board are proposing to adopt regulations pertaining to the tax credit set forth in the Neighborhood Assistance Act, 30 *Del. C.* §§2001 — 2007. The regulation sets forth certain definitions pertaining to the Act and the regulation and explains how to apply for an NAA Credit and the procedures pertaining to the application process.

**Notice Of Public Hearing; How To Comment On The  
Proposed Regulations**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Mr. Jack Tarburton, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the members of the Tax Appeal Board, or an employee of the Delaware Economic Development Office designated by the Secretary, the Director and the members of the Tax Appeal Board, will hold a public hearing at which members of the public may

present comments on the proposed regulation on December 2, 2002 in the conference room of the offices of the Delaware Economic Development Office on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Jack Tarburton at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 30, 2002.

obtain a copy of the proposed Group Health Care Insurance Eligibility and Coverage Rules or to make comments at the public hearing should notify Deborah E. McCall at the above address by calling (302) 739-8331.

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

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet Monday, November 25, 2002 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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**STATE EMPLOYEE BENEFITS  
COMMITTEE**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 29 Del. C. Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendment inserts a new sentence in Rule 7.01 that clarifies that coverage is retained under certain circumstances for public school or higher education employees through the end of the summer.

A public hearing will be held on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules on Thursday, December 5, 2002 at 1:00 p.m., in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware, 19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Deborah E. McCall at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to

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*Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.*



*Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.*

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